

Guidance for Independent Contractor Process at W&M

Spring 2023

Independent Contractor (IC) OR Employee?

Independent Contractor: The general rule is that an individual is an independent contractor if the payer has the right to control or direct *only* the result of the work and not what will be done and/or how it will be done. The payer's control and direction are limited to the end product of the IC's work. In a true IC arrangement (vs. employer/employee), your department or program is only interested in end results.

IC's typically have a separate workplace, are not supervised, and have a particular set of skills not available elsewhere within your unit or the university. IC's are not entitled to employee benefits, are not covered by workers' compensation, and their pay is usually not subject to income tax withholding.

Example: Consultants provide professional advice and usually meet the criteria of an independent contractor. These individuals usually have a separate skill or expertise not available within the University, and the need for their services does not typically extend beyond a limited period of time in which to complete a specifically defined project.

Employee: Performs work for wages or a salary and the person who hires the employee reserves the power to terminate that person and exercise control over the work to be performed.

An employer-employee relationship exists if the party for whom the work is to be done has the authority to direct the means and methods by which the individual does the work. If the individual is free to adopt the means and methods as they choose to accomplish the result, the individual is probably an independent contractor.

Additional information can be found [here](#).

Steps to take **BEFORE** services are rendered

1. Prior to engaging the services of any individual as a potential independent contractor, hiring departments must first complete William & Mary's [Independent Contractor Assessment](#) to determine the appropriate work status of the individual (employee or independent contractor).

TIP: To the extent possible, *prior* to completing the IC assessment, departments/programs should request a detailed summary of work to be performed (scope of work) from the vendor and should also have a general idea of what the project deliverables will look like. At a minimum, it's best to have a formal quote in hand outlining services to be performed so that you can convey these details when completing the IC assessment. Be sure to clearly indicate what the individual will be doing, rather than providing a broad statement of work that covers the whole project or a brief scientific sentence that does not clearly explain the tasks. For example, if an assessment simply reads "Vendor will provide research assistance for Professor Smith" this won't help HR ascertain critical details such as the type of research, skill level required, and/or why this person is uniquely qualified to do the research, etc.

2. The IC Assessment routes to Human Resources for review. HR will notify the requester via email as to whether the proposed services meet the criteria of an independent contractor (vs. employee). If the individual is determined to be an employee, HR will advise the hiring unit to follow standard hiring procedures to employ the individual (to be paid via W&M payroll).

If the individual is determined to be an independent contractor, HR will provide guidance on next steps via email and will advise that the unit follow W&M Procurement procedures for paying an independent contractor.

NOTE: HR will often need to contact the requester for clarifying information before making a determination. In some cases, units may receive a determination stating, *'Based on the responses selected, the classification of this work may be determined to be an Employee'*, however this isn't always the final result. Be sure to respond to any follow-up requests for information in a timely manner so as not to delay the process!

3. If the individual is determined to be an independent contractor, the following will need to be completed prior to submitting a requisition in buyW&M...
 - I. **Ensure that the vendor is properly set up to receive payment from W&M**
 - a. Confirm whether the individual has an active [vendor record](#) in Banner
 - b. If they do not, submit a [request](#) as soon as possible to invite the individual to register as a vendor in [buyW&M](#)
 - II. **Prepare the Independent Contractor Form to include the following details** (*link to form will be provided once your unit is authorized to move forward with the IC relationship*)
 - a. Summary of work duties to be performed
 - b. Specific objectives in chronological order, if applicable
 - c. Agreement period
 - d. Compensation (*Be advised that initial deposits are not permitted, however Procurement will consider a progressive payment schedule, i.e., percentages of total payment to be processed at different intervals as portions of work are completed*)
 - e. Reporting requirements – Describe frequency of vendor updates/reports due to the faculty member/PI based on needs/expectations (1-2 sentences is fine).
****Procurement must review this form before the IC signs -- the draft contract will need to be uploaded as an attachment when submitting the requisition in buyW&M.**
4. See enclosed guidance on how to submit a purchase order requisition in buyW&M.
 - a. NOTE: A requisition MUST be submitted in [buyW&M](#) **and approved** in advance of work being performed. Once the Independent Contractor Form is complete, administrators may submit the requisition in buyW&M along with the vendor's quote. This way, the Purchase Order will be ready to invoice against once the IC work is complete.

Employee vs. Independent Contractor Indicators

Below are some examples of common factors that distinguish between employee vs contractor however this is not an exhaustive list and no outcome is guaranteed.

	Employee	Independent Contractor
Must comply with instructions as to when and where, or how work is to be performed?	X	
Training is required to do the work, and is provided by the payer?	X	
Does the individual hire and supervise employees of W&M?	X	
Is there a continuing working relationship?	X	
Set hours of work determined by the payer?	X	
Services needed on a full-time basis?	X	
Work must be performed at a W&M facility?	X	
Payer determines the order and priority of work assignments?	X	
Payment by time, not project - individual receives payments of regular amounts at set intervals?	X	
Duties/performance of the individual's services have a significant impact on the success or continuation of the operations.	X	
Individual determines how/when/where the work is performed?		X
Individual furnishes their own tools and materials		X
Individual can suffer a personal loss (or make a profit) from his/her services		X
Individual often performs services for more than one client at a time		X
Payments are by project, not time - individual receives predetermined lump sum payments as the work is completed		X
Individual cannot be terminated so long as deliverables meet contract specifications		X