

Appendix W: Contracted Services Agreement (CSA) Procedures

I. PURCHASING SERVICES

In the event University employees cannot provide services on behalf of MSU, the University may need to acquire these services from sources outside of the University. The procedures established in the Purchasing Policy are applicable to the purchase of services.

- A. "Services" means the furnishing of labor, time, or effort by a contractor. The term does not include employment agreements or collective bargaining agreements, the provision of human services administered by the department of public health and human services, or services related to construction contracts. [MCA 18-4-123(18)]

- B. University procurement procedures do not apply to employment of:
 - 1. a registered professional engineer, surveyor, real estate appraiser, or registered architect;
 - 2. a physician, dentist, pharmacist, or other medical, dental, or health care provider;
 - 3. an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;
 - 4. consulting actuaries;
 - 5. a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;
 - 6. a private consultant employed by the Montana state lottery;
 - 7. a private investigator licensed by any jurisdiction; or
 - 8. a claims adjuster. [MCA 18-4-132 (5)]

II. CONTRACTS WITH CURRENT AND FORMER EMPLOYEES ARE PROHIBITED

Montana law prohibits contracting with former state employees, within six months following their termination*, to perform services related to matters the employee was involved with during his or her state employment. (Section 2-2-201, MCA). Contracts

with current employees are also prohibited. Current employees providing additional services related to the University may be eligible for additional compensation if appropriate.

* This requirement is waived if the Agency issues a solicitation for public bid and the requirement is awarded on a competitive basis according to normal purchasing requirements.

III. DETERMINATION OF STATUS - EMPLOYEE OR INDEPENDENT CONTRACTOR (Complete "Independent Contractor Checklist" at Appendix X)

Prior to awarding a Contracted Services Agreement, departments must determine whether the pending relationship with the person or firm offering to provide the service, is an employment relationship or an independent contractor relationship. **In order to determine the type of business relationship (employment status or independent contractor), departments must complete the Independent Contractor Checklist (Appendix X).** To be considered an "independent contractor", a firm or individual should meet the criteria set forth on the checklist.

If the contractor meets the criteria for Independent Contractor status, the procedures for purchasing services are applicable and a CSA is appropriate. Failure to meet one or more criteria may indicate an employee/employer relationship; thus a Contracted Services Agreement is inappropriate and the individual should be placed on the University payroll, consistent with University Personnel policy.

The checklist determines the legal status of the service provider, as either an employee or an independent contractor. This distinction must be made for tax withholding, workers' compensation, unemployment insurance, social security, state and federal income tax purposes, and other benefits.

IV. PROCEDURES FOR PURCHASING SERVICES

- A. Describe the Services: Prepare an explicit written description of the required services.
- B. Determine if the service is that of an "employee" or an "independent contractor".
- C. Determine the source of funding (Grants & Contract or other).
- D. These procedures are not applicable to Sub-Contractors funded by G&C.
- E. Contract Dollar Limits and Procedure.

This section identifies dollar limits that apply to all MSU campuses and departments, as provided in Section 300 "Purchasing Delegation Agreement." The dollar limits established herein are based on "Total Contract Value".

1. Contracts for services with a Total Contract Value of \$5,000 or less:

The Contracted Services Agreement (CSA), form # PD-49, and documentation of competitive bids are recommended, but not required. Use of the CSA is recommended to assure that the contractor and the department have a clear understanding of the services to be provided, ownership of the product developed, payment methods, fees, period of performance, liabilities, insurance requirements, etc.

A CSA is required for purchases of \$1,000 or more using G&C funds (Index # 426XXX through 429XXX).

2. Contracts for services with a Total Contract Value less than or equal to \$25,000:

Departments are responsible for following procedures established in the Purchasing Policy. The CSA (form PD-49) must be completed and signed by all required parties **prior to start of service**. MSU Legal Counsel signature is not required for contracts less than or equal to \$25,000. Competitive procedures must be used, i.e., obtain a minimum of three oral or written bids. The Department must document the results of the competition on the "Tabulation of Bids Resulting From Limited Solicitation Procedure", PD-20 (Appendix O). This form must accompany the Banner Payment Authorization (BPA). If competitive procedures are not used, the Department must complete a Sole Source Justification form (Form PD-14) and submit the PD-14 with the BPA. Please remember to attach the invoice to the BPA.

3. Contracts for services with a TCV greater than \$25,000.00:

Departments must submit a Purchase Requisition (Form PD-1), including a full description of the desired services and suggested service provider(s), to the Purchasing Department. The Purchasing Department will process the Requisition. If the service to be provided is sole source, Departments must prepare the PD-14 and submit it with the Purchase Requisition. If the Department obtained a bid from a vendor, the Department must provide a copy of that bid with the Purchase Requisition. The bid must be signed and dated. The Purchasing Department will request signatures from the Contractor, Grants & Contracts, appropriate Department personnel, appropriate Vice President (if not G&C funded), and MSU Legal Counsel. Upon receipt of proper signatures, the Purchasing Department will sign the CSA and distribute the contract.

IN NO EVENT shall the Contractor perform services prior to a properly signed and executed CSA.

4. Requisition routing: Route the Requisition through the appropriate approval authorities to MSU-Bozeman Purchasing. The Purchasing Department will review the Requisition, determine if it is with our delegated purchasing authority or should be forwarded to the State Procurement Bureau. If within our delegated authority, the Purchasing Department will secure bids or proposals, obtain contract signatures, obtain required certifications and issue the CSA.

Table #1

TOTAL CONTRACT VALUE	REQUIRED WITH BPA	COMMENTS
\$5,000 or less*	- Invoice - CSA (if required)	CSA recommended, not required. Competitive bids recommended, not required *G&C Funds: CSA mandatory when Total Contract Value is \$1,000 or more
Over \$5,000 and up to \$25,000.00	- CSA (PD-49) - Invoice - Sole Source Justification (PD-14) or - Tabulation of Bids (PD-20)	Departments must obtain competition (minimum of 3 oral or written bids) or meet criteria for Sole Source procurement. CSA is mandatory.
Over \$25,000: Submit Purchase Requisition (PD-1) to MSU Purchasing Dept. If Sole Source, provide a Sole Source Justification form. Provide the bid if previously obtained from vendor.	- Invoice	Departments are not authorized to award CSA's with a Total Contract Value exceeding \$25,000.00

V. Procedures for Contracting for Services using Grants and Contract Funds:

State or local governments, college and university or other entities or individuals that collaborate with MSU-Bozeman to perform research work specified in the grant document are Research Subcontractors. The appropriate Research Subcontract will be drafted by Legal Counsel to assure that all relevant terms and conditions of the grant are addressed. The Grants and Contracts Accountant will arrange for preparation of the subcontract.

VI. CONTRACTED SERVICES AGREEMENT INSTRUCTIONS

Any purchase of services from an independent contractor with a total contract value exceeding \$5,000 requires a written contract. When using G&C funds, a written contract is required if the total contract value is \$1,000 or more. The written contract is in the form of a Contracted Services Agreement (PD-49) that is provided to simplify contracting with independent contractors providing services to the University. The CSA form incorporates the terms and conditions mandated by the State Procurement Bureau and pertinent recommendations of the University Legal Counsel.

This CSA template is not recommended for use if the contract is with a state or local government, a college or university, or for purchase of computer programming services. These types of agreements usually require the inclusion of unique provisions that are not contained in the Contracted Services Agreement form. MSU-Bozeman Legal Counsel and MSU-Bozeman Purchasing Department will assist in the development of an appropriate agreement in these situations.

This form is a contract template, which incorporates the major provisions required under state law and University policy. Provisions may be modified to meet the particular needs of the contact, if it is in the best interest of MSU-Bozeman. Any modifications to the provisions must be coordinated with the MSU-Bozeman Purchasing Department and approved by MSU-Bozeman Legal Counsel or the State Procurement Bureau.

A. Preparing the Contract

The person preparing the contract should fill in the blanks as shown.

1. Purpose: This section should explain what the contract is intended to accomplish.
2. Effective Date and Duration: Performance **CANNOT** begin until a contract has been signed by all appropriate parties and has been awarded. In all cases, performance should not begin prior to the time the funds were authorized for the contracted service.
3. Services: This section should contain a thorough explanation of the services to be provided and the deliverables expected. Where there is a separate description of the work or proposal that has been submitted by the contractor and accepted by MSU-Bozeman, it should be referenced under this section. E.g., THE CONTRACTOR SHALL PERFORM THE SERVICES AS OUTLINED IN THE PROPOSAL ATTACHED AS EXHIBIT A TO THIS CONTRACT.
4. Consideration: This section should specify the total amount to be paid to the contractor and a description of how and when it will be paid. Any instructions regarding how the contractor must submit the billing or invoice should also be described.

5. Ownership and Publication of Materials: This section should be reviewed carefully to assure that it is appropriate for the contract in question. If there is the likelihood that copyrightable works will be produced under the contract, it may be necessary to negotiate and draft a more thorough provision concerning the ownership of intellectual property developed under the contract.

B. Process for Finalization

CSA's within the Department's Delegation Authority:

The Principal Investigator will draft the CSA (using PD-49) to the satisfaction of the PI and Department Head. The PI will obtain coordination by Legal Counsel and Grants & Contracts (if G&C funds). Once these parties are satisfied, the PI will mail the contract to the contractor for signature; then relevant signatures of the MSU-Bozeman officials are obtained. If the contractor requests a modification, department must notify the Purchasing Department. The contractor must submit a request to MSU or simply annotate the requested change and initial the contract. MSU Legal Counsel must approve any changes to the CSA template. The Department shall finalize the CSA and obtain proper signatures from MSU officials. The original approved CSA must be submitted with the BPA. The Purchasing Department will retain the CSA with the original signatures. The Department must provide the supporting documentation with the BPA, i.e., Sole Source Justification or Tabulation of Bids.

CSA's above the Department's Delegation Authority:

The Department must submit a Purchase Requisition to the Purchasing Department. The Purchasing Department will assist the Principal Investigator/Requisitioner with drafting the CSA for their specific needs. The draft CSA will be coordinated by the Department, Legal Counsel, G&C, and Purchasing. Upon mutual agreement, the Purchasing Department will mail the CSA to the vendor and request signature. Upon receipt of signature by the vendor, the Purchasing Department will route the document to the Department, Legal Counsel, G&C (if applicable), the VP (if applicable), and Purchasing. If the Principal Investigator has obtained a bid from the contractor, the PI may draft the CSA (PD-49) to the satisfaction of the PI and Department Head, then email a draft to the Purchasing Department and Legal Counsel for review and comment. Once these parties are satisfied, the contract is forwarded to the contractor for his/her signature, and then relevant signatures of the MSU-Bozeman officials are obtained. If the contractor requests a modification, the Department shall notify the Purchasing Department. MSU Legal Counsel must approve any changes to the terms and conditions of the CSA (PD-49). The Purchasing Department will assign a CSA # and will retain the original CSA in the Purchasing Department. The Department does not need to provide a copy of the CSA with the BPA. However, the Department shall insert the CSA Number in the Po/ENC field on the BPA.

C. Signature Guidelines

Refer to Purchasing Policy, Appendix E, for the current Montana State University-Bozeman approval signature schedule. For CSA's over \$25,000, using G&C funds, G&C Administration must sign the CSA and signature by the appropriate VP is not required. When using funds other than G&C, the appropriate Vice President must sign the CSA. Signature by Legal Counsel and Purchasing must be obtained all CSA's over \$25,000. The Purchasing Department will execute the CSA and mail copies of the CSA to all parties.

VII. CONTRACT PAYMENT INFORMATION

The original approved contract with all attachments must be sent to the Purchasing Department. A copy of the contract must be attached to the Banner Payment Authorization (BPA). If additional payments are necessary during the same fiscal year, the document number of the first payment should be referenced, as should the number of the payment (i.e., the third of five payments). A copy of the contract must be attached to the first BPA processed for each fiscal year.

Forms required for the payment of Contracted Services:

\$5,000 or less

- * Banner Payment Authorization (BPA) form
- * Vendor Invoice
- * Contracted Services Agreement (CSA), if required
CSA required if using G&C Funds and Total Contract Value is \$1,000 or more

Over \$5,000 and up to \$25,000:

- * Banner Payment Authorization form
- * Vendor Invoice
- * Contracted Services Agreement
- * Tabulation of Bids (PD-20) or Sole Source Justification (PD-14)

Over \$25,000

- * Banner Payment Authorization (BPA) showing the MSU-Bozeman contract number, i.e., CS030004, in the PO/ENC field.
- * Vendor invoice

Forms required for payment of Grants and Contracts subcontractors:

- * Banner Payment Authorization (BPA)
 - * A copy of signed subcontract
 - * Vendor invoice
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VIII. PAYMENTS TO NONRESIDENT ALIEN CONTRACTORS

A nonresident alien contractor is an individual of a foreign country that performs independent personal services. Examples of these services might include a foreign guest speaker or a foreign language translator.

To receive payment for these services, the individual must have a United States Social Security Number. If they do not have the required number, they must apply for one at the Social Security Office.

The University is required to file IRS Form 1042S, Foreign Person's US Source Income Subject to Withholding, for services performed by all nonresident alien contractors. The University is also required to deduct a 30% withholding tax on all payments made to these contractors unless they qualify for a reduced rate or exemption under an applicable tax treaty. This can be determined by completing IRS Form 8233, Exemption from Withholding. If you are paying a nonresident alien, please request a packet for Payments to Nonresident Aliens from the Controller's Office prior to the nonresident alien's visit to campus.