ENGAGING INDEPENDENT CONTRACTORS

The use of independent contractors to perform services for RF-administered accounts must be approved in advance by the Director of Grants and Contracts or delegate, 402 Crofts Hall, North Campus, 645-2634. All parties to the arrangement must be aware of the working relationship of any individual receiving payment from the RF as either an employee or an independent contractor.

University at Buffalo Faculty/Staff

Although University at Buffalo faculty cannot be paid as Independent Contractors, charges for legitimate consulting services may be paid via payroll in accordance with the extra service compensation policy. Refer to the current Policy and Procedures for Extra Service Compensation and Summer Employment for details and processing requirements reprinted in Appendix A.

Other SUNY Faculty or Staff

- Consultant Services: Payment for services performed as a consultant at other than the home campus is permitted when such activity does not preclude full discharge of obligations to the home campus and a competitive selection process of consultants has been observed. Rates of reimbursement may be consistent with those charged by recognized independent consultants in the field, subject to sponsor limitations and approvals;

- Lecture Fees: Fees for lectures delivered by SUNY faculty and professional staff at other than the home campus may not exceed $100 per day and may be charged to grants and contracts subject to sponsor limitations and approvals;

- Expenses: In addition to fees, expenses may be reimbursed to the extent that they are reasonable and necessary.

Federal Employees

Independent contractor fees generally may not be paid to Federal employees.

Department of Defense and NASA Contracts

Advance notification of the intention to engage a consultant and written prior approval of the contracting officer is required in each instance where consultant services are procured. In addition, it should be understood that the execution of a contract based on estimated project costs, which included a budget for consultant services, does not of itself constitute compliance with the advance notice and prior approval requirements unless the terms and conditions of consultant engagements are also specifically scheduled in a separate clause of the contract instrument.

Appropriate Fees

The fee should be appropriate considering the qualifications of the independent contractor, his or her normal charges and the nature of the services to be provided.
ENGAGING INDEPENDENT CONTRACTORS

Some federal agencies (including NASA, NSF, NIH, Department of Defense) have established ceilings for independent contractor fees which may not be exceeded without their prior written approval. Most federal sponsors specify that, "Payments to individuals for consultant services ... shall not exceed the daily equivalent of the maximum rate paid to a GS-18 federal employee (exclusive of facilities and administration cost, travel, per diem, clerical services, vacation, fringe benefits, and supplies)".

Although these agencies participate in the Federal Demonstration Project (FDP) and generally follow the FDP General Terms and Conditions, they may issue Agency-Specific Requirements which would supersede the FDP general policies. It is recommended that each grant or contract awarded through these agencies be carefully scrutinized by the project director for agency-specific requirements.

Conflict of Interest/Nepotism

It is inappropriate for project directors to utilize the services of an independent contractor to promote, or give the appearance of promoting, personal gain for themselves or others, such as those with whom they have family, business, or other ties. When transactions give the appearance of conflict, it would be in the project director’s best personal interest to insulate him/herself and relevant staff by obtaining countersignatures from the department chair and/or dean to provide an additional level of review and approval for such transactions.

Per federal and state guidelines, a potential conflict of interest includes:

- Any off-campus entrepreneurial venture or other business with which an investigator has significant financial ties, if what is learned or accomplished in the research or other work being proposed is likely to have direct relevance to the business or operations of that venture;

- Any employment of an investigator as a consultant or otherwise, if what is learned or accomplished in the research or other work being performed is expected to bear directly on the work the investigator does or expects to do for the employing firm.

See RF Conflict of Interest Statement, Appendix C.

Advance Approval

The project director must submit a "Request for Advance Approval for Independent Contractor Services" (see Section 4:9.5 - Exhibit 4) prior to the provision of services. [Purchase requisitions may not be used to engage the services of an independent contractor.] The form is required even in cases where the nature of the work relationship was reviewed at the application stage and regardless of the amount of fee to be paid.

The Advance Approval form requires that the following information be furnished by the project director prior to
ENGAGING INDEPENDENT CONTRACTORS

The completion of the "Request for Advance Approval for Independent Contractor Services" form by the project director signifies and certifies that the points listed in the above section have been addressed and that the independent contractor is fully aware of the status of his/her working relationship with the Research Foundation.

The Director of GCS (or delegate) must sign the "Request for Advance Approval for Independent Contractor Services" form to acknowledge that the project director has complied with all
requirements to establish an independent contractor relationship, and must resolve any apparent inconsistencies before an independent contractor may be engaged. If the engagement is consistent with all of the items listed above, the Director of GCS or delegate will sign the form to approve the engagement and to affirm that sufficient funds are available to pay for the services to be rendered. Funds to pay the independent contractor will be encumbered following Director of GCS approval.

**Independent Contractor Agreement**

When the expected costs of the independent contractor's services are $10,000 or less, a formal contract is not required, though one is advised. When the expected costs of the independent contractor's services exceed $10,000, a formal contract between the contractor and the Research Foundation must be executed. The form entitled “Checklist for Preparation of Independent Contractor Agreement” (see section 4:9.5-Exhibit 1) should be completed and forwarded to the Office of Grants and Contracts, 402 Crofts Hall, 645-2634. Upon receipt of the Checklist, the Grants office will complete an Independent Contractor Agreement and obtain the necessary signatures. A fully signed copy of the agreement will be returned to the Department for their records.

**Payment**

Following the satisfactory performance of Independent Contractor services, the project director must complete and submit a “Request for Payment for Independent Contractor Services” form (see Section 4:9.5 - Exhibit 5) in order for payment to be processed, which contains the following information:

- Full, legal name of the independent contractor;
- Home address of the independent contractor;
- Street address of the contractor's business office or a post office box number;
- Brief description of the services provided or a reference to a separate document that describes the services;
- Date(s) services were performed;
- Identification of exact payment requested to be processed;
- A statement where the independent contractor certifies that he or she is in compliance with all federal, state, and local requirements regarding reporting and paying taxes and that he or she is solely responsible for reporting and paying taxes;
- A statement that the works produced by the independent contractor will be considered “works for hire”, ownership of which will be assigned to the Foundation;
- A statement that the provider is an independent contractor and not a Foundation employee;
• Affirmation of the citizenship status of the independent contractor — US citizen, resident/non-resident alien.