



Policy #:	39.04.213
Issued:	October 2001
Reviewed:	
Revised:	August 14, 2014
Section:	39 Research

Independent Contractor/Consultant Policy for Research

Purpose:

To assist Research Administrators, Principal Investigators and others engaged in the management of sponsored projects in properly classifying individual providers of personal services as either an employee or independent contractor. To provide guidance on the difference between Subcontractors and IC/Cs to insure proper classification on research projects. To comply with federal and state tax withholding and reporting requirements as it relates to employment status.

Policy Statement:

It is the policy of Boston Medical Center that all sponsored projects utilizing an Independent Contractor/Consultant (IC/C) must follow the BMC Human Resources policy on Independent Contractor/Consultant (IC/C). This policy is a supplement (Research only) to Boston Medical Center’s Human Resources policies and procedures.

An Independent Contractor/Consultant (IC/C) is an individual retained to provide professional advice or services for a fee but not as an employee of the organization. IC/C’s may also be a firm that provides paid professional advice or services. The services must be of such a nature that they cannot be performed by an individual receiving compensation (BMC salary support) from that grant or contract; the service provider may also provide services to multiple employers. An IC/C cannot be an employee of Boston Medical Center. An individual provider of services is an IC/C if the right to work independently as well as control the means and methods of accomplishing the results lies primarily with the service provider, but the service provider is not delegated any responsibility for programmatic decision-making. Delegation of program responsibility is the key difference between Subcontractors and IC/Cs. A Subcontractor is normally an outside organization to whom the BMC PI delegates some responsibility for programmatic decision-making. BMC’s relationship to an IC/C under a sponsored project is more akin to that of a Vendor than a Subcontractor.

In accordance with M.G.L. Ch. 149 s. 148B, independent contractors must meet a three part test. They must meet the following requirements: 1) Free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact; and 2) Service providers must provide a service outside the usual service of its employer’s business; and 3) the Individual/service provider is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.

Application:

This policy is applicable in all situations in which a BMC department recognizes a need for supplemental services involving an individual or organization external to BMC (i.e., the required

service is not available) on a sponsored project. Further, this policy applies to all activities involving independent contractors, regardless of the funding source. The procedures contained in this document must be followed prior to the performance of any services by an independent contractor.

Exceptions:

This policy does not apply to the use of temporary help provided through an agency, or to contracts for services provided by partnerships or professional service corporations.

Procedure:

Before the project begins, the departmental administrator assembles the following documents:

- Independent Contractor/Consultant Agreement (including Statement of Work (SOW)) - http://www.internal.bmc.org/grants/post_forms.htm
- Independent Contractor Request Form
- HIPAA online questionnaire to determine if a Business Associate Agreement is necessary – http://internal.bmc.org/hipaa/business_agreement.asp
- Business Associate Agreement (BAA), if deemed necessary by above questionnaire

The IC/C agreement and supporting documents are then sent to the Independent Contractor/ Consultant for signatures.

Upon return of the signed agreement from the IC/C, the PI signs the IC/C agreement and submits the following to Research Finance:

- Signed IC/C agreement (including SOW)
- Independent Contractor Request Form
- HIPAA questionnaire and signed BAA, as applicable.
- Completed Purchase Requisition Form

(Note: Exceptions from the purchase order process will be reviewed and approved by Research Finance on case-by-case basis)

For new vendors, the following must also be submitted:

- Completed and signed W-9 form - <http://www.internal.bmc.org/grants/Forms/Post-Award/Forms/W9Form.pdf>
- Copy of the consultant's driver's license or valid state-issued picture ID

After all the materials are reviewed by Research Finance, the IC/C agreement and BAA, if applicable, are signed by an institutional authorized signatory. A copy of the agreement and purchase order is filed in the Research Administration File for the award. The original documents are forwarded to the Purchasing department and a Purchase Order number is assigned and communicated to the Administrator.

Each agreement is valid for a budget period, normally a twelve month period, if the project extends beyond that timeframe with the same activity; a consultant contract amendment is required. If the project rolls to a new activity number; then a new consultant agreement is required for the duration of the new project period. Advances to IC/C's are not allowed, payment will be on a cost or fee reimbursement basis. In absence of an IC/C invoices, the standard BMC IC/C invoice can be used (http://www.internal.bmc.org/grants/post_forms.htm).

All invoices from an independent contractor must be reviewed and approved by the Principal Investigator or appropriate delegate and reference a valid PO number before forwarding to Accounts Payable for processing of the payment.

Definitions:

Independent Contractor: Temporary, external worker possessing skills uncommon among BMC regular employees who is needed to provide services outside the scope of “regular” BMC work. Independent Contractors must satisfy the requirements of the Massachusetts Independent Contractor/Misclassification Law (M.G.L. c. 149, s. 148B).

Responsibility:

Principal Investigators
Department Administrators
Research Finance Staff

Forms:

Independent Contractor/Consultant Agreement
Independent Contractor Request Form
HIPAA online questionnaire
Business Associate Agreement (BAA)

Other Related Policies:

Human Resources, 07.35.000, INDEPENDENT CONTRACTOR

References:

Guiding Regulations:

The determination of an individual’s status (independent contractor/consultant or employee) when paid for services performed for BMC is governed by the Internal Revenue Service (IRS) tax code. BMC’s Human Resource department should confirm any classification of “independent contractor” to avoid IRS sanctions for misclassification. The purchasing process and required documentation is mandated by the Federal Government’s OMB Circular A-110. Since some sponsors may not permit the use of consultants or may limit the daily reimbursement rate, the sponsor’s grant procedures and specific program guidelines should be consulted. Additionally, in Massachusetts, independent contractors must meet the requirements set forth in M.G.L. Ch. 149 s. 148B.

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Initiated by: Research Finance

Contributing Departments:

Human Resources
Purchasing
Accounts Payable