

## **Paying for Services – Getting Started**

A **service** is an activity in which labor is the major factor and not merely incidental to the production, acquisition, and/or delivery of a good. The procurement of services has unique requirements, and the first requirement is an evaluation of whether, based upon guidelines established by the Internal Revenue Services, the individual or entity providing the service should be classified as an employee or an independent contractor (vendor).

The next page contains a flowchart that will enable units to quickly determine whether they must contact another university office for guidance, appoint the service provider as an employee, or perform a service provider evaluation.

When a service provider evaluation is necessary, a questionnaire will be completed by the potential service provider. This [Service Provider Questionnaire](#) will enable the unit to evaluate whether a service provider should be classified as an employee or independent contractor. The [evaluation and classification](#) must be performed **before** engaging an individual or entity to perform services and before any services begin. It must be based upon IRS guidelines, not on administrative ease or relative costs.

◆ **Note:** If the IRS reviews classifications and determines the service provider should have been classified as an employee, any costs associated with misclassification (taxes, interest, penalty) are the responsibility of the unit.

### **Paying Foreign Nationals**

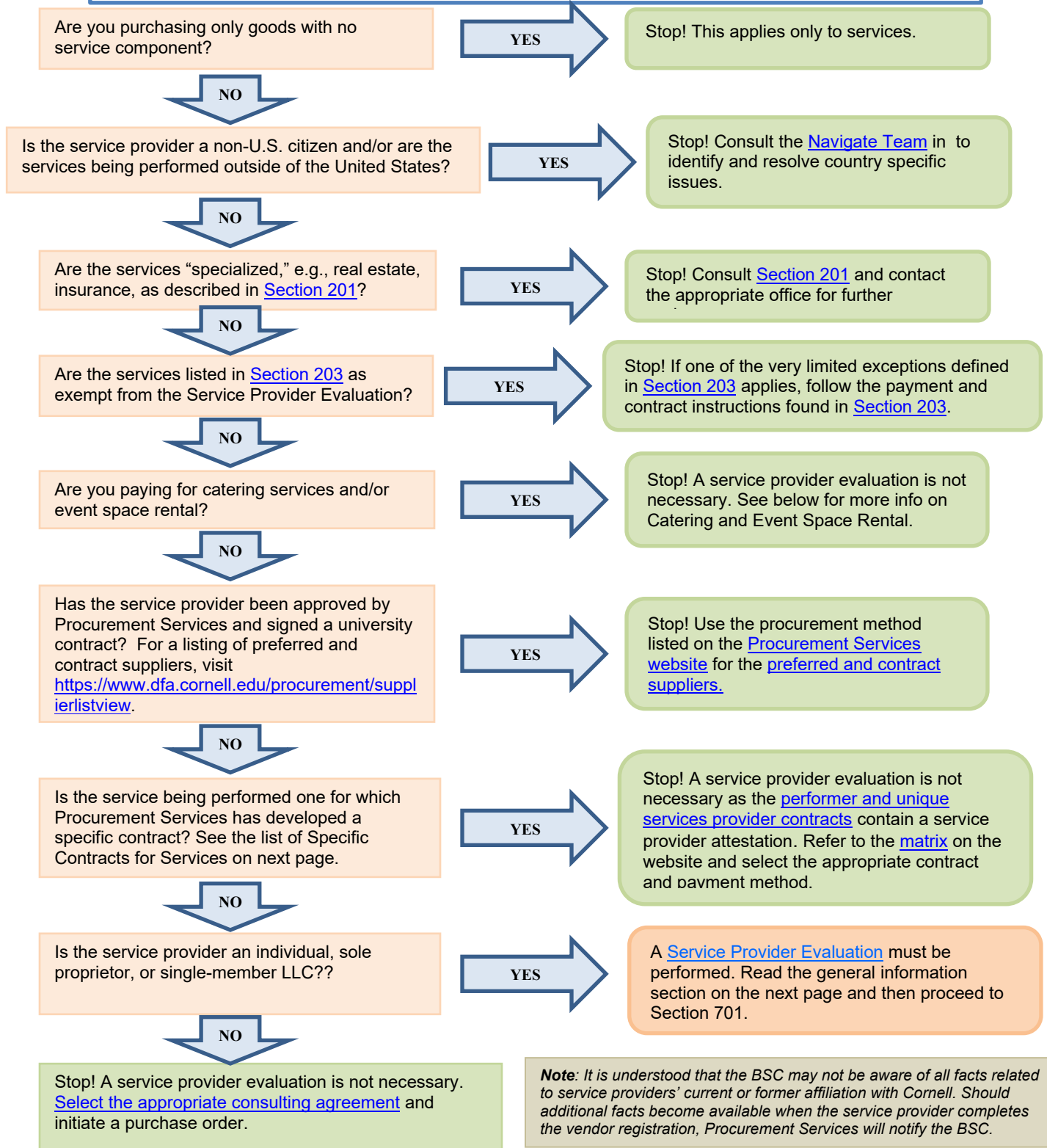
Individuals entering the United States to work at Cornell University have many issues to consider. In an effort to ensure institutional compliance with federal regulations, Cornell's Global Operations unit provides expertise on hiring non-U.S. citizens to work in the U.S. Contact the [Navigate Team](#) within Cornell's Global Operations unit.

### **Worked Performed Outside of the United States**

Work performed overseas can present a range of legal, financial, safety, and logistical considerations that create complications and could add expenses. **This is true regardless of the nationality of the service provider.** Consideration also must be given to whether the arrangement could trigger corporate registration or licensing requirements that may result in additional financial or regulatory obligations in the host country.

Before engaging a service provider to perform services outside of the United States, contact the [Navigate Team](#) within Cornell's Global Operations unit. Select "Ask a Question" from the top menu bar and provide information on the services you require, including location and if known, who will be performing the services.

## SERVICE PROVIDER EVALUATION DECISION FLOWCHART



## Service Providers – General Information

The following information does not apply to service providers appointed through Payroll.

### Insurance

The service provider (vendor) is generally required to provide proof that they meet the university's minimum insurance requirements if the performance of the service could result in liability to the University (i.e., services performed on university property). For information on the university's minimum insurance requirements, see [Section 405, Insurance Requirements](#) topic within this manual. If you are unsure as to whether the intended service provider must provide proof of insurance, contact Risk Management and Insurance.

◆ **Note:** Payment Services (in the SSC Procure-to-Pay department) updates the KFS vendor record for those vendors that are required to provide proof of adequate insurance coverage. You may check the Insurance tab on the vendor record in KFS.

### Contracts

A contract must be executed between the service provider (vendor) and the university in order to establish mutually agreed upon terms and conditions of the transaction. The university's purchase order is a legally binding contract that contains [terms and conditions](#) designed to protect the interests of the university.

When procuring services, it is often advisable to include terms beyond those in the [Cornell purchase order's standard terms and conditions](#), such as the scope of work or deliverables, acceptance criteria, identification of who will provide the services, etc. Contracts covering several specific types of services have been drafted by the Office of University Counsel and these documents will be used in conjunction with the purchase order. The contracts, listed below, can be found on the Procurement website at <http://www.dfa.cornell.edu/procurement/tools-forms/forms/contracts>.

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1. **If the vendor is international** (i.e., an individual working outside the U.S. or a foreign entity performing work within or outside of the U.S.) see International Consulting Agreements below.
2. Check the [Specific Contracts for One-time Services below](#) to see if there's a contract there that meets your needs. Each of these contracts is geared toward a specific type of service: facility rentals; caterers; performers; photography, graphic design, general services, or language translation.
  1. If a contract is available, complete the contract with the service provider, and submit it through the normal I Want document process.
  2. If you need assistance selecting a contract, contact your BSC.
  3. If a contract doesn't exist, continue with the next steps.
3. **If the vendor is a legal entity** (i.e., corporation, partnership, limited liability partnership, limited liability company):
  1. Select either the [Professional Service or IT Professional Service agreement under Consulting Agreements below](#).
  2. Send the service provider the applicable professional service provider contract.
  3. Send the completed contract and a **robust statement of work** to your business service center (BSC) using an I Want document.
4. If the vendor is an **individual** or if you're **not sure** if they are a legal entity, then complete the Service Provider Evaluation process, which is explained in Section 701.

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5. If you are engaging a **current Cornell student** to conduct a workshop or perform a service,
  1. All payments to **Cornell students for services rendered in the U.S.** should be processed as follows:
    1. If the student has an incorporated business with a federal employer identification number, then follow the standard paying for services process and issue a purchase order to the business.
    2. If the student uses their social security number, then process through Payroll as a temporary casual employee.
  2. For **students performing services outside the United States**, contact Global Operations using the Navigate web tool to be sure the payment is allowed. Follow the [International Consulting Agreement](#) process. For tax reporting purposes, please indicate in the business purpose that service will be/was provided outside of U.S.

### Specific Contracts for Services (with service provider attestation)

**For international service providers** (i.e., an individual working outside the U.S. or a foreign entity performing work within or outside of the U.S.), follow the instructions in the [International Consulting Agreements](#) section below and process on a purchase order. If you are engaging a foreign national within the US, if they are on a non-Cornell sponsored visa, you may not engage them without permission from the sponsoring agency.

These contracts are for **specific** kinds of one-time services, whether the services are performed by an individual or a legal entity (i.e., corporation, partnership, limited liability partnership, limited liability company) within the US. If you are engaging a service provider for repeat work over a period of time, please complete the service provider evaluation process and use the appropriate consulting agreement, i.e., independent consultant or professional services agreement.

Because a service provider attestation is included in these specific contracts, the service provider questionnaire and evaluation worksheet are not required. If the service provider indicates that they have been a Cornell employee, student, or student-employee within the past twelve months, contact [tax@cornell.edu](mailto:tax@cornell.edu) before proceeding.

- [Addendum for Facility Contract Agreements](#) – use this agreement when utilizing a facility's contract for event space rental. See chart below for details.
- [Caterer contract](#) – for use with caterers. See chart below for details
- [Performer and Service Provider Contract Matrix](#) – This document will help you determine the type of contract, payment method, and insurance requirements needed when hiring entertainers and one-time service providers. Use the agreements below to address tax, liability, ownership, and contract terms and conditions.
- [Performer without Equipment contract](#) -- for use with individual service providers, such as entertainers, DJs, clowns, small bands.
  - ♦**Caution:** Contracts for major, public, entertainment events held in places such as Bailey Hall and Statler Auditorium must be reviewed by the Office of University Counsel; do not use the standard Performer or Small Services Provider contract.
- [Performer with Equipment contract](#) -- for use with individual service providers, such as entertainers, DJs, clowns, small bands.
  - ♦**Caution:** Contracts for major, public, entertainment events held in places such as Bailey Hall and Statler Auditorium must be reviewed by the Office of University Counsel; do not use the standard Performer nor Small Services Provider contract.

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- [Service Provider contract](#) – for use with individual service providers, such as massage therapists, henna/face painting, one- or two-day workshops. For consulting services, use the [Independent Consultant Agreement](#).
- [Service Provider contract for Graphic Design or Videography](#) -- for use with individual service providers.
- [Service Provider contract for Writing, Editing, Indexing](#) – for use with individual service providers.
- [Service Provider contract for Photographer, Artist, Illustrator](#) -- for use with individual service providers.
- [Service Provider contract for Language Translation and Interpretation \(including sign language\)](#) – for use with individual service providers
- [Executive Search Firm Agreement Template](#) -- All final search firm agreements must be approved by Human Resources. The authorizing party must retain a copy of this contract. A purchase order is required. In addition, please forward a copy of this agreement, **completed and signed by the contractor and university representatives**, along with all relevant attachments, to Sonja Baylor, Division of Human Resources, 337 Pine Tree Road, Ithaca, NY 14850.

## Consulting Agreements

Agreements must be complete, initialed by the unit, signed by the service provider/consultant/ contractor, and include a detailed statement of work. A purchase order is required. If possible, discourage changes to the contract language.

- [Independent Contractor/Consultant agreement](#) – for use with *individuals* who have been evaluated and classified as independent contractors; covers such issues as tax and liability. The service provider questionnaire and evaluation worksheet are required. For IT-related services, use the IT Professional Services agreement.
- [Amendment to Independent Contractor/Consultant agreement](#) – use this to amend the original Independent Contractor/Consultant agreement.
- [Professional Services agreement](#) – for use with business entities; covers such issues as tax and liability.
- [IT Professional Services agreement](#) – for use with business entities or individuals providing information technology and cloud computing services; covers such issues as tax and liability. This language is written specifically for information technology companies that provide hardware, software, web design, or cloud services.
- [Amendment to Professional Services agreement](#) - use this form to amend the original Professional or IT Professional Services agreements.
- [International Independent Consultant agreement](#) – for individuals working outside of the U.S. or foreign entities performing work within and outside of the U.S. to address tax, liability, and contract terms and conditions for work performed overseas.
  - Before engaging/hiring short-term consultants, lecturers, data collectors, and others for international assignments, complete the short [Navigate Questionnaire](#). The Navigate team members from Human Resources, the Office of University Counsel, and the University Tax Office will advise you on country-specific issues.
  - Complete the [International Independent Contractor Certification and Attestation \(PDF, 256 KB\)](#). This form must be completed by any individual who provides services in any jurisdiction outside the United States on Cornell's behalf, regardless of nationality or country of residence. All information must be entered completely by the person to perform the services to ensure accuracy and a timely

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review. The information on this form is to be used to determine whether the services and individual comply with the independent contractor guidelines set out by the U.S. IRS and the laws of the country where the services will be performed.

***Finally, units with unusual business needs require customized contracts. Such contracts must be reviewed by the Office of University Counsel; therefore, contact Procurement prior to initiating the purchase order. Additional information on contracts can be found in [section 409](#).***

**Catering and Event Space Rental**

*Catering* occurs when a vendor prepares, sets up, serves or cleans up food on Cornell controlled property, including both facilities owned by Cornell and facilities (event space) that may be rented or leased and only under Cornell's control for the period of the event (i.e., rental of a banquet hall). Catering should not be confused with simple *delivery* where no service is provided on site (i.e., pizza delivery).

Below the contract requirements, deposit and final payment options for catering only, event space rental, catering with event space rental are defined.

<b>Catering Only</b>	<b>Dollar Amount</b>	<b>Contract Requirements</b>	<b>Deposit Options</b>	<b>Final Payment Options</b>
<b>Caterers with a University Contract</b>	<b>Up to \$10,000</b>	The standard catering contract is not needed.  Quote/scope of work is required.	A deposit up to 50% of the total, not to exceed \$5,000, may be paid via service center pcard.	The BSC may make final payment on a pcard. <i>The total payment (sum of deposit and final payment) may not exceed \$10,000.</i>
<b>Caterers with a University Contract</b>	<b>\$10,000 or greater</b>	The standard catering contract is not needed.  PO is required. A Quote/scope of work must be attached to the requisition.	After the PO is issued, a deposit up to 50% of the total, not to exceed \$10,000, may be paid via a service center pcard.	Final payment to be made through the PO process.
<b>All Other Caterers</b>	<b>Up to \$10,000</b>	Use Cornell's <a href="#">standard Catering Contract</a> .  The BSC director or designee signs the completed contract and returns it to vendor.	After contract is signed, a deposit up to 50% of the total, not to exceed \$5,000, may be paid via service center pcard.	The BSC may make final payment on a pcard. <i>The total payment (sum of deposit and final payment) may not exceed \$10,000.</i>
<b>All Other Caterers</b>	<b>\$10,000 or Greater</b>	The unit will ask the vendor to complete Cornell's <a href="#">standard Catering Contract</a> .  The BSC collects Cornell's Standard Catering Contract (BSC does not sign)	After the PO is issued, a deposit up to 50% of the total, not to exceed \$10,000, may be paid via service center pcard.	Final payment to be made through the PO process.

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Catering Only	Dollar Amount	Contract Requirements	Deposit Options	Final Payment Options
		and attaches it to the KFS Requisition.		

- ❖ **Caution:** When hosting events in a private residence, you must contact the Department of Risk Management and Insurance prior to the event. It is imperative to ensure that the appropriate vendor insurance and licenses are in place to protect the homeowner from potential liability.

	Dollar Amount	Contract Requirements	Deposit Options	Final Payment Options
<b>Event Space Rental OR Catering with Event Space Rental</b>	<b>Up to \$10,000</b>	In addition to the contract that the vendor has supplied, the unit will ask the vendor to complete Cornell's <a href="#">Addendum for Facility Contract Agreements</a> , and then the BSC Director or designee signs the addendum.	After a vendor contract and addendum are signed, a deposit up to 50% of the total, not to exceed \$5,000, may be paid via service center pcard.	The BSC may make final payment on a pcard. <i>The total payment (sum of deposit and final payment) may not exceed \$10,000.</i>
<b>Event Space Rental OR Catering with Event Space Rental</b>	<b>\$10,000 or Greater</b>	In addition to the contract that the vendor has supplied, the unit will ask the vendor to complete Cornell's <a href="#">Addendum for Facility Contract Agreements</a> . The BSC <i>collects</i> the addendum and vendor contract (BSC does not sign) and attaches them to a Requisition.	After the PO is issued, a deposit up to 50% of the total, not to exceed \$10,000, may be paid via service center pcard.	Final payment to be made through the PO process.

For your convenience, the list of caterers with contracts is available on the Procurement website at <https://www.dfa.cornell.edu/procurement/buyers/commodities/hiring-caterers/caterers>.

**Joint Venture**

The university may enter into a joint venture with an outside entity for the performance of services. These ventures are often complicated. Units must involve Procurement prior to entering into such an agreement.

**Sponsored Project Consulting Agreements and Subcontracts**

When an individual is performing services that are directly related to the science or scope of a sponsored project, a [Service Provider Evaluation](#) must be completed to determine if the individual is an employee or an independent contractor. If after the evaluation, the service provider is deemed to be an Independent Contractor, a purchase order is required and an Independent Contractor/Consultant Agreement must be completed. Proceed to [Section 701, the Service Provider Evaluation](#).

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◆ **Note:** If another organization is performing a substantive portion of the work effort based upon an award made to Cornell, it may be necessary to formalize this relationship through the execution of a subcontract. Such agreements are executed by the Office of Sponsored Programs (OSP). Please see OPS website at [www.osp.cornell.edu/](http://www.osp.cornell.edu/) for further information on subcontracts.



## Performing the Service Provider Evaluation

The purpose of the service provider evaluation is to determine whether to appoint a service provider as an independent contractor or as an employee paid through payroll. The IRS asserts that if Cornell exercises control over the service provider, the individual should be appointed as an employee.

There are risks and costs associated with each classification of the service provider. For *employees*, there are the employer's share of FICA tax, employee benefits, workers compensation and other insurance coverage, overtime premiums, etc. For *independent contractors*, there are contract costs as well as potential penalties and interest from the IRS and other regulatory agencies if the agency, during its review, reclassifies the independent contractor as an employee.

The unit engaging the service provider has **primary responsibility** for independent contractor review. The unit may be held financially responsible for any taxes, interest, penalties, judgments, or awards due to misclassification.

To determine whether a service provider is an independent contractor or an employee under common law, you must examine the relationship between the worker and the business. All evidence of control and independence in this relationship should be considered. If Cornell exercises control over the service provider, the individual should be appointed as an employee. The factors that provide evidence of "control" fall into three categories – Behavioral Control, Financial Control, and the Nature of the Relationship itself.

- *Behavioral Control* generally reflects that the organization exercises control over the service provider's activities. If Cornell provides training and/or instructions about how to complete the task, the service provider should generally be classified as an employee. In contrast, independent contractors determine how they will accomplish the task.
- *Financial Control* generally reflects that the service provider is not at risk for financial loss on a contract because the organization provides the equipment, reimburses the business expenses and pays on an hourly basis rather than a negotiated fee for specific deliverables.
- *Relationship Control* generally reflects that the service provider works primarily for the organization and anticipates a continuing relationship. An independent contractor has a broad customer base and is free to work when, for whom, and for as many firms as he/she chooses.

A worksheet is available to assist the unit in completing the evaluation of Behavioral Control, Financial Control and Nature of the Relationship. See the [Service Provider Evaluation Worksheet](#).

### Procedure for Performing the Service Provider Evaluation

◆ **Note:** The BSC may assume all or part of the tasks outlined below for the unit. Contact your BSC for their specific procedures.

1. The unit engaging the service provider will send the [Service Provider Questionnaire](#) to the service provider for completion (see the [Forms section](#) of the Procurement Services' Website) and request its return directly to the unit.
2. After receiving the completed [Service Provider Questionnaire](#), the unit will complete Cornell's [Service Provider Evaluation Worksheet](#) to determine whether "control" over the service provider exists, as described on the previous page. Remember to attach both the [Service Provider Questionnaire](#) and the [Service Provider Evaluation Worksheet](#) to the requisition or I Want document. (See the [Forms section](#) of the [Procurement Services' Website](#).)

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- ❖ **Caution:** The unit must review the service provider's classification **prior** to entering into an initial contract or renewing a contract. The unit should make its own determination and not rely on another unit's determination.
- 3. If the unit concludes that the service provider should be classified as an *employee*, the unit will request appointment of the individual as an employee through the Office of Human Resources (see your BSC for further instructions).
  - a. The unit may engage the service provider through a temporary employment agency. Contact the Office of [Workforce Recruitment and Retention at mycareer@cornell.edu](mailto:mycareer@cornell.edu) or (607) 255-0056.
- 4. **If the unit concludes that the service provider should be classified as an independent contractor, the unit will:**
  - a. Document the resolution of any conflict of interest and/or commitment identified during IC evaluation process. See the [University Policy 4.14, Conflicts of Interest and Commitment](#) for more information.
  - b. Evaluate the need for insurance. Requirements for insurance coverage are outlined in the [Section 405, Insurance Requirements](#) section of this manual; contact Risk Management and Insurance with questions on insurance requirements. ♦Note: Procurement will contact the service provider and request proof of insurance; contact Procurement to request this assistance.
  - c. Determine the terms of the agreement with the service provider, such as the scope of work or deliverables, acceptance criteria, identification of who will provide the services, etc. These terms are most easily defined through completion of the [Independent Contractor/Consultant Agreement](#) form (see the [Forms section](#) of the Procurement Web site.) Contact Procurement with questions on these terms, which are in addition to the standard terms and conditions of Cornell's purchase order.
  - d. Request the issuance of a purchase order through the BSC and submit to the BSC the [Service Provider Questionnaire](#), the [Service Provider Evaluation Worksheet](#), conflict of interest/commitment resolution (if applicable) and [Independent Contractor/Consultant Agreement](#).
    - ♦ Note: The Service Provider Evaluation Worksheet requires the name, title and signature of the unit-level individual that performed the service provider evaluation.

## Other Considerations with Independent Contractors:

### Billing and Tax

All business expenses that the unit has agreed to pay must be submitted as a component of the vendor's invoice. Do not process an expense/travel reimbursement for the independent contractor. Do not submit individual expense receipts with the invoice. In accordance with IRS regulations, the university will report all payments to independent contractors totaling \$600 or more during a calendar year on IRS form 1099-NEC.

The independent contractor is responsible for all estimated tax payments and other tax filing requirements; all tax records, including original business receipts; general liability and other insurance coverage for workers who work on his/her contract with Cornell; medical insurance, personal accident insurance, pension plan, or other benefits, whether personal or extended to his/her employees.

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**Inquiries by Government Agencies**

All inquiries made directly to the unit by a government agency about independent contractors must be directed to the Tax Manager in the University Controller's Office. Do not respond to these inquiries at the unit level.

## **Responsibilities Related to the Payment for Services**

### **Unit Responsibilities**

- Work through the Paying for Services flowchart to determine the appropriate payment method or contract method
- Submit completed service provider questionnaire and evaluation worksheet, if directed in flowchart
- Determine the terms of the agreement with the service provider, such as the scope of work or deliverables, acceptance criteria, identification of who will provide the services, etc.
- Send contract to service provider for review, signature and return to unit for completion
- Review, date, initial or sign the contract as required for the department on the Cornell agreement. Do not sign a vendor or service provider's contract.
- Provide required information (as described above) with the I Want Doc or form required by your BSC

### **Business Service Center (BSC):**

- Understand and communicate policies to faculty, staff, and service providers
- Verify that the service provider evaluation has been performed (where one must be performed, based on the information provided in [section 700](#)) and documented by the unit, prior to requesting payment to the service provider
- Verify that all conflict of interest and conflict of commitment issues have been resolved and documented by the unit
- Ensure that independent contractors meet the university insurance requirements or complete Risk Management's waiver process
- Ensure that contracts are properly executed prior to the performance of services
- Attach the following to the requisition: [Service Provider Questionnaire](#), [Service Provider Evaluation Worksheet](#), and [contract](#) (*Independent Contractor/Consultant Agreement form or Performer or specific Service Provider contract*) to Procurement Services when requesting the purchase order
- Ensure that the procurement of services is undertaken in compliance with the policy and procedures outlined in this manual

### **Procurement Services:**

- Request, review, and maintain Certificates of Insurance for service providers as appropriate (Procurement)
- Update KFS vendor record with certificate of insurance as appropriate (SSC Procure-to-Pay)
- Receive IRS forms, supplier information forms (via manual or automated process) and proof of insurance from vendors (SSC Procure-to-Pay)

### **Tax Office in the University Controller's Office:**

- Provide guidance to units on IRS issues and interpretations

### **Risk Management and Insurance:**

- Negotiate any exceptions to the minimum necessary insurance coverage for independent contractors