

Independent Contractor Procedures

Purpose

These procedures establish campus requirements for the review, approval, and engagement of Independent Contractors (ICs) at California State University, San Bernardino (CSUSB). These procedures are intended to ensure compliance with:

- CSU Technical Letter HR/Salary 2021-07;
- California labor law;
- AB 5 and AB 2257;
- Public Contract Code restrictions;
- CSU collective bargaining agreements;
- CSU procurement policy; and
- CSUBuy Independent Contractor Request (ICR) workflow requirements.

1. Independent Contractor Standard

Under the Dynamex ABC Test, a worker is presumed to be an employee unless the University establishes all of the following:

A. Freedom from Control

The worker is free from the control and direction of the University in connection with the performance of the work, both contractually and in actual practice.

B. Outside the Usual Course of Business

The worker performs work outside the usual course of CSU business.

C. Independently Established Business

The worker is customarily engaged in an independently established trade, occupation, profession, or business.

Certain engagements may qualify for exemptions under AB 2257 requiring application of the Borello Test rather than the Dynamex ABC Test.

2. Responsibilities

Departments / Requestors

Departments are responsible for:

- Developing clear scopes of work and business justifications;

- Timely initiation of the Independent Contractor Request (ICR) in CSUBuy;
 - Ensuring services do not begin before approval and issuance of a Purchase Order;
 - Providing complete supporting documentation.
 - Collaborating with Procurement Services and the appropriate Human Resources personnel to ensure that engagement requests are timely and compliant.
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Supplier Management

- Evaluate business relationship factors supporting **Dynamex Requirement C** or an applicable Borello exemption, including whether the proposed contractor demonstrates characteristics of an independently established trade, occupation, profession, or business;

Human Resources / Classification & Compensation Services

When applicable, Human Resources / Classification & Compensation Services is responsible for:

- Reviewing whether the proposed work falls within an existing CSU classification;
 - Determining that the work is free from the control and direction of the university;
 - Determining whether the work appears integrated into CSU operations or bargaining unit work;
 - Determining whether the engagement may trigger union notice obligations or contracting-out review;
 - Determining background check requirements and collaborating with Employment Services.
 - Collaborates with procurement to confirm that worker is not a current CSU or other state agency employee;
 - Reviewing and determining whether the proposed work satisfies applicable Dynamex or Borello criteria under the Dynamex ABC Test or an applicable AB 2257/Borello exemption related to freedom of control and outside usual course of business factors.
 - Obtain guidance from Systemwide HR as necessary prior to engaging with independent contractor.
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Human Resources / Employee & Labor Relations

Employee & Labor Relations are responsible for:

- Coordinating required union notice processes;
 - Managing meet-and-confer obligations when applicable;
 - Advising on bargaining unit implications and labor relations risks associated with the proposed engagement.
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Human Resources / Employment Services

Talent Acquisition is responsible for:

- Coordinating background checks when required under HR 2017-17.

Faculty Affairs & Development

Faculty Affairs & Development is responsible for:

- Reviewing proposed faculty-related scopes of work for potential faculty classification conflicts;
 - Reviewing potential faculty and staff bargaining unit implications;
 - Coordinating faculty-related union notice obligations when applicable.
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Procurement & Contracts

Procurement is responsible for:

- Reviewing Independent Contractor Requests received through the CSUBuy workflow for procurement compliance.
 - Reviewing vendor qualification and procurement compliance requirements;
 - Evaluate and ensure procurement-related business relationship factors supporting Dynamex Requirements or an applicable Borello exemption, including contractual terms, vendor information, and whether the proposed contractor operates as an independently established trade, occupation, profession, or business.
 - Acts as a compliance check and coordinates with the appropriate Human Resources office to verify current or former CSU employment status when necessary;
 - Confirming vendor registration and required procurement documentation;
 - Evaluate, approve, and process Unauthorized Purchase Explanation/Certification (UPEC) requests;
 - Reviewing agreements, insurance requirements, and contract terms;
 - Coordinating with Employee & Labor Relations, Faculty Affairs & Development, and/or Auxiliary Human Resources, as necessary, to confirm completion of required union notice or contracting-out obligations prior to approval of the engagement;
 - Coordinating with Talent Acquisition and/or Auxiliary Human Resources, as necessary, to confirm completion of required background check requirements prior to commencement of services;
 - Ensuring all required approvals are completed prior to commencement of services;
 - Issuing Purchase Orders and maintaining procurement records consistent with CSU policy and campus procedures.
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Auxiliary Human Resources

Auxiliary Human Resources are responsible for:

- Reviewing proposed auxiliary Independent Contractor engagements for compliance with applicable State and Federal labor laws;

- Reviewing whether the proposed IC satisfies applicable Independent Contractor criteria under the Dynamex ABC Test or an applicable AB 2257/Borello exemption.
- Reviewing whether the proposed work potentially falls within an auxiliary employee classification or bargaining unit position;
- Determining whether the proposed engagement may implicate bargaining unit work, contracting-out provisions, or labor relations obligations applicable to the auxiliary;
- Reviewing whether the engagement appears integrated into ongoing auxiliary operations;
- Coordinating required background check determinations and compliance requirements consistent with applicable CSU and auxiliary policies;
- Coordinating with stateside Human Resources, when appropriate, regarding shared operational or classification concerns.

Because auxiliaries are separate legal entities, auxiliary Human Resources are responsible for ensuring the auxiliary independently complies with applicable employment classification requirements and legal obligations. CSUSB auxiliary organizations include, but may not be limited to, University Enterprise Corporation, Santos Manuel Student Union, Associated Students, Incorporated, and CSUSB Philanthropic Foundation.

3. Independent Contractor Review Process

Step 1 – Department Review

The department reviews the proposed engagement to determine whether:

- The work may qualify as an Independent Contractor relationship;
- The work potentially falls within an existing CSU classification;
- The worker may qualify under Dynamex or an applicable AB 2257/Borello exemption;
- The worker is a current CSU or State employee or subject to Public Contract Code restrictions.

The department prepares:

- Detailed Scope of Work;
- Clear deliverables;
- Timeline and dates of service;
- Business justification.
- Ensure the vendor is registered.

Step 2 – CSUBuy Independent Contractor Request (ICR)

The department submits the Independent Contractor Request through CSUBuy and completes:

- Required questionnaire responses;
- Scope of Work;
- Required attachments and supporting documentation.

Step 3 – Independent Contractor Review Routing

The Independent Contractor Request is routed through the CSUBuy workflow to the appropriate Scope of Work reviewer based on the nature of the engagement and established campus procedures. The appropriate reviewer may include Human Resources / Classification & Compensation Services, Faculty Affairs & Development, or Auxiliary Human Resources.

Step 4 – Scope of Work Review & Determination

The appropriate Scope of Work reviewer conducts the Independent Contractor review based on the type of engagement and operational area impacted by the proposed services.

The appropriate reviewer may include:

- Human Resources / Classification & Compensation Services;
- Faculty Affairs & Development; or
- Auxiliary Human Resources.

The Scope of Work reviewer evaluates:

- Whether the proposed work may appropriately be performed as an Independent Contractor engagement under applicable CSU guidelines;
- Whether the work potentially falls within an existing CSU or auxiliary classification or bargaining unit;
- Whether the work appears integrated into ongoing CSU or auxiliary operations;
- Whether the scope of work contains sufficient detail, deliverables, timelines, and business justification to support Independent Contractor classification;
- Whether the engagement may trigger union notice, contracting-out review, meet-and-confer obligations, and/or background check requirements.

The reviewer documents review notes within the request outlining:

- Whether the scope of work supports Independent Contractor classification;
- Whether union notice is required;
- Whether a background check is required;
- Whether additional review, clarification, or supporting documentation is necessary.

The reviewer may:

- Approve the request;
- Return the request to the department for additional scope of work clarification, business justification, or supporting documentation; or
- Deny the request if the proposed engagement does not support Independent Contractor classification under applicable CSU guidelines as well as state and Federal laws.

Where required:

- Employee & Labor Relations and/or Faculty Affairs & Development coordinate union notice obligations;
- Talent Acquisition and/or Human Resources coordinate background check requirements pursuant to HR 2017-17.
- Obtain guidance from Systemwide HR or applicable authority as necessary prior to engaging with independent contractor.

Only approved requests may proceed to Procurement final review and Purchase Order issuance.

Step 5 – Procurement Final Review & Purchase Order (contract) Issuance

Upon receipt of the Independent Contractor Request (ICR), Procurement reviews the request to:

- Ensure all required information, questionnaire responses, supporting documentation, and procurement documentation have been provided;
- Verify the request has been reviewed and approved by the appropriate Scope of Work reviewer, when required;
- Verify vendor registration, procurement compliance, and required contract documentation.

Incomplete requests or requests missing required reviews or documentation may be returned to the requesting department for correction or completion.

Prior to issuing a Purchase Order, Procurement verifies that:

- All required campus reviews and approvals have been completed;
- Required union notice obligations have been completed and are cleared, when applicable;
- Required background check has been completed and is cleared, when applicable; and
- All procurement requirements have been satisfied.

When necessary, Procurement coordinates with the appropriate reviewing offices to confirm completion of required reviews, including:

- Human Resources / Classification & Compensation Services;
- Employee & Labor Relations;
- Faculty Affairs & Development;
- Talent Acquisition; and/or
- Auxiliary Human Resources.

Once all required reviews and procurement requirements have been verified:

- Procurement issues the Purchase Order.
 - Services may not begin until the Purchase Order has been issued.
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Step 6 – Payment

After completion of services:

- The contractor submits an invoice in accordance with Purchase Order and campus payment requirements;
- The department verifies completion of services and confirms receipt of deliverables where applicable;
- Payment is processed only after:
 - all required approvals have been completed;
 - all required documentation has been received;
 - and services have been verified by the department.

4. Limited Scope Review Engagements

Certain low-risk, limited-duration engagements that generally present lower Independent Contractor classification risk may proceed through a limited scope review process coordinated through the CSUBuy Independent Contractor Request (ICR) workflow.

Examples of engagements that may qualify for limited scope review include:

- One-time guest speakers;
- Single-engagement guest performers and limited rehearsals consistent with applicable Labor Code exemptions, including Labor Code §2780;
- Catering services provided by independently established businesses;
- Product or software purchases with incidental installation or setup services;
- Bona fide business-to-business service relationships meeting applicable Labor Code §2776 requirements.

These engagements remain subject to:

- CSU Independent Contractor Guidelines;
- Procurement intake and completeness review;
- Scope of work review by the appropriate reviewer, when questionnaire responses, scope of work, business justification, or supporting documentation indicate potential classification, bargaining unit, or compliance concerns;
- Applicable bargaining unit, contracting-out, union notice, and background check requirements, when applicable;
- Additional escalation or review, when necessary, based on the nature of the engagement.

Because these engagements are typically:

- event-based,
- project-based,
- or provided by independently established businesses,

they may require reduced levels of classification analysis and supporting documentation compared to higher-risk or operationally integrated engagements.

5. Required Documentation

Required documentation may include:

- Independent Contractor Request (ICR) submitted through CSUBuy;
- Detailed Scope of Work, when applicable;
- Business justification, when applicable;
- Quote, agreement, or contract documentation;
- Certificate of Insurance or approved waiver, when required;
- Background check documentation, when required;
- Vendor registration in the CSUBuy Supplier Portal;
- Additional supporting documentation required to complete Independent Contractor review, procurement review, labor relations review, tax review, or compliance review, when applicable.

Incomplete requests may be returned to the department for correction, clarification, or additional documentation prior to approval processing.

6. Prohibited Activities

Departments may not:

- Permit work to begin before issuance of a Purchase Order;
- Sign agreements or otherwise commit CSU funds or contractual obligations without Procurement authorization;
- Engage Independent Contractors to replace CSU employees or bargaining unit work;
- Retain current CSU employees as Independent Contractors for the same or similar services;
- Submit Independent Contractor Requests after services have already been performed;
- Circumvent CSU hiring, procurement, classification, labor relations, or Independent Contractor review requirements.

Unauthorized commitments or noncompliance with CSU procurement and Independent Contractor requirements may result in:

- Procurement violations;
- Audit findings;
- Delayed payment;
- Additional administrative review;

- Potential personal financial liability;
 - and other corrective or disciplinary action, when applicable.
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7. Compliance

Failure to comply with these procedures, CSU Independent Contractor Guidelines, procurement requirements, labor laws, or applicable collective bargaining obligations may result in:

- Wage and benefit liability;
- Tax withholding and reporting penalties;
- Procurement violations;
- Union grievances or contracting-out disputes;
- Audit findings;
- Delayed payment processing;
- Loss of reimbursement under Federal contracts or grants;
- Workers' compensation and unemployment insurance liability;
- and other legal, financial, or operational consequences.