

## 2.204 Services Agreements

### I. Overview

An Agreement for Services, or services agreement, is a contract used to procure unique, technical, and/or specialized services from consultants, specialists, web developers, computer/information technology specialists, and other professionals. Services agreements may be entered into with partnerships, firms, corporations, sole proprietorships, and individuals. An Employee-Independent Contractor (EIC) classification is required before the Agreement for Services is executed, if services are being procured from an individual, sole proprietor, or single member LLC; refer to [Policy 3.225 RCUH Employee-Independent Contractor Review](#). The services agreement must be fully executed with an approved Purchase Order (PO) prior to the commencement of services. The RCUH templates [Agreement for Services \(UH\)](#) or [Agreement for Services \(Direct Projects\)](#) should be used whenever possible.

Most services agreements are fixed-price contracts, in which responsibility is placed on the contractor for completion of the services in accordance with the contract terms. The fixed-price contract is appropriate for use when the extent and type of work necessary to meet project requirements can be reasonably specified and the cost can be reasonably estimated.

Time and materials contracts are defined as contracts where the total cost is the sum of (A) the actual cost of materials; and (B) direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Time and materials contracts may only be utilized if a fixed price contract is not suitable. The contract must also include a ceiling price, and must specify that any costs incurred by the contractor in excess of the established ceiling is incurred at the contractor's own risk. The project must exercise a high degree of oversight in order to obtain reasonable assurances that the contractor is using efficient methods and effective cost controls.

RCUH and UH employees may not enter into service agreements with RCUH, for any UH project that is service-ordered to RCUH, whether using extramural, intramural, or revolving funds. For extramural awards, an exception may apply if explicitly allowed by the sponsor or terms and conditions of the award. Additional guidance is available at <http://www.ors.hawaii.edu/index.php/start-up-a-manage/manage-award/allowable-allocable-a-reasonable-costs> or questions may be directed to [compliance@ors.hawaii.edu](mailto:compliance@ors.hawaii.edu).

### II. Responsibilities

#### **A. Principal Investigator**

1. Work with the vendor and respective FA in negotiating and drafting a services agreement.

2. Obtain an EIC Determination (as applicable) from RCUH Human Resources.
3. Ensure that services agreements are not being executed with RCUH or UH employees, unless an exception applies. For any exceptions, ensure that the project has obtained adequate documentation to support the exception and all other required documentation for procurement.

#### **B. Fiscal Administrator**

Work closely with the PI in negotiating and drafting services agreements.

#### **C. RCUH**

Review all non-standard services agreements, and services agreements \$25,000 and above.

### **III. Details of Policy**

#### **A. General**

Projects requiring specialized skills, knowledge, resources, and experience that cannot be provided by existing project, UH, or RCUH personnel, may obtain such services from providers outside the project, UH, and RCUH, on a contractual basis. However, under no circumstance should a services agreement be used to circumvent RCUH or UH employment policies and procedures. If services are rendered by an employee, the appropriate income taxes and social security contributions (FICA) must be withheld and paid by RCUH. For contracted services, taxes and other related payments are the responsibility of the contractor. It is imperative that the providers of services are appropriately categorized to comply with laws and regulations; refer to [Policy 3.225 RCUH Employee-Independent Contractor Review](#).

While the acquisition of services by contract may be perceived as a cost-effective means of satisfying project service requirements, the misclassification of a service provider has the potential to subject RCUH to costly penalties due to non-compliance with federal tax laws, or the assessment of employment related claims such as workers' compensation, unemployment insurance, or malpractice. Therefore, programs must give careful consideration to the various ramifications of obtaining services on a contractual basis.

#### **B. Provisions of a Services Agreement**

##### **1. Selection**

Selection of a contractor shall be based on a variety of criteria including, but not limited to, demonstrated competence, knowledge, references, and unique qualifications to perform the services, in addition to offering a fair and reasonable price that is consistent with current market conditions. Additional criteria may be

used as appropriate under the circumstances; refer to [Policy 2.101 Source Selection Methods](#).

## 2. Specific Provisions

The following terms and conditions should be addressed in the services agreement:

- a. *Scope of Services (Performance Requirements)* – Performance requirements should be precise and written such that it can be easily determined whether a contractor has successfully fulfilled its obligations under an agreement. Scheduled due dates that specify milestone targets must be clearly defined and may include dates for formal written reports or oral progress reports, as well as regular meetings to evaluate progress, identify problem areas, or address concerns. The location where the services will be performed must also be included, so that payments to the contractor can be properly classified as being either U.S.-source income or foreign-source income.
- b. *Time Schedule* – A services agreement must specify a start and completion date. The completion date cannot be a date past the termination date of the federal grant, award, or funding source. If an end date cannot be determined, a maximum time limit (i.e., not to exceed date) or maximum number of work units (e.g., consecutive calendar days, etc.) must be stated.
- c. *Compensation and Payment Schedule* – Compensation and payment terms include elements relating to cost and payment, such as maximum cost (i.e., not to exceed cost), cost per deliverable, hourly rates for individuals providing services, number of hours required, allowable expenses, and invoicing and payment procedures. All advance payments to a vendor require the completion and submittal of the [Attachment 47 Request for Advance Payment and/or Deposit to a Vendor or Contractor](#) form, with the payment request. These terms should also include any provisions for travel and travel costs, if any.
- d. *Standards of Conduct* – If the contractor is, or is being assisted by, a *current* legislator or employee of the State of Hawai‘i, *or* is, or is being assisted by, someone who worked for RCUH or UH during the past two years, the following steps must be taken:
  - i. The project must contact the Hawaii State Ethics Commission (HSEC) (808-587-0460) for an opinion on whether the contractor may provide services; and
  - ii. The project and the Fiscal Administrator (FA) must contact their assigned Procurement Services Specialist for guidance in completing the Standards of Conduct Declaration in the Agreement for Services.

The opinion of the HSEC should be noted in the procurement file. Refer to Sections IId, e, and f of [Policy 2.004 Standards of Conduct](#) for additional information.

- e. *General Conditions* – The Attachment [8a](#) and [8b](#) Agreement for Services templates contain RCUH's standard terms and conditions. RCUH review of an Agreement for Services is necessary when the terms and conditions of the agreement deviate from the standard language in the template, or when the transaction is \$25,000 or greater.
- f. *Special Conditions* – Special conditions arise when it is necessary to deviate from the standard terms and conditions of the Agreement for Services template.
- g. *Performance Monitoring* – The Principal Investigator (PI) must monitor vendor compliance with the terms and conditions of the services agreement.
- h. *Vendor Accountability* – Work requirements (e.g., statement of work, technical specifications, etc.) provided in the services agreement should clearly define all performance objectives, deliverables, specifications, work expectations, and project milestones. The PI must hold the contractor accountable for the successful completion of the tasks outlined in the services agreement.

### **C. Documents for Submission to Fiscal Administrator**

1. Purchase Order.
2. Agreement for Services.
3. Evidence of price competition or sole source and cost price reasonableness form.
4. A contract of \$25,000 or more requires a valid tax clearance from the Hawaii Department of Taxation and the U.S. Internal Revenue Service prior to execution of the contract and prior to processing final payment; refer to [Policy 2.302 Tax Clearance \(Certificate of Vendor Compliance\)](#) for details. A tax clearance is not required if the contractor is a government agency.
5. It is the responsibility of the PI to send the Agreement for Services and, if expending federal funds, the applicable Attachment 32, to the contractor upon execution of the Agreement for Services. Attachment 31 should not be transmitted to the contractor as the terms and conditions stated in the services agreement govern the transaction.
6. A contract of \$25,000 or more (under federal grants) and over \$35,000 (under federal prime contracts) requires an [Attachment 22 Certification Regarding Debarment, Suspension, and Other Responsibility Matters](#). A contract of over \$100,000 (under federal grants) and over \$150,000 (under federal prime contracts) requires an [Attachment 23 Certification Regarding Payments to Influence Federal Transactions](#).

### **D. Amendments to Services Agreements**

All changes to a services agreement must be documented and executed in an amendment to the services agreement. Changes include, but are not limited to, changes to price, schedule (including no-cost extensions), and other terms and

conditions. The [Amendment to Agreement for Services](#) template should be utilized, and all amendments are required to be reviewed and signed by RCUH. Amendments should be executed during the existing period of performance, and the effective date should be on or before the expiration of the existing agreement or previous amendment.

#### **IV. Relevant Documents**

[Amendment to Agreement for Services](#)

[Attachment 8a Agreement for Services \(UH\)](#)

[Attachment 8b Agreement for Services \(Direct Projects\)](#)

[Attachment 22 Certification Regarding Debarment, Suspension, and Other Responsibility Matters](#)

[Attachment 23 Certification Regarding Payments to Influence Federal Transactions](#)

[Attachment 31 General Terms and Conditions Applicable to All Purchase Orders](#)

[Attachment 32a Terms and Conditions Applicable to Contracts and Purchase Orders \(Under Federal Grants\)](#)

[Attachment 32b Federal Provisions – Government Subcontract Provisions Incorporated In All Subcontracts/Purchase Orders \(Under Federal Prime Contracts\)](#)

[Attachment 32c Federal Provisions Applicable When Subcontractor \(Commercial Entity\) Is In Possession of Government Property – Government Subcontract Provisions Incorporated In All Subcontracts/Purchase Orders \(Under Cost-Type Prime Cost Reimbursable Contracts\)](#)

[Attachment 32d Federal Provisions Applicable When Subcontractor \(Educational or Nonprofit Organization\) Is In Possession of Government Property – Government Subcontract Provisions Incorporated In All Subcontracts/Purchase Orders \(Under Cost-Type Prime Cost Reimbursable Contracts\)](#)

[Attachment 40 UH WH-1 University of Hawai'i Statement of Citizenship and Federal Tax Status](#)

[Attachment 47 Request for Advance Payment and/or Deposit to a Vendor or Contractor](#)

[Policy 2.007 Tax Treatment of Compensation \(Services, Rents, and Royalties\)](#)

[Policy 2.101 Source Selection Methods](#)

[Policy 2.302 Tax Clearance \(Certificate of Vendor Compliance\)](#)

[Policy 3.225 RCUH Employee-Independent Contractor Review](#)

**Date Revised:** 7/01/2018