Procurement Policy Highlights (4.11 Independent Contractors):

1. Prior to engaging the services of any individual as an IC, HR must review scope of work to determine if the individual should be classified as an *employee* or as an *independent contractor/consultant*.
   - *Note: this classification is a part of the OSCAR special approver process*

2. Rensselaer has to abide by IRS and DOL regulations to make sure we aren’t penalized for misclassifying individuals, paying them incorrectly or not appropriately withholding taxes.

3. If the consultant is a company and not an individual, sole proprietorship, or single-member LLC, IC review does not apply.
Classifying Workers

United States Department of Labor

“Workers who are economically dependent on the business of the employer, regardless of skill level, are considered to be employees, and most workers are employees.”

“On the other hand, independent contractors are workers with economic independence who are in business for themselves.”
Classifying Workers (continued)

It all starts with a statement of work: SMART

- **Specific**
  - Yes: “The worker will prepare remarks for the Director’s presentation at the ABC event.”
  - No: “The worker will assist the Director with events.”

- **Measurable**
  - Yes: “The worker will evaluate the research data methods used in Dr. Smith’s XYZ Project and produce a 3 page executive summary, along with the statistical analysis data he applied.”
  - No: “The worker will review Dr. Smith’s research.”

- **Achievable**
  - Yes: “The worker will produce results that are proof-read and fact checked.”
  - No: “The worker will not make any mistakes.”

- **Reasonable**
  - Yes: “The worker will provide weekly historic tours during the academic year, weather permitting.”
  - No: “The worker will provide historic tours on demand with 30 minutes notice.”

- **Time bound**
  - Yes: “The worker will provide photography services as described in this statement of work during FY18.”
  - No: “The worker will provide photography services as needed.”
Classifying Workers (continued)

Employers must assess the relationship of the employer to the worker.

- Is this person a “Company” or an “Individual”?
  - New Suppliers – refer to W9 and supplier’s self-classification
  - Existing suppliers who may or may not have been subject to IC review on prior orders – when in doubt, ask the supplier to provide an updated W9
  - All IRS W9s should be the December 2014 version

![W-9 Form](image)
Classifying Workers (continued)

- When the Answer is “Individual”, inclusive of individuals, sole proprietors and/or single member LLCs:
  - Employee?
  - Independent Contractor?

When is a “company” considered an “individual” and will be subject to review as an Independent Contractor?

1. Individual – even if using a DBA name
2. Sole proprietorship – even if using a DBA name
3. Single-member LLC – even if using a DBA name
The Economic Realities Test…

- Is completed by the employer
- Assesses and emphasizes the worker’s application of initiative & skill as a businessperson
  - Not an assessment of their qualifications or skill in their profession
  - Three people doing similar tasks could be classified differently
- Still considers financial, behavioral, & contractual control
  - to a lesser degree than older evaluation tools
- Requires answers and explanations to these questions:
  - To what extent is the work performed an integral part of Rensselaer Polytechnic Institute’s business?
  - Describe whether the worker’s managerial skills affect his or her opportunity for profit and loss.
  - What is the relative investment in facilities and equipment by the worker as compared to the investment made by the employer?
  - Does the worker have to apply skill and initiative related to matters requiring business judgement in order to stay in business?
  - Briefly describe the actions the worker takes to find new work/new customers and/or to stay in business.
  - Is there an ongoing relationship between the worker and the employer?
  - Who sets pay amounts?
  - Who sets work hours?
  - Who determines how the work is performed?
  - Is the worker is free to work for others and hire helpers?
Economic Realities Test (example)

A tale of three photographers….

“Patty Professional”
- Pays for ads, has a portfolio of other customers, may hire assistants
- Sets prices to be competitive, has expenses, has insurance, may lose money on a particular job
- Invests in her business, in her skills, in her equipment
- Has a “day job” but runs her photography business on weekends

“Amy Amateur”
- Has a knack for photography and recently bought her first camera
- Needs to uses some of the employer’s equipment, facilities, and helpers to complete the job
- Hasn’t invested much or anything in her business (no website, no business cards, no portfolio of work
- Her other customers, if any, are family and friends
- Doesn’t have any other “1099” employers

“Vicky Vendor”
- Works for a company that has multiple other employees.
- Company assigns her work.
- You pay the company; the company pays Vicky
Division of Human Resources Form

- **Economic Realities Test** – based upon IRS and Federal Department of Labor rules
  - Reviewed and completed by the Department who is hiring the worker
  - Must be submitted through OSCAR as an Independent Contractor requisition with the Independent Contractor Special Approver selected
  - Department must also include evidence of the contractor being in business for himself or herself as a PDF attachment on the requisition for review by HR
Procurement Form

- **Independent Contractor Agreement**
  - **Department** fills out pages 1-2 and adds Scope of Work at Exhibit A; **individual to be hired reviews and signs**
  - Department must attach the full ICA, including Exhibits A-D, in OSCAR
  - Signed for Rensselaer pursuant to **Contractual Authority Policy**
  - Must be submitted with IRS Economic Realities Test Form through OSCAR
  - Insurance required
Procedure:

By the requisitioner:

- Requesting department creates OSCAR requisition with the following attachments:
  - A completed Economic Realities Test form and supporting evidence
  - Independent Contractor Agreement
    - Referees, officials may offer alternative documentation to ICA
- Requisitioner must select:
  - Independent Contractor Special Approver (Human Resources)
  - Services – Insurance Required Special Approver (Procurement/Risk Management)
- Requisition may select
  - Creative Services Special Approver (Creative Services) – printing, video, design, photography services
- Commodity Code 92410 for Independent Contractor
Procedure:

**By Procurement Services:**
- Independent Contractor requisitions will flow to Associate Director first for review. AD will comment out to SSM assigned to the commodity area in which the IC is performing his or her service. SSM will assign requisition for processing and update the commodity code.
- Confirm proper Special Approvers have reviewed
- Review ICA, obtain signature for Rensselaer
- Confirm insurance or request waiver from Risk Management
- Attach fully executed ICA to external side for issuance with PO
Common questions to Procurement

- Dates of service, span vs. specific days, multiple dates
- Independent Contractor Review process applies to services from a supplier/contractor, not procurement of goods

Goods vs. Services

- Services are intangible, last for a specific span of time, and involve someone doing something for you that you can’t do, don’t have time to do, or don’t want to do
- Goods are tangible, last indefinitely, and the purchase of a good ends up in a transfer of ownership
- Examples:
  - If you buy a painting, that’s a good.
  - If you hire an artist to paint you a picture, that’s a service.
  - If you go to McDonald’s and buy a hamburger, that’s a good.
  - If you hire a professional chef to make burgers for your BBQ, that’s a service.
Common Questions to HR

- Background checks are still necessary
- Form I9 and other “new hire” documents are not necessary
- The worker cannot choose his or her classification as contractor or employee
- We cannot choose a classification based on whether or not we budgeted for fringe
Division of Human Resources

- Kathy McNamara – x 8246, mcnamk@rpi.edu
- Elias Cox – x 4124, coxe4@rpi.edu

Division of Administration

- procurement_support@lists.rpi.edu