Monterey Bay Aquarium Research Institute
INDEPENDENT CONTRACTOR / CONSULTANT POLICY 05/06

Summary of Significant Changes, May 2006

- The policy and procedures now incorporate the requirements of OMB Circular A-110 "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations" and OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations" as well as relevant US Treasury and IRS regulations.

- The Questionnaire to Determine Independent Contractor or Employee Status form has been revised and consolidated.

- Exhibit A has been divided into 2 forms, one for non-federally funded activity, and the other for federally funded activity. Note that the federal version is now two pages in length.

- The Independent Contractor Agreement and the Sample Letter to Contractor have been edited.

- New Exhibit B.1 has been added for inclusion in federally funded agreements.

- Two certification forms have been added to the document:

  Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

  Certification Regarding Lobbying

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Policy:

The purpose of this policy is to set forth the procedure to determine if an individual providing services to MBARI is an employee or independent contractor and to determine the payment method for an individual(s) who performs services for the Institute.

This policy applies to all MBARI personnel who contract individuals to perform services for the Institute.

Definitions:

A. **Employee** - an individual in an employment situation in which the Employer has the right to control and direct the individual with regard to the result to be accomplished and the process by which the result is accomplished.

B. **Independent Contractor/Consultant** - an individual in an employment situation in which the employer has the right to control and direct the individual with regard to the result to be accomplished but not the process by which the result is accomplished. Examples are physicians, lawyers and plumbers. They are engaged in the pursuit of an independent trade, business or profession, in which they offer their services to the public.

Guidelines When Hiring an Independent Contractor:

- MBARI does not furnish tools and materials.
- MBARI does not establish a work schedule or provide office space or training.
- MBARI does not require the independent contractor to provide regular verbal or written reports.
- Payment for the assignment should be based generally on one fee for performing the service rather than by the hours spent on that assignment.
- The independent contractor may be asked to provide proof of liability coverage and/or certification that s/he is not debarred, suspended or in any way excluded from covered transactions by any Federal department or agency pursuant to EO 12549.
- Incidentals such as travel, meals and materials should be included in the fee, or should be stated, for example, "as not to exceed ten percent of the fee." Any other arrangements for reimbursement of travel or other expenses must be reviewed in advance with the Accounting Department and should be specified in the agreement as well, otherwise the Institute will not be liable for travel expenses.
- Do not include an independent contractor’s name in the Institute’s telephone directory.
- Be mindful that independent contractors who earn more than $10,000 a year from a single employer and who do not perform services for any other employer are likely to be considered employees by the Internal Revenue Service.
- Individuals are expected to provide SSN/TIN. Foreign Individuals may not be eligible for reimbursement as an Independent Contractor.

Procurements made with Federal grant funds are subject to compliance with the standards and requirements as set forth in OMB Circular A-110, Section 48, Contract Provisions, and Appendix A, and OMB Circular A-133, Paragraph 5.

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INDEPENDENT CONTRACTOR / CONSULTANT PROCEDURE 05/06

- **Internal Projects – Project Manager is responsible for completing all steps below**
- **External Projects – Project Manager is responsible for initiating ICA step and for processing invoices for payment. Grants Office creates PO and mails ICA.**

Initiate ICA

1. Download and complete forms:

Independent Contractor versus Employee Questionnaire
Independent Contractor Agreement
Exhibit A (Part I for Internal Projects, Part II for External Projects, 2 pages)

2. Print two copies

Internal Projects: Deliver completed forms to Mike Pinto (CFO) and Norm Steinberg (HR) for signature approval.

External Projects: Deliver completed forms to Grants Office for signature & processing.

Create PO

1. Log onto web PO and create PO with ICA as attachment, submit for approval.

2. Once PO# assigned, add PO # and Project # to upper right hand corner of ICA.

3. Print a copy of the PO and attach to ICA.

Obtain Contractor's Signature

1. Prepare 2 original sets of the signed Agreement with transmittal letter (see sample).

Letter instructs Contractor to return invoices to you for approval with PO # shown.

2. Contractor will retain one fully signed copy and return one to MBARI, give original to Mike Pinto and keep a copy for your reference and file.

Process Invoices

1. Verify services have been completed and deliverables are acceptable per Exhibit A, including amount and rate of pay as well as period of performance.

2. Confirm PO # is correct on the invoice, sign, date and submit to Accounts Payable (Internal projects) or Grants Office (External Projects) for payment.