

Consultant or Subcontractor?

A Questionnaire and Sample Commitment Letter

When preparing a grant proposal in which outside personnel are to be enlisted for collaboration or other assistance, there can be some confusion about whether they should be retained as a “Consultant” or a “Subcontractor”. The designation of “Consultant” is often preferred due to the impression that less time and paperwork will be required to enlist their support. F&A costs/restrictions are also often the reasoning behind a PI preferring the “Consultant” designation. Unfortunately, the proper designation for a planned consultant or collaborator isn’t really open to preference. It’s purely a matter of the facts at hand. To put it simply, a Consultant acts on his or her own, completely independently of an employer or institution; in other words, we will be making checks out to a person rather than an institution. Requesting the Letter of Commitment, and requesting it as early as possible, can help us make the proper designation in a timely fashion. Attached to this questionnaire is a Sample Consultant Letter of Commitment, which will help you determine if the designation of Consultant is appropriate for the type of assistance you are seeking for your project. Before sending the letter template to your prospective Consultant for completion, it is a good idea to get the answers to the following questions up front in order to determine if the letter is even applicable:

1. What is the service or function they will provide to UNM (with some specificity);
2. Will they expect to have publication rights for their contribution to the research? (If the answer to this question is yes, they cannot be set up as a Consultant.)
3. What will be the duration of their commitment?
4. What is the amount of compensation they expect annually and/or for the entirety?
5. Who will checks be made out to; i.e., whose name, address, and EIN or federal tax ID number will go on the 1099 that UNM will mail to report any compensation (which may be subject to income tax) for their contribution at the end of the year? (If the EIN of a public institution will be used, then they cannot be set up as a Consultant.)
6. Will they be operating under their own insurance or under their institution’s? (If they will be operating under the insurance of a public institution, they should not be set up as a Consultant.)
7. Will they be using the lab equipment or facilities of their institution? (If the answer is yes, they should not be set up as a Consultant.)

PLEASE NOTE:

It is possible that a Consultant can be a private business entity. However, the IP issue in question 2 above must still always be answered “No”.

Once you have the answers to these questions, there should be no doubt as to whether you may designate this person as a Consultant. If it is determined that the designation of Consultant is, in fact, appropriate, send the attached Sample Commitment Letter for them to complete, sign, and return to us for the PreAward file.

[Date]

University of New Mexico Health Sciences Center
Financial Services Division
Attn: Rena Vinyard, PreAward Manager
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1 University of New Mexico
Albuquerque, NM 87131-0001
Phone: (505)272-6264
Fax: (505)272-0159
E-mail: HSC-Preaward@salud.unm.edu

Re: Consulting services for [XXXXXXXX(project title)] ; Dr. [UNMHSC PI]

Dear Rena Vinyard;

After reviewing the above referenced grant proposal, I am very happy to offer my support in the form of consulting services. [Consultant may insert elaboration on the merits of the project here.] I understand that for the purposes of this project, the role of Consultant is a service vendor role; it conveys no intellectual property rights to me or my company, and I will be offering to this project the benefit of my expertise only. I also understand that I will be responsible for all personal tax obligations on any income proceeding from my services on this project (if applicable) and will therefore provide my tax identification number with my initial invoice for IRS annual tax reporting purposes.

Notwithstanding the foregoing, I hereby offer my services in the capacity of Consultant [for a fee of \$XXX.xx annually, which includes direct and indirect costs] [(or) at No Cost to your institution]. My understanding is that the approximate dates of the period of performance in which I will participate on the project is expected to be [XX/XX/XX] through [XX/XX/XX]. I also realize that my participation and subsequent remuneration (if applicable) is contingent upon your proposal actually being funded by the grantor agency, [XXXXXXXX]. [If applicable) Upon award by the grantor agency, UNM will issue me a Purchase Order upon which I will base the invoice(s) for my services directed to the address above].

I am very confident in the merits of the proposed research. I look forward to working with you on this auspicious project.

Very truly yours,

XXXXXX [Name/Title]
XXXXXXXXXX[Address]
XXXXXXXXXX[Address]
XXXXXXXXXX[Phone]

Cc: [UNMHSC PI]