Consultants to Berkeley Lab, Hiring

Brief

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BRIEF

Policy Summary

This policy provides guidelines and requirements for requesting and using the services of a consultant at Berkeley Lab.

Who Should Read This Policy

Any person involved with engaging the services of a consultant

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Contact Information

Procurement and Property Manager

Policy

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D. Policy Statement
D.1 General
D.2 Policies Governing Use of Consultants
D.3 Policies Governing Consultant Relationship
D.4 Procedures for Securing Consulting Services

POLICY

A. Purpose

Lawrence Berkeley National Laboratory (Berkeley Lab) may engage the services of a consultant on a short-term or intermittent basis if the consultant contributes to the Laboratory's mission and those services cannot be provided as effectively by a Laboratory employee.

B. Persons Affected

Anyone involved with engaging the services of a consultant for Berkeley Lab

C. Exceptions

Not applicable

D. Policy Statement
D.1 General

1. Consultants work independently and are not under Laboratory supervision. Consultants may not perform work of a policy-making, decision-making, managerial, or supervisory nature; nor may they approve or disapprove actions that commit or expend Laboratory funds. Consulting services may not be obtained for unauthorized purposes, such as to bypass or undermine Human Resources (HR) policies or pay limitations.

2. Consultants are prohibited from making any appearances on behalf of the Laboratory at a congressional office or federal agency, including military organizations, without a Laboratory employee present. The Office of Laboratory Counsel must approve in writing the proposed exceptions to this requirement. Under no circumstances may a consultant be used to specifically aid in influencing or enacting legislation.

3. Consultants are required to refrain from activities on behalf of the Laboratory and the Department of Energy (DOE) that could be interpreted as creating a conflict of interest for the consultant. Accordingly, consultant agreements and Personal Services Agreements (PSAs) impose certain conflict-of-interest requirements and restrictions on the consultants.

D.2 Policies Governing Use of Consultants

1. Selection Process
   a. Consultants are selected on the basis of professional qualifications, resources, experience, cost, and ability to meet Laboratory needs, as determined by the division requiring the particular service and approved by Procurement. Neither agencies nor other organizations will be paid a fee for locating a consultant.

2. Duration of Agreement/Number of Service Days
   a. Agreements for consulting services are established for a period for which there is a foreseeable need, normally for one year or less. Consultant agreements must specify an anticipated number of service days per agreement year. A consultant may not receive fees for more than 90 consultant service days in a 12-month period without written approval from the HR Center Manager or designee. When the need is expected to exceed these time requirements, regular part-time employment or contract labor should be considered, and, if appropriate, arranged in accordance with existing employment practices. There are no restrictions on the number of service days within the agreement period for PSAs.
   b. Agreements may be written for a period of up to five years with appropriate justification from the requester to support the long-term need for the consultant's services. Agreements are renewed only when there is a verified continuing need.

3. Foreign Nationals
   a. Foreign nationals who are not permanent residents of the United States must have an appropriate visa number and an Internal Revenue Service (IRS) Individual Taxpayer Identification Number (TIN) in order to provide consulting services to the Laboratory. To determine whether a consultant may receive payments as a foreign national, the Laboratory’s International Researchers and Scholars Office (IRSO) should be notified of that consultant’s proposed services as early as possible.

4. Current UC Faculty as Consultants
   a. Current University of California (UC) faculty may not be Laboratory consultants unless: The employee occupies a teaching or research position; Procurement has determined that the expertise is not otherwise available; and the employee’s management has approved it. UC staff personnel normally may not be retained as consultants. The alternative of acquiring the services of UC personnel through an Intra-University Transaction (IUT) should be considered and discussed with Procurement.
   b. The Chancellor of a UC faculty member’s home campus must approve faculty consultant arrangements, and the compensation rate must be in accordance with UC academic personnel policies. Accordingly, consultant agreements and PSAs:
      i. Require consultants to disclose any actual or proposed employment or other compensatory arrangement with any other activity of the University
      ii. Permit the terms governing amounts payable to the consultant or firm under the agreement to be modified as necessary to avoid dual compensation

5. Former Laboratory Employees
   a. When the services of former employees are required, the Laboratory’s practice is to rehire them as Laboratory employees through the HR Department. In exceptional cases, the use of a consultant agreement or PSA may be appropriate for the services of former employees. Written approval from the HR Center Manager or designee is required in these cases. Care must be taken to ensure that the selection of former employees as consultants to the Laboratory will best serve the Laboratory’s interests.

6. Retired Faculty and Staff
   a. A retired employee may work as a consultant if he or she is either employed by a consulting firm or owns his or her own consulting business. A retired employee may be a consultant for the Laboratory if he or she has not worked as a UC employee during the previous rolling 12-month period.
   b. Laws and regulations affecting the UC Retirement Plan (UCRP) permit retired members to work at the Laboratory. The HR Department should be contacted regarding the employment of retired faculty and staff (see RPM Section 2.01, Employment).

7. DOE Contractor Employees
   a. An employee of a DOE contractor performing work on a full- or part-time basis under a management and operating (M&O), facilities-management, site-integrating, or other major DOE contract may provide consulting services to the Laboratory if the services are performed outside the official hours of duty of, or while on leave from, the DOE contract. Such consulting services must not:
      i. In any manner interfere with the proper and effective performance of the duties of the position
      ii. Appear to create a conflict of interest
      iii. Appear to subject DOE, the University, or the other DOE contractor to public criticism or embarrassment
   b. An alternative to acquiring the consulting services of DOE contractor personnel through a DOE Contractor Order should be considered and discussed with Procurement.
D.3 Policies Governing Consultant Relationship

1. Time and Place of Performance
   a. Consultants, as independent contractors or employees of independent contractors, may adopt (subject to technical contact approval) arrangements suitable to the consultant concerning performance details, such as times and places for rendering the agreed-upon services.

2. Results of Performance
   a. Consultants may be required to furnish reports or other data documenting the services rendered, as requested by the technical contact and in accordance with the terms of the agreement. When this is impractical, the technical contact is expected to maintain records adequate for this purpose.

3. Compensation
   a. Consultants are normally paid agreed-upon compensation, with either daily rates or fees for each full day the consultant renders services. In addition, consultants may be reimbursed for certain costs and expenses, such as travel and clerical support, if indicated in the consultant's proposal and approved by the technical contact and authorized by Procurement in the consultant agreement or PSA.
   b. The reasonableness of a consultant's fee should be based on the individual's established market value and the market value of the services to be provided. Fee rates based on salary should be substantiated by a copy of a current paycheck stub, the prior year's W-2 form, a letter of agreement with the employer, a statement of substantiation from the employer, or a comparison of rates for similar consulting services. Fee rates based on contractual arrangements with other clients may be substantiated by copies of client agreements or other suitable documentation.
   c. Consulting agreements may be awarded by Procurement on a no-fee basis, allowing reimbursement of expenses only. Expenses must be reimbursed in accordance with Laboratory requirements. If no fee is paid, consultants may serve an unlimited number of days per year.
   d. As discussed above, certain restrictions pertain to consultant fees paid to UC faculty, consultants receiving compensation from multiple University sources, and compensation to individuals for consulting services who also perform work on a full-time basis under another DOE contract.

4. Taxes
   a. Fee income is subject to federal and state income tax. Laboratory Accounts Payable will issue appropriate 1099 tax forms covering total fees paid during each calendar year to consultants providing services under a consultant agreement.

5. Property
   a. Acquisition of property, including controlled property (equipment and sensitive property) or use of government-furnished property, by a consultant is generally not allowed. Deviating from this requirement requires a memorandum substantiating the necessity of such action, approval by Procurement, and inclusion of appropriate property provisions in the consultant agreement or PSA.

6. Travel
   a. Consultants normally are reimbursed for travel and travel-related expenses in accordance with the Laboratory's requirements. Foreign travel requires DOE approval in advance.
   b. Only travel expenses for travel required in performance of the consultant services are reimbursable. Expenses for local commuting to and from the Laboratory and the consultant's place of business normally are not reimbursable.

7. Conduct of Consultant
   a. University and government policies form the basis for rules of conduct to which consultants agree to be bound through the agreements for consultant services. These rules specifically prohibit the following:
      i. Accepting any gratuity or special favor from individuals or organizations with whom the Laboratory is doing business, or proposes to do business, under circumstances that might reasonably be interpreted as an attempt to influence the consultant in accomplishing the agreed-upon work
      ii. Using for personal gain or making other improper use of privileged information acquired in connection with the consultant's work for the Laboratory. The term "privileged information" includes, but is not limited to, unpublished information relating to technological and scientific developments; anticipated materials requirements or pricing actions; possible new sites for DOE program operations; knowledge of selection of contractors or subcontractors in advance of official announcement; and medical, personnel, or security records of individuals.
      iii. Making or influencing any decision on behalf of the Laboratory that directly or indirectly affects the interest of the Laboratory or the government if the consultant's personal concern in the matter may be incompatible with the interest of the government
      iv. Using the name of the University, the Laboratory, or the government in any publications, news releases, advertising, speeches, technical papers, photographs, and other releases of information regarding the consultant's work for the Laboratory, except with prior written approval of the Deputy Director for Operations or designee
   b. Technical contacts are responsible for guarding against such situations by reminding consultants of their obligations in these matters and advising them when and from whom to obtain further guidance in questionable cases.

8. Patents, Data, and Copyrights
   a. Under the UC-DOE Prime Contract, the Laboratory is required to protect the government's interests in inventions and technical data by including the appropriate and related clauses in its consultant agreements and PSAs. These clauses basically concern such matters as patent rights; rights to data, including copyrights; and patent and copyright infringement.
   b. Technical contacts are expected to ensure that the consultant's obligations in these matters (e.g., reporting inventions, reporting notices or claims of infringement, and securing required DOE approvals) are fulfilled. If the consultant does not meet these obligations, the technical contact is expected to notify Procurement immediately so that appropriate and timely action may be taken (see Intellectual Property policies).

9. Subcontracts and Assignment
   a. Consultants must secure prior written approval from the Laboratory to subcontract with, assign to, or otherwise employ anyone to perform any of the consultant services, except incidental clerical or similar support work specified in the agreement with the Laboratory. This approval is provided by/through Procurement.

10. Environment, Safety, and Health Fire Protection Requirements
    a. Agreements for consultant services specify that consultants are required to take all reasonable precautions at Laboratory sites to
11. Insurance and Indemnification

a. Normally, consultants are not required to maintain liability insurance, but may be required to indemnify the University from liability for injury or damages related to the consulting services. The Laboratory may require a consultant to maintain liability insurance if:
   i. The services are performed on Laboratory, government, or third-party premises
   ii. Government-furnished property is provided to a consultant or a consultant's employer
   iii. The nature of the services poses a significant potential risk to the University and the government

b. No consultant may be indemnified unless prior approval is obtained from DOE-HQ and the Regents of the University of California. Laboratory Counsel should be consulted on any request by a consultant for indemnification.

D.4 Procedures for Securing Consulting Services

1. Request to Establish an Agreement

a. Requests for consultant services are initiated by the technical contact (requester). The request may be for a new agreement, the renewal of an existing consultant agreement, additional service days or other changes to an existing agreement, or consultant services under an agreement already in place for another Laboratory organization. Requests for services of a consultant should be submitted using the Request for Consultant/Personal Services Agreement and Renewal form, available from the Procurement Web site, and be accompanied by a memorandum providing various information, as identified in the request form.

b. The completed request form and memorandum should be sent to Procurement with an approved e-Procurement (ePro) purchase requisition for processing. If the package is not complete or the information is inadequate, the request package may be returned to the requester with a memorandum explaining the reasons and requesting the additional information.

c. In addition, an Organizational Conflicts of Interest (OCI) Pre-Procurement Fact Sheet must be completed and accompany each request greater than $150,000. This fact sheet is available on the Procurement Web site. If there appears to be a reasonable possibility that an OCI may exist or arise, steps must be taken to avoid or neutralize it. If the OCI can only be mitigated, an award may not be made until DOE approval of the mitigation plan has been obtained.

2. Solicitations and Proposals

a. Formal, written solicitations for consultant agreements or PSAs are normally not required, and written proposals are not required for consultant agreements or PSAs under the small-purchase threshold (currently $150,000).

3. Negotiating the Agreement

a. Only Procurement may negotiate the terms and conditions of the agreement and issue either a consultant agreement or a PSA. Understandings are established and confirmed in the agreement concerning the nature and extent of services to be rendered, where and when services will be performed, the fee to be paid, expenses to be reimbursed, and other appropriate details, as discussed in above paragraphs.

b. Care must be taken to ensure that the consultant's obligations and the role of the technical contact relative to these obligations are clearly understood. The consultant should be cautioned that any changes in services or other terms of the agreement will be recognized by the Laboratory only if authorized in writing by Procurement. Both the consultant and technical contact should also be cautioned not to incur any costs until the agreement has been fully executed.

4. Securing Approvals

a. The UC-DOE Prime Contract establishes the right of DOE to approve or disapprove all Laboratory subcontracts, including consultant agreements and PSAs. Prior DOE approval is required for the following:
   i. An organizational conflict of interest that can only be mitigated
   ii. Foreign travel

b. Changes, deletions, or additions to the Laboratory standard terms and conditions (General Provisions) of a consultant agreement or PSA that may require prior written approval of the Laboratory Counsel and DOE. This approval is secured through Procurement.

5. Initiating Consulting Services

a. The technical contact normally contacts the consultant to arrange for the start of consultant services. Performance should not begin until the agreement has been executed. The technical contact will direct the consultant to the Site Access Office, where the appropriate badges and parking permits are obtained, and will ensure that the consultant is directed to the person or group for whom the services will be rendered.

6. Attendance at Off-Site Conferences

a. The Laboratory may pay fees and reimburse travel costs to permit a consultant to attend meetings away from the Laboratory. Written justification must be provided to Procurement and approval obtained in advance for such attendance. Generally, approval is granted only when it can be shown that attendance by a regular employee cannot accomplish the same purpose.

7. Claim for Consulting Services

a. Invoices for consulting services are submitted with supporting documentation to the Accounts Payable Office via e-mail at APInvoices@lbl.gov. The Invoice for Consulting Services form is available from Procurement for this purpose. The technical contact reviews and signs off on the invoices to verify that the consultant has rendered services as claimed, that the period of time claimed is correct, and that the quality of services performed is acceptable to the Laboratory. After verification by the technical contact, Accounts Payable reviews each invoice to ensure it is consistent with the terms of the agreement. The invoice is then processed for payment.

8. Termination and Renewal

a. Most agreements have a term of about one year and vary according to what is administratively the most practical termination date. Renewal of an agreement may be appropriate if consultant services are needed for longer periods. Agreements that are not renewed simply expire without further obligation.

b. The PeopleSoft Purchasing System sends consultant agreement/PSA expiration notices to the technical contact in 30-, 60-, or 90-day intervals. Renewal is usually accomplished through a modification to the agreement, based on terms negotiated in the
manner of the original agreement. Procurement initiates this action after receiving the Request for Consultant/Personal Services Agreement and Renewal form from the technical contact with the additional information required for the renewal. An ePro requisition may also be required for the renewal.

9. **Personal Services Agreements**
   a. PSAs are treated in essentially the same manner as agreements for consultant services, except as follows:
      i. Solicitations are sent, and agreements awarded to, the individual's company rather than the individual.
      ii. Payments are made to the company instead of the individual.

### E. Roles and Responsibilities

Managers, supervisors, and employees must adhere to the provisions of this policy.

### F. Definitions/Acronyms

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<th>Definition</th>
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<tr>
<td>Consultant</td>
<td>An individual acting on his or her own behalf who personally provides expert advisory and/or assistance services of a technical or professional nature. Consultants provide technical, scientific, engineering, and/or administrative expertise not otherwise available to the Laboratory.</td>
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<tr>
<td>Consulting Services</td>
<td>Services that are “hands-off” in nature and are limited to expert advisory and/or assistance services consisting of information, advice, opinions, alternatives, conclusions, or recommendations to Laboratory personnel, including studies, analyses, and evaluations, that are personally provided by a technical or professional consultant</td>
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<td>Consulting Agreement</td>
<td>An agreement between the Laboratory and an individual consultant with special knowledge or expertise for the performance of consulting services</td>
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<tr>
<td>Personal Services Agreement (PSA)</td>
<td>An agreement between the Laboratory and an established company that makes available by name one or more of its employees as consultants for the performance of consulting services</td>
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### G. Recordkeeping Requirements

None

### H. Implementing Documents

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<tr>
<td>12.01.001.002</td>
<td>Organizational Conflicts of Interest (OCI) Pre-Procurement Fact Sheet</td>
<td>Reference Guide</td>
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<td>Retired Employees, Re-employing</td>
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### I. Contact Information

Procurement and Property Manager

### J. Revision History

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<th>Date</th>
<th>Revision</th>
<th>By whom</th>
<th>Revision Description</th>
<th>Section(s) affected</th>
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<tr>
<td>1/2/2012</td>
<td>1</td>
<td>M. Mock</td>
<td>Reformat for wiki</td>
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<td>M. Stouff</td>
<td>Update &quot;Associate Laboratory Director for Operations&quot; position title to &quot;Deputy Director for Operations&quot;</td>
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**Document Information**

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Source Requirements Documents


Implementing Documents

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Other References

- Intellectual Property (Patents) Policies