

# Dollars & Sense

North Carolina Central University

Purchasing Department

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## New Personal Services Contract Procedures

Personal service contracts have been closely scrutinized for the past few years. A situation at a sister institution brought to light the practice of using “lapsed salaries” (salary monies associated with vacant positions) to, among other things, procure personal service contracts. As a result, state agencies, including the UNC system schools, were required to report all personal service contracts to the North Carolina Legislature on a quarterly basis.

Things heated up when The News & Observer ran an article on its front page entitled “More flexibility, but less oversight – contract positions give agencies short-cuts” (5/13/2002). This was followed by an editorial in the same newspaper a few days later that stated “Short term employment contracts used by state agencies can lead to questionable expenses. It’s time to tighten up.” (5/16/2002) Even more pointedly, the editorial concludes: “The state can ill afford a financial drain stemming from lack of oversight involving contract employees.”

Data collected from the first quarterly submission from state agencies showed 11,000 personal service contracts amounting to \$58 Million were initiated – most written within the university system and three other departments. It was even

reported that one university issued a contract to a former state health director for \$162,000 (the same amount as his former annual salary) that only required he provide quarterly reports. (The News & Observer found those reports to be “cursory.”)

While these events took place a few years ago, it is not hard to imagine the impact the perception generated from this information is having on our legislature as it meets to confront the worst state financial crisis in decades, or on a governor who has to propose the first budget in generations advancing the notion that state employees might lose their jobs.

Needless to say, smart money bet that there would be less flexibility in the use of personal service contracts in the future.

At NCCU, the future is NOW!

The NCCU Office of Legal Affairs is consulting with several offices to discuss how best to process personal service contracts. Given the tenor of the times, the new procedures are likely to be a major departure from current campus practice

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## For Office Supplies-Be a Smart Shopper

When shopping for office supplies you have three choices, Office Depot, Staples and Piedmont Office Suppliers. To place orders on-line with these vendors you **MUST** attend a training session to receive a password and logon ID . Be smart and make sure you compare prices to ensure the University is getting the best values for it's buck. Our next office supply training will be held August 25, 2009.

# Personal Services Contract Con't

It will surprise no one that money is at the heart of the controversy. On the federal side, there is a significant difference between the tax treatment of payments made to independent contractors and those made to employees. For example, the University does not have to withhold or pay income or social security taxes on payments made to independent contractors, but these taxes must be collected from payments made to employees. For this reason, it is important that NCCU be able to distinguish between payments to independent contractor and employees – the two most common types of payment situations. In instances where we improperly classify a worker, the University will be forced to pay both the employer and employee share of the tax liability to the IRS.

As a result of these concerns (among others) concerning Federal employment regulations, the University's **new** default position is to classify an individual as an employee rather than an independent contractor. Of course, the University will continue to hire individuals as independent contractors, but only when facts deem such a relationship is appropriate. **Accordingly, it is now proposed that any unit wishing to hire an independent contractor obtain prior approval from the Office of Human Resources before any such contract is approved by Purchasing and/or Legal Affairs.** This prior approval will allow a proper consideration of the issues regarding the classification of the individual under review up-front.

Concerns on the State side, as expressed by the Legislature, have been (1) the cost of procuring services via a personal service contract is likely to be more expensive than

using the same funds to actually hire an employee to do the same job, and (2) oversight of personal service contracts is often inadequate and/or the service contract is too vague or loosely defined to insure that the taxpayers receive good value. As the News & Observer reports one legislator saying: "There appears to be a great deal of flexibility within the departments as to who gets the contracts, without any accountability after the contract is awarded."

However, even the most vehement critics of the use of personal service contracts by state agencies acknowledge that these contracts are a much needed and important tool. Nevertheless, anyone considering using a personal service contract should keep the following points in mind:

1. It must be very clear that the required service does not duplicate the job description and cannot be performed by a university or state employee;
2. Compensation must be reasonable (and not overly generous) even considered in the harshest light;
3. The contract should be clear about the "deliverables" that are to result from work undertaken via the contract and the measure that will be used to evaluate satisfactory performance;
4. The state and its taxpayers will expect documentation of close scrutiny and vigorous oversight of the work performed under a personal service contract.

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## COST SAVINGS FOR THE UNIVERSITY

**In a pro-active move to reduce cost and generate savings for NCCU the Facilities Service, Design and Construction and Purchasing Team pulled together a plan with Orange Recycling to reduce cost by reducing the number of pick-ups without compromising the integrity of the program. The results are savings in the amount of \$320.10 per month and a yearly total of \$3841.20.**



## New Account Codes and Budgetary Pool Line

749130 OR 74913G	BANK CARD/FEES	749900	OTHER FIX CHRГ-OOTHER
749170 OR 74917G	LEO RETIREMENT SUPPLEMENT	749901 OR 74960G	EXPERT WITNESS FEES
749600 OR 74960G	EXPERT WITNESS FEES	74913G	BANK CARD/FEES
749600	EXPERT WITNESS FEES	74917G	LEO RETIREMENT SUPPLEMENT
746400	TORT CLAIMS	74901G	FINES/PENALTIES
746920	EMPLOYEE RECOGNITION	74930G	OTHER FIX CHRГ-MEMBER DUE
748100	ADMINISTRATIVE EXPENSE	74940G	OTHER FIX CHRГ-NONLIB SUB
748990	OVERHEAD RECEIVABLE	74990G	OTHER FIX CHRГ-OOTHER
749010	FINES/PENALTIES	<b>Budgetary Pool Lines</b>	
749130	BANK CARD/ FEES	74600G	FIXED CHGS/OTHER EXPS BPL4
749300	OTHER FIX CHRГ-MEMBER DUE	74600P	FIXED CHGS/OTHER EXPS BPL4
749400	OTHER FIX CHRГ-NONLIB SUB		

## Procedure for Frequent Used Account Codes

Documentation is always required for account codes beginning with 73000 and 74000. Use 752350 or 75235G for all computer and printers with the dollar amounts from \$1.00 to \$4999.00. Account code 729900 or 72990G for all computer accessories and supplies. The account code for printers, shredders, and fax machines will come from the 75000 line. Flowers, gift cards, and tickets the account code is 739490 or 73949G



## Personal Services Contract Con't

Finally, the decision has been made that, unless a compelling argument to the contrary can be made, **all individuals hired to work with students must be classified as employees.** This makes sense when you consider that, as a university, NCCU is in the business of instructing and guiding students through its employees. Such a classification will also afford the benefit of a criminal background check for individuals that must come into close contact with our students.

**Consultant Services Agreements or Contracts** can be problematic. For a time, it seemed that everyone in business for themselves called themselves "consultants". In fact, the general usage of the term "consultant" can be very loose.

Not so for the State of North Carolina, where consultants are defined by a "State Consultancy Act." For the State of North Carolina and its agencies (including the universities), consultant contracts and agreements are contracts with individuals (including State employees) or business entities with specialized knowledge designed to investigate problems, provide counsel and advice, review, analyze, implement, or formulate improvements in programs or services. Consultant services include advice on the organization, planning, directing, control, evaluation and operation of a program, agency or department.

Consultant contracts must be approved through the North Carolina Department of Administration and authorized through the Governor's Office. The scrutiny consultant contracts receive is not cursory. The State procedure also requires that our Chancellor write to the state purchasing office to declare that the proposed service

is critical to the mission of our university and that such services cannot be supplied by anyone else within the UNC System or any agency in the State. Competitive bidding will be required unless a valid justification for a waiver of competition can be offered.

Educational Consultants (that are used for curriculum development and academically oriented research) require the approval of the NCCU Provost/Vice Chancellor for Academic Affairs or the NCCU Vice Chancellor Research and Graduate Studies.

**The new procedures for personal service contracts apply to consultancy agreements as well.** Proposed consultancy contracts must be submitted to Human Resources and Legal Affairs for assessment before they can be forwarded to the appropriate dean or vice chancellor for approval and processing by the Purchasing Department.

The NCCU Purchasing Department is willing and able to lend its expertise in developing personal service contracts. However, even the best advice from Purchasing cannot compensate for the role campus users must play: (1) providing a clear, well thought out and expressed scope of work, (2) helping develop a contract that accurately reflects its needs and expectations, and (3) providing a mechanism for sufficient oversight to insure that the full benefit of the contract is achieved.

It is important to remember this when considering a personal service contract: others will be watching to see what services are contracted for, who gets a contract, how the contract is implemented, and what actual results were able to be achieved.

## Congratulations and Applause....

"A PICTURE IS WORTH A THOUSAND WORDS..." There are many happy customers due in large part to the innovative spirit and enthusiasm shown by the Central Receiving/Retail Store staff. Staff members are: Ms. Deborah Banks, Mr. Calvin Ramseur, Mr. Richard Randall, and Mr. Andrew L. McArthur. Central Receiving embarked upon a new and rewarding challenge with the grand opening of NCCU's first retail store. The retail store is a unique concept to assist with the distributing, and disposing of state surplus merchandise. The store is located on campus at Central Receiving, at 625 George Street. Central Receiving/Retail Store will continue to

provide the university with the transfer and movement of surplus items to be used by various departments on campus. The Retail Store is available for faculty/staff each day from 8:00am until 5:00p, except Thursdays. On these days faculty/staff are welcomed to browse the store room and make selections from sample merchandise. University departments must complete a Movable Equipment-Notice of Disposal/Change in Location form, and submit it to the Fixed Asset Office. Surplus is picked-up and delivered to departments only on Mondays.