Welcome to our Personal Services contracts and Independent Contractor Determination presentation! 😊
The OSU PPSC or Personal/Professional Services contract may presently be found on the OSU Procurement and Contract Services (PaCS) website at http://pacs.oregonstate.edu/forms.

However, there is a new update in the works which is to be renamed the “PSC” or “Personal Services Contract”. We have dropped the word “Professional” from the title to avoid confusion since it is used as a defined term for services specific to OSU’s Construction Contracting. As the terms “Professional” and “Personal” are used interchangeably in the Procurement world this name change does not change the type of services encompassed by this document.

Today we will help to clarify what a Personal Service is versus a Trade Service, to identify the key components of a Personal Services Contract including the Scope of Work, and provide a summary of the process for executing these documents.
What is a Personal Service? A Personal Service is a service provided by an individual or company with specialized skills, knowledge and resources, in the application of technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment.

The important aspect here that clearly defines a personal service is that the skills are in application of an expertise, profession or artistry.

With this in mind, you could consider a personal service as akin to what would typically be considered “white collar” work.

Please make particular note of the PaCS Manual link of http://oregonstate.edu/fa/manuals/pacs since it is a valuable guide and will be referenced several times during this presentation.
Examples of this include:

Accountants
Attorneys
Consultants
Grant Writers
Physicians
Recruiters

(PaCS Manual, Section 402-006 “Personal Services Contracts”)
CONVERSELY – a trade service is a service provided by an individual or company with skills, knowledge, and resources, in the application of a manual or mechanical trade labor.

The important aspect here that clearly defines a trade service is that the skills are in application of manual labor.

- With this in mind, you could consider a trade service as akin to what would typically be considered “blue collar” work.
Examples of this include:

Building System Maintenance
Electrician
Food Service
Farm Labor
Janitorial
Lumberman
When contracting for a **Trade Service**, provided Bureau Of Labor & Industry (BOLI) prevailing wage rates do not apply, it would be appropriate to utilize a **Purchase Order (PO)**.

A **Departmental PO** can be utilized if the cost of the Trade Service is **below $5,000**. This type of PO may be issued by an OSU department without processing by a Business Center (BC) or PaCS.

A **Banner PO** must be used for a trade service over $5,000 and may be used at any dollar level when the application of the Banner PO terms and conditions is desired. A **Banner PO must be processed by the appropriate BC in the $5,000 to $24,999 range** and by PaCS when valued at $25,000 or more.
A Personal Services Contract (PSC) is used at OSU to contract for infrequent, technical or unique services performed by contractors with specialized, technical or scientific expertise of a professional nature.

(PaCS Manual, Section 402-006 “Personal Services Contracts”)

A Personal Services Contract (PSC) is used at OSU to contract for infrequent, technical or unique services performed by contractors with specialized, technical or scientific expertise of a professional nature.

Again, a Personal Service is a service provided by an individual or company with specialized skills, knowledge and resources, in the application of technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment that can typically can be considered “white collar” work.
A Personal Services Contract may be used at any dollar level and are highly recommended when detailed expectations or obligations are necessary.

A PSC with a detailed Scope of Work is a good idea as it protects both parties.
A Personal Services Contract **must be used** when the dollar amount is **$5,000 or above** cumulatively in one academic year for a department.

When the dollar amount in question is **at or above $25,000**, **competition is required**. OSU PaCS will work with you to determine a solicitation method or if an exemption or sole source exists.
On the other hand, a PSC is not used when the contractor:

- Is to **supervise OSU personnel** or other contractors.
- Is listed as an **instructor of record** for an OSU for credit course.
- Will **be in contact with minors** until contractor has passed a criminal background check as required in OAR 580-223.
- Will **represent themselves as OSU** or make promises on behalf of OSU.
- Will **drive OSU vehicles.**
- Will **transport students**, unless specifically authorized to do so in the contract. If authorized, contractor must meet OSU minimum driving standards in accordance with OAR 125-155.

In short, contractors may not act as a representative of OSU.
It is very important for the **PSC Scope of Work** to be **clear, correct and sufficiently detailed** to explain the project.

**Why?**

- The contractor does not have to complete work that is not documented.

- Unwritten expectations have a habit of not getting done.

- The contractor may complete the project in a manner and/or with a **result that was not intended**.
The Scope of Work for a PSC typically contains:

- A detailed description of the work to be done.
- The location of the work.
- A timetable for completion of the work.
- Acceptability of the work.
- Special certifications or travel requirements.
- How and when will the contractor be paid.

(PaCS Manual, Section 403-002 "Scope of Work")

POORLY WRITTEN SCOPE OF WORK EXAMPLE: A PSC has a scope of work that simply states “Contractor will create a website for Department” with an amount of $7500 payable to the contractor for the work. As written, if the Contractor produced a single black and white website page with only the name of the Department and a listing of Departmental personnel, OSU would be contractually obligated to pay $7,500 for the single website page!!

WELL WRITTEN SCOPE OF WORK EXAMPLE: A PSC has a scope of work that states “Contractor will design and create a new Department website with a minimum of 30 individual website pages. Contractor will initially develop a story board detailing each page of the website and have the story board approved by Department Contact prior to creating the website.” The amount is specified as $7500 payable to contractor at $50 per hour. With this scope of work OSU would owe the contractor $50 per hour that the contractor works on the project and OSU would have control over the website content.
Also important is the clear specification, in addition to the total “Not to Exceed” sum for the PSC, of the Rate of Pay.

Such payments could be based upon payment per a time period, (per hour, per week, per month, etc.), paid up front, etc. and could be paid up front, at completion of all work, or at intervals.

As simple statement of “not to exceed sum to be paid to Contractor” could result in a lump sum payment when that was not the intent and could be further be complicated by an incomplete Scope of Work.
Only Contract Officers are authorized to sign and execute contracts and agreements on behalf of OSU.

Work should not begin until after it is signed by the Contractor, Department and a designated Contract Officer.

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A listing of OSU Institution Contract Officers is established by the OSU Office of the Vice President for Finance & Administration and may be found at http://pacs.oregonstate.edu/sites/default/files/resources/authorized-contract-signatories.pdf.

This list details who can sign on behalf of the University and details any limitations on that authority.

Work should not begin until after it is signed by the Contractor, Department and a designated Contract Officer.

Work based upon a contract that is completed before that document is executed can be considered “unauthorized”.
So in conclusion, what is the process for executing a PSC at OSU?

- First determine whether the work involved is a Personal Service or a Trade Service.
- Determine whether or not the vendor in question qualifies as an Independent Contractor under ORS 670.600. This will be covered within the next segment of this presentation and final determination of this will reside with PaCS.
- Construction of the PSC, using the PaCS template, by the Department or Business Center with PaCS consultation as needed.
- Signature distribution to the Contractor and then to the Department.
- Submission to PaCS for final review of Independent Contractor status determination, contract content and then processing for final signature. PaCS will work with the Department and the BC should revision be required.
- PaCS returns the executed PSC to Business Center for distribution.
THANK YOU !!!

Please contact PaCS for assistance at any point along the PSC process, especially at the start.

pacs@oregonstate.edu / 541-737-4261

We are here to help.

A current copy of the Personal Services Contract can be obtained by visiting the PaCS website at http://pacs.oregonstate.edu/ and clicking on the forms link at the top of the page.
INDEPENDENT CONTRACTOR DETERMINATION
OSU may only issue contracts to those individuals that are determined to be Independent Contractors.

It is important to make this determination before issuing a PSC or PSI and as such PaCS provides an Independent Contractor Determination Form on the PaCS website which should be used as a guideline to determining if the person qualifies as an Independent Contractor or should more appropriately be classified as an employee.

The current form is based on 20 question guideline previously provided by the IRS.

However, PaCS is working on updating the form to be in alignment with existing Oregon Revised Statutes 670.600 which guide many of the regulatory agencies within the state of Oregon. We are in the review status and anticipate having it updated in early spring along with the revised Personal Services Contract.

Today’s presentation will be based on the information contained in ORS 670.600.
ORS 670.600 provides a very clear legal definition for an Independent Contractor and is followed by 4 of the 6 regulatory agencies in the state of Oregon.

The only 2 regulatory agencies that don't follow the exact standards in ORS 670.600 are the Bureau of Labor and Industry or BOLI and the Worker's Compensation Division. They are required by court decisions to utilize a slightly different classification system but the elements are very similar to those elements contained in ORS 670.600.

The reason OSU PaCS is working toward standardizing our Independent Contractor Determinations toward ORS 670.600 is because the majority of the regulatory agencies are required to use this statute and it provides a bit more clarity than other guidelines.
So what does ORS 670.600 say?

ORS 670.600 defines an Independent Contractor as someone who provides services for remuneration and who is

1. Free from direction and control over the means and manner of providing the services; AND

2. Is customarily engaged in an independently established business; AND

3. Is responsible for obtaining any required licenses or certificates necessary to provide the services.

Pretty simple?? Not really.

The two elements of this that can be very confusing are what it means to be “FREE FROM DIRECTION AND CONTROL” and what it means to be customarily engaged in an “INDEPENDENTLY ESTABLISHED BUSINESS”. Those are the two elements that I’ll elaborate on next.
What does this mean?

It means the Contractor needs to be free from OSU’s direction and control in how they do the work, and OSU only controls the result of the work, not the means and methods of accomplishing the result.

**NOTE:** While I will discuss this a bit further it is important to note that each instance has very specific factors and all of the factors are used to weigh into the final Independent Contractor Determination made by OSU PaCS. So I may make an example of a specific factor now that indicates “direction and control” and you may have an occasion where that specific factor has been in a contract and allowed. However, there may have been other factors in that instance that “outweighed” that one factor. OSU PaCS looks at the entire relationship.

So some factors that would indicate that OSU has direction and control over an individual include Instructions, Evaluation and Training.

1. **Instructions** are when OSU might specify exactly to a contractor: when and where to do the work; what tools or equipment they have to use; what workers to hire or to assist with the work; where to purchase supplies and services; what work must be performed by a specified individual; what order or sequence to follow when performing the work. The level and detail of instruction provided in the above factors are also indicative of the relationship.

2. Another factor of direction and control is **evaluation**. If OSU is evaluating the methods they are using to produce the work as opposed to evaluating the end result, it is more likely that the individual is not an Independent Contractor.

3. Another factor of direction and control is **training**. If OSU is providing the training in order for the individual to do the work, it is more likely that the individual is not an Independent Contractor.
INDEPENDENTLY ESTABLISHED BUSINESS

A person is considered to be customarily engaged in an independently established business if any three of the following requirements are met:

1. Maintain a business location that is:
   - Separate from the business or work location of the service recipient; or
   - That is in a portion of their own residence that is used primarily for business.

2. Bear the risk of loss, shown by factors such as:
   - Entering into fixed price contracts;
   - Being required to correct defective work;
   - Warranting the services provided; or
   - Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.

3. Provided contracted services for two or more different persons within a 12-month period, or the person routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

4. Makes a significant investment in the business, through means such as:
   - Purchasing tools or equipment necessary to provide the services;
   - Paying for the premises or facilities where the services are provided; or
   - Paying for licenses, certificates or specialized training required to provide the services.

5. Has the authority to hire other persons to provide or assist in providing the services and has the authority to fire those persons.

Now to discuss an Independently Established Business:

**Under ORS 670.600** a person is considered to be **customarily engaged in an independently established business** if any three of the following five requirements are met;

1. **Maintain a business location separate from OSU** or maintain a portion of their residence that is used primarily for business

2. **Bear the risk of loss** in their business, such as:
   - Entering into fixed price contracts
   - Being required to correct defective work
   - Warranting the services
   - Providing/negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.

3. **Provided contracted services for two or more different persons (outside of OSU) within a 12 month period** – OR Routinely engage in business advertising, solicitation or other marketing efforts **reasonably calculated to obtain new contracts** to provide similar services

4. **Make a significant investment in their business** by:
   - Purchasing tools or equipment
   - Paying for the premises or facilities where the services are provided; or
   - Paying for licenses, certificates or specialized training in order to provide the services

5. Has the **authority to hire other persons to provide or assist in providing the services** and has the authority to fire those persons.
INDEPENDENT CONTRACTOR DETERMINATION

- What are the implications of misclassification?
  - Loss of benefits and protections afforded by law:
    - Unemployment benefits
    - Income Tax withholding
    - Workers compensation coverage for on the job injuries
    - Minimum wage and overtime as well as other workplace protections under civil rights and wage and hour law
  - Loss of benefits offered to properly classified employees:
    - Sick leave
    - Vacation leave
    - Retirement benefits
  - OSU could face fines, lawsuits and have to pay the benefits identified above.

What **implications are there to misclassifying** an individual as an Independent Contractor as opposed to an Employee?

The Independent Contractor would **lose benefits and protections afforded under law** such as:

- unemployment;
- income tax withholding;
- workers compensation;
- minimum wage and overtime; and

The Independent Contractor would **lose benefits offered to an employee** such as:

- sick leave;
- vacation leave; and
- retirement benefits

OSU could also **face fines, lawsuits and have to pay the benefits identified above in addition** to what **OSU already paid the contractor** in the contract.