




**National Rural Electric
Cooperative Association**

A Touchstone Energy® Cooperative 

NRECA VENDOR MANAGEMENT OFFICE

Contracting for Services— Prepare Before You Execute

SCM / IT / EO 2J

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**Thursday, February 21st, 2008
1:15 – 2:30 p.m.**

- ▶ General Tips
- ▶ FEMA Considerations
- ▶ Critical Terms and Conditions
- ▶ Co-employment Issues
- ▶ Using Independent Contractors

- ▶ Develop “Prime” List
 - ▶ References
 - ▶ Try To Source Local Vendors
 - ▶ Consolidate Vendors (Benefit: “Single Throat to Choke” or “One Person to Hug”)
 - ▶ Get COIs In Advance
- ▶ Contracting
 - ▶ Use Your Own Contract Template
 - ▶ Master / SOW Structure
 - ▶ Resources Vs. Results
 - ▶ Clearly Define Expected Results In SOW
 - ▶ Monitor Performance (Before Things Get Out Of Hand)

- ▶ FEMA Worried About Gouging, Paying For More Than Repair, And Documentation
- ▶ FEMA Prefers Storm Work Competitively Bid (In Advance) And Formal Contracts
- ▶ FEMA Prefers Unit Work Contracts; T&M Contracts Allowed In Narrow Cases (e.g., During “Immediate Response Period”)
- ▶ Absolute No-No: Cost + Percentage Of Cost
- ▶ Work Must Be For Repairs (Not Upgrades)
- ▶ Document, Document, Document
 - ▶ Even Contemporaneous Handwritten Notes And After-The-Fact Narrative Descriptions

- ▶ Cooperative.com > Supply Chain > Contract Templates > Master Professional Services Agreement
- ▶ Standard Of Performance
 - ▶ Supplier's staff, assigned to perform the Services, have the experience and are qualified to perform the tasks involved with providing the Services in an efficient and timely manner. The Services shall be performed in a competent and professional workmanlike manner and in accordance with the highest professional standards.
- ▶ Termination
- ▶ Acceptance Period (Audit / Inspections)

- ▶ **Change Control (Increase And Decrease)**
 - ▶ NRECA shall have the right, in its sole discretion, and for any reason whatsoever, to decrease the scope of the Services. In such case, the fee for the applicable Exhibit A will be reduced by an amount consistent with the decrease in scope.
- ▶ **Indemnity / Limitation of Liability**
- ▶ **Insurance**

- ▶ Legal Doctrine: Applies When Two Businesses Exert Some Control Over A Workers's Work Or Working Conditions
- ▶ Three Tests
 - ▶ IRS 20-Factor Test: Behavioral Control, Financial Control, And Relationship Of Parties (See Next Slide)
 - ▶ Department Of Labor Test (FLSA): Degree Of Economic Integration, Permanency Of Relationship, Worker's Investment In Tools And Equipment, And Assumption Of Profit Risks
 - ▶ Common Law Test: Whether Workplace Employer Has Right To Control Manner And Means By Which Worker Performs Assigned Tasks

▶ Only A Guide. “No” To 1 – 16 and “Yes” To 17 – 20
Imply Independent Contractor Status:

1. Must Worker Take Instructions From Company Regarding When, Where, How?
2. Worker Receive Training From Company?
3. Company's Operations Dependent On Service Provided By Worker?
4. Worker Personally Perform Services?
5. Has Worker Hired Or Supervised Workers To Assist Worker In The Services?
6. Continuing Relationship Between Company And Worker?
7. Must Worker Work Set Hours?
8. Worker Required To Work Full Time At Company?
9. Work Performed On Company Premises?
10. Worker Required To Follow Set Sequence Or Routine?
11. Must Worker Provide Status Reports?
12. Worker Paid By Hour, Week, Or Month?
13. Company Reimburse Worker For Expenses?
14. Company Supply Worker With Needed Tools Or Materials?
15. Company Made A Significant Investment In Facilities Used By Worker?
16. Worker Free From Suffering A Loss Or Realizing A Profit?
17. Worker Only Perform Services For Company?
18. Worker Limit Availability Of Services To General Public?
19. Company Have Right To Discharge Worker?
20. May Worker Terminate Services At Any Time?

- ▶ **Use IRS 20-factor Test As Guide**
 - ▶ Avoid Using Independents (Individual Contractors)
 - ▶ Don't Get Involved In Hiring / Tasking / Firing
 - ▶ Make Vendor Responsible For Drug / Background Tests
 - ▶ Use (Very) Different Badges
 - ▶ Don't Invite To Staff Meetings Or Employee Events
 - ▶ Don't "Recognize" Workers
 - ▶ Require Break In Period Of Service
- ▶ **Contract Provisions**
 - ▶ Independent Contractor Status
 - ▶ Vendor Controls Work, Responsible For Training
 - ▶ Vendor Responsible For Worker Taxes

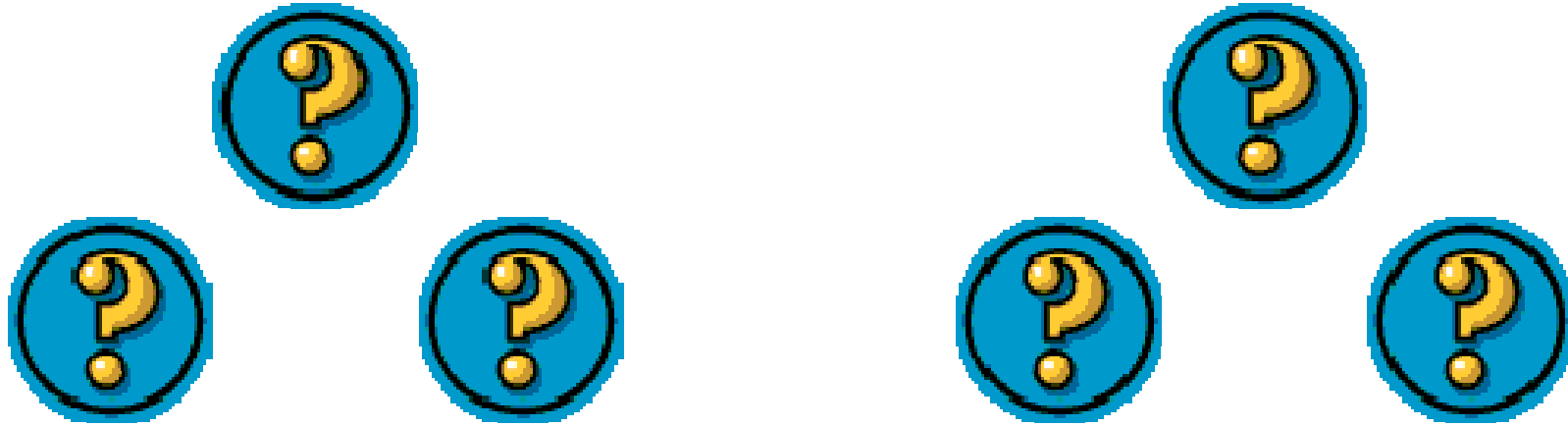
REASONS TO NOT USE INDEPENDENTS

- ▶ Customers Typically Receive Volume Discounts From Agencies
- ▶ Independent Contractors Increase Risk Of Co-employment And Typically Don't Have Corporate Guidelines (E.G., Sexual Harassment)
- ▶ Contractual Warranties, Representations, And Indemnifications Have Limited Or No Value Because Independent Contractors Are Judgment Proof (Due To Limited Assets)
- ▶ Informal Dispute Resolution Easier To Achieve With Agencies Due To Ongoing And Future Business Opportunities
- ▶ Agencies Offer Broader Pool Of Resources And Resource Search Capabilities
- ▶ Independent Contractors Increase Number Of Vendor Relationships, Contracts, And Invoices To Manage



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QUESTIONS



Check Out

www.vmo-blog.com

