

Independent Contractor Policy

Introduction

The purpose of this policy is to provide direction, clarification, and best practices for the engagement of independent contractors within Mercy Hands. This policy is based on the Procurement Policy, section titled “Contracting for Goods and Services”.

It is expected that Mercy Hands activities will be carried out to the maximum extent possible by using the services of regular employees. However, independent contractors/consultants may be used when necessary resources or services cannot be provided adequately by regular employees within the scope of their employment or in emergency temporary circumstances.

This policy applies to individuals doing business in their own name or an assumed business name, it does not apply on a business with an established business entity with multiple employees.

Independent Contractor Standards

an individual who performs labor or services shall be considered to perform the labor or services as an “independent contractor” if the standards of this section are met.

How to tell if a worker qualifies for independent contractor status:

Just as the “20 factors” on the next section indicate employee status, the following traits are indicators of independent contractor status. A worker may be an independent contractor if they:

1. Is permitted to employ assistants.
2. Sets the order or sequence of work.
3. Sets their own hours of work.
4. Works for other employers.
5. Is paid by the job or by the contract completed.
6. Makes their services available to the public.

7. Has an opportunity for profit and loss.
8. Furnishes their own tools.
9. Has a substantial investment in their trade.
10. May be dismissed only under terms of a contract.

How to tell if a worker is an employee:

The general rule is if Mercy Hands has the right to control, both what work will be done and how it will be done, there is an employer-employee relationship.

To determine if Mercy Hands has the right to control, Mercy Hands uses the following 20-factor test:

A worker is generally an employee if they:

1. Must comply with Mercy Hands' instructions about when, where and how to work.
2. Receives training from or at the direction of Mercy Hands. This may include having to work along with an experienced employee or having to attend meetings.
3. Provide services that are integrated into the business. That is, the success or continuation of Mercy Hands' work depends significantly on the performance of certain services which the worker provides.
4. Performs the work personally.
5. Hires, supervises and pays assistants for Mercy Hands.
6. Have a continuing relationship with Mercy Hands.
7. Must follow set hours of work.
8. Works full-time for Mercy Hands.
9. Do their work on Mercy Hands' premises.
10. Must do their work in a sequence set by Mercy Hands.
11. Must submit regular oral or written reports to Mercy Hands.
12. Receives payments of regular amounts at set intervals.

13. Receives payments for business and/or traveling expenses.
14. Relies on Mercy Hands to furnish tools and materials.
15. Lacks a significant investment in facilities used to perform the service.
16. Cannot make a profit or suffer a loss from their services.
17. Only works for Mercy Hands at the time of employment.
18. Does not offer their services to the general public.
19. May be fired by Mercy Hands.
20. May quit work at any time without liability other than losing pay.

Standard Operating Procedure

When hiring an individual, the Program Management in consultation with the HR Director and Procurement Director will complete the assessment for the Independent Contractor Standards.

The assessment of the work characteristics may conclude with the following results:

1. Employee – If the management expects to assert 12 or more of the employer’s controls illustrated in the 20 characteristics, the individual is to be engaged as a Mercy Hands employee and paid according to the requirements that follow for employees.
2. Independent contractor/Consultant – If the services/work will be free from 12 or more of the employer controls illustrated in the 20 characteristics, the individual may be engaged as a contractor/consultant and paid according to the requirements that follow for engaging independent contractors/consultants.
3. Assessment is unclear – If the result of the assessment is unclear, consultation with the Executive Director will be necessary to determine final assessment.

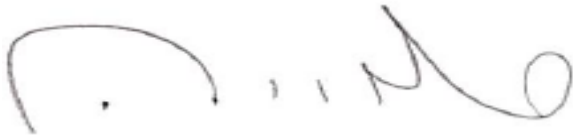
When/if all conditions above are met, the following procedures must be followed:

- 1- The Director of Procurement obtains the scope of work/proposal detailing, at a minimum, the services to be provided, service timeframe, and itemized costs.
- 2- The Director of Procurement drafts the Independent Contractor Agreement (annex 1) and share it with the HR Director and Program Management for review.

- 3- Upon finalizing the Independent Contractor Agreement, the Director of Procurement signs two copies and shares them with the Independent Contractor for signature.
- 4- The Director of Procurement will share a copy of the signed Independent Contractor Agreement with the Finance and Accounting Department for pay arrangements.
- 5- The HR Department may issue a non-employee/ Independent Contractor ID card for the Independent Contractor.

Special Situations/ Exceptions

Exceptions to this Policy require written approval by the Executive Director and MEAL and Quality Management Director. In these instances, final classification of Independent Contractor/Consultant or Employee will be determined by the General Administrator.



Last update: July 2022

Approved by: Khaldoon Al-Moosawi

ANNEX -1-

Contractor Agreement

Date:

Project Ref.:

This Agreement is made between Mercy Hands for Humanitarian Aid (MH) as the client with a principal place of business at Karrada, Al-Masbah, Sector 929, Street 4., Building 36, Baghdad, Iraq and _____ (Contractor Name) _____, with a principal place of business at _____ (Contractor Address) _____.

1. Services to Be Performed

Contractor agrees to perform the services described in the Scope of Work (SoW), which is attached to this Agreement.

2. Payment

In consideration for the services to be performed by Contractor, MH agrees to pay Contractor at the following rates: \$---- per month service. The month service is defined as working when requested by the Program Manager and in accordance with the SoW.

Contractor shall be paid within a reasonable time after Contractor submits an invoice to MH. The invoice should include the following: an invoice number, the dates covered by the invoice, and a summary of the work performed. If the Contractor does not have their own invoicing system, then they can use MH's timesheet as an invoice.

3. Expenses

Unless otherwise stated by MH, the Contractor shall be responsible for all expenses incurred while performing services under this Agreement. This includes travel expenses; vehicle maintenance and repair costs; vehicle and other license fees and permits; insurance premiums; road, fuel, and other taxes; fines; cell phone expenses; meals; and all salary, expenses, and other compensation paid to employees or contract personnel the Contractor hires to complete the work under this Agreement.

For expenses reimbursed by MH, the Contractor shall submit an itemized statement of Contractor's expenses. MH shall pay Contractor within 30 days after receipt of each statement.

4. Vehicles and Equipment

When not provided by MH, Contractor will furnish all vehicles, equipment, tools, and materials used to provide the services required by this Agreement. MH will not require Contractor to rent or purchase any equipment, product, or service as a condition of entering into this Agreement.

5. Independent Contractor Status

Contractor is an independent contractor, and neither Contractor nor Contractor's employees or contract personnel are, or shall be deemed, MH's employees. In its capacity as an independent contractor, Contractor agrees and represents, and MH agrees, as follows

[Check all that apply]

- [X] Contractor has the right to perform services for others during the term of this Agreement.
- [] Contractor has the sole right to control and direct the means, manner, and method by which the services required by this Agreement will be performed. Contractor shall select the routes taken, starting and quitting times, days of work, and order the work is performed.
- [] Contractor has the right to hire assistants as subcontractors or to use employees to provide the services required by this Agreement.
- [] Neither Contractor nor Contractor's employees or contract personnel shall be required to wear any uniforms provided by MH.
- [X] The services required by this Agreement shall be performed by Contractor, Contractor's employees, or contract personnel, and MH shall not hire, supervise, or pay any assistants to help Contractor.
- [X] Neither Contractor nor Contractor's employees or contract personnel shall receive any training from Client in the professional skills necessary to perform the services required by this Agreement.
- [X] Neither Contractor nor Contractor's employees or contract personnel shall be required by MH to devote full time to the performance of the services required by this Agreement.

6. Business Licenses, Permits, and Certificates

Contractor represents and warrants that Contractor and Contractor's employees and contract personnel will comply with all federal, KRG, and local laws requiring drivers and other licenses, business permits, and certificates required to carry out the services to be performed under this Agreement.

7. KRG and Federal Taxes

MH will not:

- withhold KRG or federal Social Security taxes from Contractor's payments or make payments on Contractor's behalf
- withhold KRG or federal income tax from Contractor's payments.

Contractor shall pay all taxes incurred while performing services under this Agreement— including all applicable income taxes and, if Contractor is not a corporation, self-employment (Social Security) taxes. Upon demand, Contractor shall provide MH with proof that such payments have been made.

8. Fringe Benefits

Contractor understands that neither Contractor nor Contractor's employees or contract personnel are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of MH.

MH will offer to the Contractor to purchase its self-managed health insurance plan, Dhamani.

9. Workers' Compensation

MH shall not obtain workers' compensation insurance on behalf of Contractor or Contractor's employees. If Contractor hires employees to perform any work under this Agreement, Contractor will cover them with workers' compensation insurance to the extent required by law and provide MH with a certificate of workers' compensation insurance before the employees begin the work.

10. Insurance

MH shall not provide insurance coverage of any kind for Contractor or Contractor's employees or contract personnel. Contractor shall obtain the following insurance coverage and maintain it during the entire term of this Agreement:

[Check all that apply.]

Automobile liability insurance for each vehicle used in the performance of this Agreement -- including owned, non-owned (for example, owned by Contractor's employees), leased, or hired vehicles -- in the minimum amount of \$ _____ combined single limit per occurrence for bodily injury and property damage.

Comprehensive or commercial general liability insurance coverage in the minimum amount of \$ _____ combined single limit, including coverage for bodily injury, personal injury, broad form property damage, contractual liability, and cross-liability.

Before commencing any work, Contractor shall provide MH with proof of this insurance and with proof that MH has been made an additional insured under the policies.

Health insurance. The Contractor must purchase health insurance for the whole period of work. The Contractor shall provide MH with proof of this insurance.

11. Indemnification

Contractor shall indemnify and hold MH harmless from any loss or liability arising from performing services under this Agreement.

12. Term of Agreement

This agreement will become effective when signed by both parties and will terminate on the earlier of:

- the date Contractor completes the services required by this Agreement
- _____ [end of project date] _____, or
- the date a party terminates the Agreement as provided below.

13. Terminating the Agreement

With reasonable cause, either MH or Contractor may terminate this Agreement, effective immediately upon giving written notice.

Reasonable cause includes:

- a material violation of this Agreement, or
- any act exposing the other party to liability to others for personal injury or property damage.

OR

Either party may terminate this Agreement at any time by giving days' written notice to the other party of the intent to terminate.

14. Exclusive Agreement

This is the entire Agreement between Contractor and Client.

15. Modifying the Agreement

This Agreement may be modified only by a writing signed by both parties.

16. Resolving Disputes

If a dispute arises under this Agreement, the parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in Iraq. Any costs and fees other than lawyer fees associated with the mediation shall be shared equally by the parties. If it proves impossible to arrive at a mutually satisfactory solution through mediation, any party may take the matter to the Iraqi courts.

17. Confidentiality

Contractor acknowledges that it will be necessary for MH to disclose certain confidential and proprietary information to Contractor in order for Contractor to perform duties under this Agreement. Contractor acknowledges that disclosure to a third party or misuse of this proprietary or confidential information would irreparably harm MH. Accordingly, Contractor will not disclose or use, either during or after the term of this Agreement, any proprietary or confidential information of MH without MH's prior written permission except to the extent necessary to perform services on MH's behalf.

Proprietary or confidential information includes:

- the written, printed, graphic, or electronically recorded materials furnished by MH for Contractor to use
- any written or tangible information stamped "confidential," "proprietary," or with a similar legend, or any information that MH makes reasonable efforts to maintain the secrecy of
- work or marketing plans or strategies, donor and beneficiary lists, operating procedures, trade secrets, design formulas, know-how and processes, computer programs and inventories, discoveries, and improvements of any kind, sales projections, and pricing information
- information belonging to donors, beneficiaries, partners and suppliers of MH about whom Contractor gained knowledge as a result of Contractor's services to MH, and
- other: _____.

Upon termination of Contractor's services to MH, or at MH's request, Contractor shall deliver to MH all materials in Contractor's possession relating to MH's business.

Contractor acknowledges that any breach or threatened breach of Clause 17 of this Agreement will result in irreparable harm to MH for which damages would be an inadequate remedy. Therefore, MH shall be entitled to equitable relief, including an injunction, in the event of such breach or threatened breach of Clause 17 of this Agreement. Such equitable relief shall be in addition to MH's rights and remedies otherwise available at law.

18. Proprietary Information.

A. The product of all work performed under this Agreement (“Work Product”), including without limitation all notes, reports, documentation, drawings, computer programs, inventions, creations, works, devices, models, work-in-progress and deliverables will be the sole property of MH, and Contractor hereby assigns to MH all right, title and interest therein, including but not limited to all audiovisual, literary, moral rights and other copyrights, patent rights, trade secret rights and other proprietary rights therein. Contractor retains no right to use the Work Product and agree not to challenge the validity of the MH’s ownership in the Work Product.

B. Contractor hereby assigns to MH all right, title, and interest in any and all photographic images and videos or audio recordings made by MH during Contractor’s work for them, including, but not limited to, any royalties, proceeds, or other benefits derived from such photographs or recordings.

C. MH will be entitled to use Contractor’s name and/or likeness use in advertising and other materials.

19. No Partnership

This Agreement does not create a partnership relationship. Contractor does not have authority to enter into contracts on MH’s behalf.

20. Assignment and Delegation

Contractor may not assign or subcontract any rights or delegate any of its duties under this Agreement without MH’s prior written approval.

21. Applicable Law

This Agreement will be governed by the Iraqi laws, without giving effect to conflict of laws principles.

Signatures

Mercy Hands: _____
Printed Name

Job Title

Signature

Date

Contractor: _____



Printed Name

Signature

Date

Attachments: Exhibit A: Scope of Work

SCOPE OF WORK
