

| System-wide Policy: FI0420 - Contracts | |
|---|----------------------------|
| Version: 17 | Effective Date: 02/21/2020 |

FI0420 – Contracts

Topics:

| | |
|--|--|
| Definition | Signing Contracts |
| Applicability | Storage of Contracts |
| Conflict of Interests | Fiscal Review Committee Requirements |
| Independent Contractors | Paying Contractors |
| Procurement Requirements | Forms |
| Drafting Contracts | Procedures |
| Reviewing Contracts | Contacts |
| Fiscal Review Committee Requirements | Related Policies |
| Contracting Authority | |

Objective:

To outline authority and responsibilities of university personnel regarding drafting, reviewing, and signing contracts.

Policy:

Definition

1. A contract is any agreement between the university and another party that creates an obligation, right, or liability. An agreement may be a binding contract even though one party provides something of value to the other party at no charge. The title of a document does not affect whether the document is a contract.

| System-wide Policy: FI0420 - Contracts | |
|---|----------------------------|
| Version: 17 | Effective Date: 02/21/2020 |

2. Examples of university contracts include, but are not limited to, the following types of agreements: affiliation agreements; agreements for the purchase, lease, or rental of goods or services; agreements for the use of the university's name, logo, or resources; agreements regarding use of intellectual property; agreements with hotels, convention centers, or other facilities; athletic agreements; banquet event orders; catering agreements; click-wrap terms and conditions (also known as shrink-wrap, click-through, browse-wrap, online, or electronic terms and conditions, terms of use, or licenses); clinical service agreements; deeds; gift agreements not related to a University Foundation; instructional agreements; liability waivers; material transfer agreements (also known as MTAs); memoranda of agreement (also known as MOAs); memorandum of understanding (also known as an MOUs); nondisclosure agreements (also known as confidentiality agreements, NDAs, or CDAs); settlement agreements; software license agreements; subscription agreements; term sheets; and terms and conditions.

Applicability

3. This policy applies to all contracts (including every amendment, change order, modification, renewal, or extension of the contract) regardless of dollar value with the following exceptions:
- Purchase orders issued by a university procurement office (See [FI0405 - Procurement](#));
 - Real property acquisition and disposition contracts (See [FI0620 - Capital Outlay](#));
 - Real property lease agreements (See [FI0625 - Lease of Real Property by or to the University](#));
 - Contracts that must be approved by the State Building Commission; and
 - Contracts for legal services, including but not limited to outside counsel, expert witnesses, and consultants procured by the Office of the General Counsel. A contract is not required for deposition or trial transcription services, or any other services provided by court reporters, when

| System-wide Policy: FI0420 - Contracts | |
|---|----------------------------|
| Version: 17 | Effective Date: 02/21/2020 |

obtained from a firm or individual by the Office of the General Counsel.

Note: Only the General Counsel is authorized to procure legal services for the University.

4. The following applies to sponsored grants and contracts, including those with zero dollar amounts:
 - a. The campus research offices are responsible for drafting and reviewing domestic sponsored grants and contracts, domestic material transfer agreements, and domestic confidentiality agreements. These agreements do not have to be routed through the review process outlined in this policy, and the campus research offices are responsible for maintaining all sponsored grants and contracts in accordance with the university's Records Management policy (See [FI0120 - Records Management](#)).
 - b. All payable sponsored grants and contracts (including no-cost amendments to payable research contracts), however, must be entered into the university's contract management system to enable correct payments by the accounts payable staff. The campus or institute are responsible for ensuring that these contracts are properly entered into the university's contract management system.
 - c. As noted in this policy, domestic sponsored grants and contracts can be executed by the Vice Chancellors for Research or designee approved by the Chief Financial Officer. (See [Signing Contracts](#) section below).
 - d. All foreign sponsored grants and contracts, regardless of dollar amount, must be reviewed by the Treasurer's Office and the Office of the General Counsel before being signed. See [FI0205 - Sponsored Projects](#) for additional policies related to sponsored grants and contracts.
5. The Audit Division of the State Comptroller's Office is staffed to service most of the university's needs and requirements for independent audits. When federal grants and contracts, however, require an independent audit or other needs exist for auditing or specialized accounting services by firms, the appropriate chief business officer should furnish the Chief Financial Officer (or designee) a detailed summary of requirements to present to the State Comptroller's Office to determine if the State Audit Division can handle these needs or requirements. If

| System-wide Policy: FI0420 - Contracts | |
|---|----------------------------|
| Version: 17 | Effective Date: 02/21/2020 |

these needs cannot be serviced by the State Audit Division, a contract with an independent firm will be negotiated in accordance with procurement policy and this policy. In addition to complying with procurement policy and this policy, such contracts require prior approval of the university's Chief Financial Officer and the State Comptroller, and must include the following provision:

"All audit (or accounting or financial analysis) workpapers must be made available for review by the State Comptroller, or State Comptroller's representatives, upon request during normal working hours either while the analysis is in progress or subsequent to the completion of this contract."

Additionally, if the university plans to enter into a contract for financial management or accounting services, the university must first obtain approval by the State's Commissions of Finance and Administration.

Conflict of Interests

6. All contracts must comply with the university's Conflict of Interests policy. Employees are expected to take all reasonable precautions to ensure that their outside financial interests do not place them in conflict with carrying out their duties and responsibilities as employees of the university, or as investigators. All employees are required to take the initiative and report in writing to their immediate supervisor any actual or potential conflict of interests between their university duties and responsibilities, and their outside interests. See [FI0125 - Conflict of Interests \[Replaced by GE0002\]](#) for additional information.
7. Contracts with current employees of the State of Tennessee (including The University of Tennessee and Tennessee Board of Regents) for goods or services are prohibited. Contracts with former employees for goods or services are likewise prohibited for six months after termination. This restriction, however, does not apply to individuals who are classified as "friends" or individuals who have a "special appointment" and who have not been paid in the last six months. See [FI0445 - Employee Services Between the University Board of Regents](#)

| System-wide Policy: FI0420 - Contracts | |
|---|----------------------------|
| Version: 17 | Effective Date: 02/21/2020 |

[Institutions and State Agencies](#) for policies on contracting with other State agencies, including the Board of Regents.

Independent Contractors

8. If the proposed contract is with an individual who is providing a service, the department must use reasonable efforts to ensure that the individual qualifies as an independent contractor and not as an employee. If an individual fails to qualify as an independent contractor, the university cannot enter into a contract with the individual, and any compensation for services will be processed through payroll and applicable taxes will be withheld. The Treasurer's Office will make the final determination before a payment is processed. An independent contractor guide is provided in [Appendix C](#) to assist departments in making the correct classification. Departments must review this guide and consult with either The System Administration Accounts Payable Office or The Controller's office when they are unsure if the individual will qualify as an independent contractor. Departments must determine whether an individual is an independent contractor or employee before the department procures services from the individual. If the individual is to be classified as an employee, the department will not have to bid, process a non-competitive justification, or process a contract or purchase order.

Procurement Requirements

9. Before contracting with vendors to procure services, departments must determine if the services can be obtained from internal university resources such as motor pools, office of information technology, facilities services, general stores, and printing operations. Internal resources must be used when available.
10. Payable contracts must comply with the university's procurement policy ([See FISCAL POLICY FI0405](#)).
11. In general, all purchases by the university must be obtained through a competitive process, unless the total cost of the goods or services is less than \$10,000 or a non-competitive purchase is approved in advance by the campus/institute business office. (See [FI0405 - Procurement](#)). The university

| System-wide Policy: FI0420 - Contracts | |
|---|----------------------------|
| Version: 17 | Effective Date: 02/21/2020 |

requires a purchase order or contract when the cumulative payable amount is \$10,000 or more; and, the university requires a contract when the cumulative receivable amount is \$10,000 or more.

12. Campus procurement directors are authorized to issue purchase orders, which are binding contracts, generally awarded on a competitive basis. This is generally the most efficient manner to procure goods and services because, once a purchase order is issued, no additional work is required by the department and they can begin buying items from that vendor. If the vendor or the university requires a contract (other than a purchase order), regardless of the dollar amount and regardless of whether the goods or services were procured in a competitive manner, the department must submit the contract to the appropriate campus or institute contract office for review, and the contract can only be signed by an authorized official of the university. A list of individuals authorized to sign on behalf of the university is posted on the [System Administration Procurement Service's website](#). Departments are encouraged to work with their procurement department and the proposed vendor towards the issuance and acceptance of a purchase order in lieu of a contract.

[Drafting Contractshttps://policy.tennessee.edu/fiscal_policy/fi0420/ - top](https://policy.tennessee.edu/fiscal_policy/fi0420/)

13. To expedite the contract review process, departments should use the university's standard contract documents whenever possible ([See Appendix A](#)). If the vendor will not accept the university's standard contract documents, the department should consider selecting a different vendor before agreeing to work with the vendor in drafting a contract. The university requires various provisions and there are also numerous clauses that the university cannot agree to due to State statutes or other regulations. Departments should first contact their contract office for assistance. Failing to comply will result in a longer review process, since the contract office and/or Office of the General Counsel will then attempt additional negotiations with the vendor or alternative language may have to be drafted.

| System-wide Policy: FI0420 - Contracts | |
|---|----------------------------|
| Version: 17 | Effective Date: 02/21/2020 |

14. When amending an existing contract, the university's standard contract amendment form should be used whenever possible ([See Appendix B](#)). Contract amendments are subject to the same review procedure as the original contract.

Reviewing Contracts

15. All applicable contracts must be reviewed by the appropriate campus or institute contract office, and when appropriate, the System Procurement Services Office, before being signed on behalf of the university by an authorized official.
16. Departments must not attempt to negotiate legal terms and conditions with vendors. Departments must ensure that the business terms (e.g. dates, dollar amounts, services, goods, etc.) are accurate.
17. Because the university is a state agency, there are numerous clauses that may be required in certain circumstances, and many clauses to which the university cannot legally agree. The Treasurer's Office, in consultation with the Office of General Counsel, will issue guidance regarding acceptable contract content. Campus contract offices must consult with that guidance.
18. Any exceptions approved by the Chief Financial Officer apply to contract amendments, including renewals.
19. Generally, contracts should not be sent to vendors for review until it has been fully reviewed by the all applicable university officials.

Contracting Authority

20. **Delegated Contracts.** The following types of contracts are delegated for execution by authorized campus and institute officials unless they fall within one of the categories of non-delegated contracts described in #22 below:
- All contracts involving the transfer of funds to or from the University in the amount of less than \$250,000. Note: in determining whether the less than \$250,000 limitation is satisfied, the net effect of funds flowing between the parties shall not be considered but only the stated dollar amounts to be transferred to or by the University (e.g., if the contract requires the other party to pay the University \$90,000 while committing the University to pay

| System-wide Policy: FI0420 - Contracts | |
|---|----------------------------|
| Version: 17 | Effective Date: 02/21/2020 |

\$270,000 in other costs, the contract is non-delegated because it commits the University to pay \$270,000 regardless of any other provision of the contract).

- b. All contracts, regardless of amount, in one of the following categories:
 - i. Contracts with domestic entities for research to be conducted by the university (including sponsored grants, contracts, and sub-awards);
 - ii. Contracts with the State of Tennessee and its agencies (including, the Tennessee Board of Regents and its institutions, and State-owned parks) (See [FI0445 - Employee Services Between the University Board of Regents Institutions and State Agencies](#) for more details regarding employment/dual services contracts between the university and the State of Tennessee and its agencies);
 - iii. Contracts with the U.S. federal government and its agencies;
 - iv. Contracts for the rental of university facilities;
 - v. Contracts on templates that have been approved by the Treasurer's Office and the Office of General Counsel and are listed on [this website](#);
 - vi. Contracts with county or city governments in Tennessee;
 - vii. Contracts with companies who recruit international students to attend the university;
 - viii. Employment contracts with athletic coaches and athletic directors, which must be signed by the chancellor of the campus; provided that all such contracts must be approved by the Office of General Counsel prior to being signed by the chancellor;
 - ix. Contracts for scheduling athletics events; or
 - x. Student housing contracts.

Note: MOUs, MOAs, letters of intent, and similar documents might be considered by a court to be binding on the University by their terms, even if they are called "non-binding" agreements. Such "non-binding"

| System-wide Policy: FI0420 - Contracts | |
|---|----------------------------|
| Version: 17 | Effective Date: 02/21/2020 |

agreements are delegated only if they fall within one of the categories of delegated contracts described above.

21. **Contract Amendments.** Amendments to delegated contracts may also be signed by authorized campus or institute officials if the university's cumulative payment amount for the initial contract plus all amendments is equal to or less than \$250,000.
22. **Non-delegated Contracts.** The following contracts may not be executed by campus or institute officials, regardless of dollar amounts, even if they fall into one of the categories of delegated contracts:
 - a. Leases of real property to or by the university if the amount is more than \$50,000 per year or the term is longer than five years. (This does not apply to pre-approved lease forms for student housing);
 - b. Contracts that impose any exclusivity obligations on the university;
 - c. Contracts for purchase or sale of real property;
 - d. Memoranda of agreement to establish endowments; charitable remainder annuity trust agreements; and charitable remainder unitrust agreements;
 - e. Contracts for participation in bowl games and regional or national athletic tournaments above \$250,000;
 - f. Employment contracts with executive officers, including the president (this does not include standard offer letters processed through human resources), but excluding employment contracts with athletic coaches and athletic directors. See Section 20(b)(viii);
 - g. Contracts for indicia licensing, promotions, and sponsorship agreements;
 - h. Contracts for the university's endorsement of goods or services;
 - i. Contracts with foreign governments, contracts with companies whose contracting unit is located in a foreign country and contracts with individuals who are citizens of a foreign country;
 - j. Contracts for accounting, auditing, banking, or fiscal management services;
 - k. Post-retirement service contracts and retirement incentive agreements;

| System-wide Policy: FI0420 - Contracts | |
|---|----------------------------|
| Version: 17 | Effective Date: 02/21/2020 |

- l. Settlement agreements (Note: settlement agreements must be approved and executed in accordance with [BT0031 - Policy on Settlement of Claims and Litigation](#), as applicable);
- m. Affiliation agreements involving any transfer of funds exceeding \$250,000 to or from the university;
- n. Affiliation agreements with faculty physician practice plans;
- o. Affiliation agreements with teaching hospitals for graduate medical education programs;
- p. Contracts for the provision of administrative, technical, professional, management, or executive services by a university employee to another party (except the State of Tennessee and its agencies) under the direction and control of the other party, including but not limited to an agreement to lease or loan a University employee to another party.

Signing Contracts

- 23. All contracts must be signed by an officer of the university (as defined in the University Bylaws, ([Article VII, Section 7.6](#)) unless authority to sign the specific type of contract is delegated to specific campus/institute officials. Campus officials are only authorized to execute delegated contracts for their campus/institute. A list of officials authorized to sign contracts on behalf of the university is available at <http://treasurer.tennessee.edu/contracts/contractsignature.html>
- 24. The university's authorized officials may utilize electronic or digital signatures, provided the use of such signatures is in compliance with Tennessee law. Authorized officials may only use the electronic or digital signature platforms allowed by the Office of the Treasurer.
- 25. Faxed, scanned/emailed, and photocopied contracts from the other party are acceptable and will be considered the equivalent of an original by the university.
- 26. An official otherwise authorized to sign a contract on behalf of the university may not do so for contracts involving entities in which that individual is also an officer or a member of the board of directors. Examples of such entities include the UT

| System-wide Policy: FI0420 - Contracts | |
|---|----------------------------|
| Version: 17 | Effective Date: 02/21/2020 |

Foundation, UC Foundation, UT Research Foundation, affiliated teaching hospitals, and faculty physician practice plans.

27. Signing of a delegated contract. Contracts to be signed at the campus, institute, or unit level must be sent to the appropriate campus or institute contract office with the exception of student housing agreements. After signatures for both the university and the other party are obtained, the contract should be stored in accordance with #30 below.

- a. The following university officials are authorized to sign delegated contracts for their respective campus, institute, or unit:
 - i. Chancellors;
 - ii. Senior Vice President/Senior Vice Chancellor;
 - iii. Vice president for public service;
 - iv. Chief business officers;
 - v. Vice chancellors for research (domestic sponsored grants and contracts); and
 - vi. Other officials designated by the University's Chief Financial Officer (or designee). The Chief Financial Officer will forward a copy of this authorization to the Director of the System Procurement Services who will maintain this list on their website.
- b. Officials authorized to sign contracts may not delegate this authority to anyone except other authorized officials. Authorized officials, however, may delegate authority to athletics directors to sign non-financial game contracts; to housing directors to sign pre-approved form contracts for the rental of student housing; or to 4-H Center managers to sign income generating rental agreements. Other delegations require prior approval by the University's Chief Financial Officer. Contract signature authority requests must be on the university's official contract signature authority request form. [See Appendix D.](#)

28. **Execution of a non-delegated contract.** All non-delegated contracts must be signed by an officer of the University (as defined in the University Bylaws, [Article IV, Section I](#)). After campus or institute contract office review, non-delegated contracts must be sent to the System Procurement Services Office for

| System-wide Policy: FI0420 - Contracts | |
|---|----------------------------|
| Version: 17 | Effective Date: 02/21/2020 |

processing through fiscal and legal review before the contract may be signed on behalf of the university. A digital copy of the fully executed contract will be maintained by the System Procurement Services Office for their official file.

29. In the event a party requires a non-delegated contract to be signed by an authorized official whose signature authority is limited to delegated contracts, the contract must also have the signature of the Chief Financial Officer or other University of Tennessee System Administration officer authorized to execute a non-delegated contract.

Storage of Contracts

30. All contracts must be routed and stored in the university's contract system except for:
- a. Student Housing contracts delegated to the student housing directors;
 - b. Credit applications;
 - c. Receivable research contracts, zero-dollar affiliation agreements, and memorandum of understandings;
 - d. Legal settlements;
 - e. Purchase orders;
 - f. Rental of university facilities at 4-H centers, university owned swimming pools and similar venues.
 - g. Season ticket agreements for athletic events for university owned venues.

Note: Each campus may develop procedures for the approval of the contracts/agreements listed above and they are not required to be routed and stored in the university's contract system unless they elect to do so. Departments are still responsible for retaining them in accordance with the [FI0120 - Records Management](#).

Fiscal Review Committee

[Requirementshttps://policy.tennessee.edu/fiscal_policy/fi0420/ - top](https://policy.tennessee.edu/fiscal_policy/fi0420/)

| System-wide Policy: FI0420 - Contracts | |
|---|----------------------------|
| Version: 17 | Effective Date: 02/21/2020 |

31. In addition to review by campus officials, certain contracts require presentation to the Fiscal Review Committee of the Tennessee General Assembly. These requirements are listed below and departments must be familiar with them to ensure that their contracts comply with these requirements. If departments have any questions regarding the Fiscal Review Committee, contact the System Procurement Services office.
32. Pursuant to Tennessee law, the Fiscal Review Committee of the Tennessee General Assembly is required to review and comment on proposed non-competitive contracts with a term (time period) of more than one year and a cumulative payable value of \$250,000 or more.
33. The University must also submit amendments to payable contracts equal to or exceeding \$250,000 and that have a term of longer than one year to the Fiscal Review Committee, even if the initial contract was procured competitively. Amendments might include changing the vendor's name, increasing or decreasing the University's maximum payment obligation, or changing the services being offered and/or length of the contract. If a provision for extension of time and increasing funding were addressed in the initial contract, then the amendment may not be required to be submitted to the Fiscal Review Committee.
34. The following contracts are exempt from the Fiscal Review Committee reporting requirement:
- Contracts submitted to the State Building Commission;
 - Sponsored grants and contracts;
 - Contracts for training medical residents and interns (a written summary of these contracts will be provided annually to the Committee);
 - Revenue producing contracts;
 - Maintenance agreements for equipment or software when the equipment or software was procured competitively (a written summary of these contracts will be provided to the Committee quarterly);
 - Library subscription contracts and electronic database contracts that are only available from one source (a written summary of these contracts will be provided to the Committee quarterly); and

| System-wide Policy: FI0420 - Contracts | |
|---|----------------------------|
| Version: 17 | Effective Date: 02/21/2020 |

- g. Amendments to contracts for enterprise resource planning systems (e.g., SAP (IRIS), Banner, and similar systems) that were procured in a competitive manner (a written summary of these contracts will be provided to the Committee annually).
35. The System Procurement Services Office is the university's liaison with the Fiscal Review Committee. Any contracts or amendments that need to be presented to the Committee should first be submitted to the appropriate campus or institute contract office. After appropriate review, the campus or institute contract office will forward the contract to the System Procurement Services Office as well as any questions regarding these requirements. Departments are responsible for providing information requested by the Fiscal Review Committee. The Fiscal Review Committee requires most contracts be formally presented to the Committee in person. Campus or institute chief business officers are responsible for determining the appropriate individuals to present their contracts before the Fiscal Review Committee. **The System Procurement Services Office will not present contracts before the Fiscal Review Committee.**
36. The Fiscal Review Committee requires contracts or amendments to be submitted to the Committee **at least 60 days prior to the start date of the contract or amendment.** Before contracts can be submitted to the Fiscal Review Committee for approval, departments must ensure that the appropriate business, contract, and legal review at the University is complete. **Because the Fiscal Review Committee requires contracts and amendments to be submitted no less than 60 days before the contract or amendment start date, contracts and amendments must be received by the Treasurer's Office at least 90 days in advance of the contract or amendment start date. If a contract is submitted late, the committee requires the President to present the contract.**

| System-wide Policy: FI0420 - Contracts | |
|---|----------------------------|
| Version: 17 | Effective Date: 02/21/2020 |

Paying Contractors

37. Payments to contractors must be processed in accordance with [FI0505 - Accounts Payable](#). For non-sponsored contracts, payments related to the scope of services or products described in the contract may exceed the university's maximum financial amount by no more than 15% or \$100,000, whichever is less. Payments above this amount require advance approval from the campus/institute chief business officer (or designee) and the chief financial officer (or designee) or an amendment to modify the maximum liability of the contract.

Forms

- Appendix A – Standard Contract ([FI0420-Appendix-A-Standard-Contract.doc](#))
- Appendix B – Contract Amendment ([Appendix B – is the Contract Amendment](#))
- Appendix C – Independent Contractors Guide ([FI420-APPENDIX-C-INDEPENDENT-CONTRACTORS-GUIDE.pdf](#))
- Appendix D - [University's FI0420 Signature Authority Request Form](#)

PROCEDURES:

To view links to campus policies and procedures, click here:

<https://policy.tennessee.edu/campus-policies-procedures/>

FOR MORE INFORMATION

Blake Reagan (865) 974-2302 breagan@tennessee.edu

Related Policies: [FI0120 - Records Management](#), [FI0125 - Conflict of Interests \[Replaced by GE0002\]](#), [FI0205 - Sponsored Projects](#), [FI0445 - Employee Services Between the University Board of Regents Institutions and State Agencies](#), [FI0620 - Capital Outlay](#), [FI0625 - Lease of Real Property by or to the University](#)