

Procedure for FI0420: Contracts Contract Office Procedures	
Version: 1	Effective Date: 6/01/2023

Objective

This procedure details the processes that the university's contract offices will follow.

Scope

This procedure applies to all institution contract offices and the UTSA contract office.

Definitions

Building System: A building's "envelope," mechanical systems, electrical systems, and plumbing systems.

Procedure

I. Reviewing Contracts: responsibility for reviewing contracts

A. Institution Process and Authority

- i. Generally, institution contract offices will review Institution Authority contracts. Institution contract offices may consult with the UT System contract office, when needed.
- ii. Institution contract staff must consult with the Office of General Counsel when the contract office staff members encounter issues with which they are not familiar.
- iii. Institution officials with contract-signature authority may sign Institution Authority contracts.

B. System Process and Authority

- i. The UT System Procurement Services office will review System Authority contracts.
- ii. For System Authority contracts that fall under section II(B)(v)-(xiii) of these Contract Office Procedures, the UT System Procurement office will send the contracts to the Office of General Counsel for review.
- iii. For all other System Authority contracts, the UT System Procurement office will send to the official designated by the Office of General Counsel and the Chief Financial Officer. That official may determine whether the Office of General Counsel needs to review the contract, and if not, that official's review will be in place of the Office of General Counsel's review. The official must exercise good judgment and obtain the Office of General Counsel's review anytime the official is uncertain about any issues in the contract.
- iv. System officials with signature authority may sign System Authority contracts.

II. Institution Authority and System Authority Defined:

- A. **Institution Authority:** The following types of contracts are Institution Authority contracts, unless they fall within one of the categories of System Authority contracts:
- i. All contracts involving the transfer of funds to or from the university in the amount of less than \$250,000.00.
 1. To determine the value of an agreement (including an amendment), the net effect of funds flowing between the parties must not be considered; rather, the university will consider only the greater of: the stated dollar amounts to be transferred to, or the amounts that the university will pay to the other party (e.g., if the contract requires the other party to pay the university \$90,000 while committing the university to pay \$270,000 in other costs, the contract falls under System Authority because it commits the university to pay \$270,000 regardless of any other provision of the contract).
 2. The total net value of the agreement (the original contract plus any amendments) is the agreement's value. For example, if the original contract is valued at \$225,000, and an amendment is valued at \$30,000, the total value is \$255,000, which makes the contract fall under System Authority.
 - ii. All contracts, regardless of amount, in one of the following categories:
 1. Contracts with domestic entities for research to be conducted by the university (sponsored grants, contracts, and sub-awards);
 2. Contracts with the State of Tennessee and its agencies (including, the Tennessee Board of Regents and its institutions, and State-owned parks);
 3. Contracts with government agencies in the U.S. and its territories;
 4. Contracts for the licensing (rental) of university-owned facilities;
 5. Contracts with companies who recruit international students to attend the university (provided that contract offices must obtain their campus Export Control Office's review and approval before sending the contract for signature if the vendor is an international company);
 6. Contracts for maintenance of software or equipment;
 7. 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);
 8. Contracts for scheduling athletics events, including bowl games or national tournaments;
 9. Student housing contracts between the university and students, when the university owns the student-housing facility.
 10. Study abroad: contracts with international entities or individuals for study-abroad programs or to facilitate a study-abroad event; provided that contract offices must obtain their campus Export Control Office's review and approval before sending the contract for signature.
 11. International individuals or corporations: purchases of goods or services from international individuals or corporations, provided that the transaction is on the applicable standard international template and that the international agency has made minimal substantive changes to the terms and conditions

(provided that contract offices must obtain their campus Export Control Office's review and approval before sending the contract for signature).

B. **System Authority:** A contract that does not fall into the category of Institution Authority is a System Authority contract. Additionally, the following contracts are System Authority contracts, regardless of dollar amount, even if they fall into one or more of the categories of Institution Authority contracts:

- i. Leases of real property that meet one of the following criteria:
 1. Valued at \$250,000 or more per year; or
 2. Term (duration) is longer than 5 years.
- ii. Leases of tangible personal property (such as equipment, vehicles, golf carts, etc.) that have annual lease payment valued at \$250,000 or more per year.
- iii. Exclusivity obligations: contracts that impose any exclusivity obligations on the university, including "requirements" contracts (which are contracts that obligate the university to buy certain goods from only one vendor).
- iv. Contracts for, or that include, accounting, auditing, banking (including ATMs), credit-card processing, or fiscal management services.
- v. Sale or purchase of real property.
- vi. Memoranda of agreement to establish endowments; charitable remainder annuity trust agreements; and charitable remainder unitrust agreements.
- vii. 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.
- viii. Contracts with international governments and their instrumentalities.
- ix. Settlement agreements (note: settlement agreements must be approved and executed in accordance with BT0012 - Policy on Settlement of Claims and Litigation, as applicable).
- x. Affiliation agreements involving any transfer of funds exceeding \$250,000 to or from the university;
- xi. Affiliation agreements with faculty physician practice plans;
- xii. Affiliation agreements with teaching hospitals for graduate medical education programs;
- xiii. 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.

III. Additional Review Steps

A. All contracts, generally:

- i. Contract offices must ensure that the department is aware of, and approves of, any revisions to the contract's business terms before the university signs, if the contract office or the vendor make changes to the business terms during negotiation.
- ii. When a contract office revises a contract, the contract office will communicate the revisions to the other party directly (and will not require the university department that requested the contract to negotiate with the other party).

- iii. Contract offices will use the university's Contract Manual for guidance on relevant revisions.
 - iv. Contract offices must keep departments reasonably informed of the status of contracts.
- B. Insurance: Contract offices must utilize the latest version of the university's Insurance and Bonding Guidelines. Contract offices will coordinate with Risk Management, as needed, for guidance.
- C. Debarment:
 - i. Circumstances when debarment checks are not required:
 - 1. Contract offices do not need to conduct debarment verification checks for receivable contracts or for zero-dollar contracts.
 - 2. Contract offices do not need to conduct debarment verification checks for payable contracts (including zero-dollar amendments to payable contracts) when the other party is a government agency in the United States (including local, state, and federal agencies).
 - ii. Circumstances when debarment checks are required:
 - 1. For payable contracts and any amendment to a payable contract (including zero-dollar amendments to a payable contract), contract offices will need to conduct debarment verification checks as outlined below. When a contract office staff member conducts a debarment check, the contract office staff member must document the debarment check by uploading appropriate documentation in the contract management system.
 - a. All payable contracts (including zero-dollar amendments to payable contracts):
 - i. State of Tennessee Central Procurement Office
 - b. All payable contracts (including zero-dollar amendments to payable contracts) that are funded (either entirely or partially) by federal funds:
 - i. System for Award Management (SAM)
 - ii. Office of Inspector General
 - iii. U.S. Food and Drug Administration (FDA)
- D. Additional Internal Review Steps for Specific Types of Contracts: the applicable contract review staff member must ensure that any review step listed below occur before the university sends the contract to the other party for review.
 - i. Banking, ATMs, Credit Cards, Debit Cards, or other Financial Services
 - 1. If a contract involves any financial services, including banking, ATMs, credit cards, debit cards, etc., the Treasurer's Office must review.
 - ii. Capital Improvements (Construction, Demolition, Renovation)
 - 1. If a contract involves construction, demolition, remodeling, etc., the Office of Capital Projects must review.
 - iii. Employment Contracts
 - 1. If a contract is a contract of employment, the Office of General Counsel must review.
 - iv. Exclusivity
 - 1. If a contract imposes an exclusivity obligation on the university, the UT System Office of Procurement Services' director must review.
 - v. External Sales (Receivable/Revenue Contracts)

1. If a contract will involve the university making external sales where the estimated value is equal to or more than \$50,000, the Controller's Office's Tax Officer must review the contract.
- vi. Financial Management, Auditing, Accounting Services
 1. If the contract involves financial management, auditing, or accounting services, the Treasurer's Office must review.
- vii. HIPAA/Business Associate Agreements (BAAs)
 1. Whenever any contract permits or requires the University to receive, access, use, store or disclose health information and/or records, the University is required to comply with all applicable state and federal laws and regulations, as well as applicable University policies and procedures, to ensure that the privacy and security of such health information and/or records is maintained at all times. Depending upon the nature of the contract, these laws and regulations include, but are not limited to the privacy and security provisions of the Family Educational Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) and various Tennessee state laws and regulations. If there is any question about which such laws and regulations apply (or do not apply) to the contract, whether or not a HIPAA Business Associate Agreement is needed, or whether or not any specific contract language needs to be added, deleted, or revised in order for the contract to be in compliance with all such laws and regulations, and applicable University policies, then the contract offices must consult with the HIPAA Privacy Officer, the HIPAA Security Officer, and/or the Office of General Counsel, as appropriate.
 2. Contract offices must consult with the Office of General Counsel regarding business associate agreements (BAAs).
- viii. Information Technology
 1. If a contract involves either software or services related to software, the applicable campus office of information technology must review.
- ix. Installation
 1. If a contract involves an item or items that will be installed into a Building System, the Office of Capital Projects must review.
- x. International Events or Entities/Individuals
 1. If a contract involves international events, international entities, or international individuals, the applicable Export Control office must review.
- xi. Leases
 1. The Office of Real Estate must review any leases that require Tennessee State School Bond Authority approval.
- xii. Licensing
 1. If a contract involves a third party utilizing the university's name, image, or likeness, the Office of Trademark Licensing must review. The Office of Trademark Licensing does not need to review if the other party only wants to list the university as a client (and the draft contract does not contain any other language related to the university's intellectual property).

- xiii. Private Use of Tax-Exempt Space
 - 1. If a contract involves a third party utilizing university space to operate a private business (such as dining services), the Controller's Office, the Office of General Counsel, and the Treasurer must review. The Controller's Office, the Treasurer, and the Office of General Counsel will determine whether the State of Tennessee needs to review and will handle submitting the contract to the State of Tennessee for review.
- xiv. Private (Company) Use of UT Space
 - 1. The Controller's Office will review contracts that involve a private company using university space for private-business use (such as to operate a cafeteria, bookstore, etc.).
- xv. Procurement Event
 - 1. If a procurement office's solicitation results in a contract, the procurement office will review the contract to ensure that the contract complies with the terms of the solicitation.

IV. Negotiation

- A. The university's contract office staff members are authorized to negotiate with attorneys for third parties regarding contract language.
- B. Contract office staff members must engage the university's Office of General Counsel when the contract office staff member believes that the Office of General Counsel's assistance would be helpful or when another party requests to engage the university's Office of General Counsel.

V. Contract Manual

- A. The official designated under section I(B)(iii) above, in collaboration with the Director of the UT System Administration Procurement office and the Office of General Counsel, will maintain a Contract Manual. The Contract Manual will provide guidance to the contract offices regarding contract language, applicable laws, and similar topics.
- B. Contract office staff members must utilize the Contract Manual and must make reasonable efforts to comply with the guidance stated in the Contract Manual.

Penalties/Disciplinary Action for Non-Compliance

Failure to comply with this procedure in general could result in adverse human resources actions, up to and including termination. If a contract-review team member fails to make appropriate revisions, the university could face consequences, including lawsuits. If a contract-review team member fails to document debarment verifications, the university could face state or federal audit findings. Failure to obtain Export Control review could result in civil penalties.

Responsible Official & Additional Contacts

Subject Matter	Office Name	Telephone Number	Email/Web Address
Policy Clarification and Interpretation	Blake Reagan	865-974-3971	breagan@tennessee.edu
Policy Training	Abbie Shellist	865-974-3311	ashellis@tennessee.edu