



UNIVERSITY POLICY GC-02.02-12/22

TO: The University of West Florida Community
FROM: Dr. Martha D. Saunders, President
SUBJECT: Contract Review by the Office of the General Counsel
RESPONSIBLE OFFICE: Office of the General Counsel

I. Purpose:

The University of West Florida is a public institution of higher education with authority to enter into contracts and agreements that are necessary to meet the mission and priorities of the University. As a public body corporate, the University is subject to legal and ethical requirements and restrictions that affect its ability to accept certain contract terms. The purposes of this policy are to ensure that: (a) University Contracts are reviewed and executed following the appropriate University procedures; (b) risks associated with University Contracts are analyzed at the appropriate level; and (c) business units have the tools, resources, and signatory authority needed to assess risk and enter into contracts that best serve the University. This policy is intended to provide direction regarding when review by the Office of the General Counsel (OGC) is required before entering into a contract. This policy defines the general parameters through which a University Contract might be created.

This policy applies to all University contracts as defined below and all individuals involved in the review or execution of University contracts.

Regardless of any other language in this policy, a unit always may request that the OGC review or assist with forming a contract, terminating a contract, or interpreting a contract. Nothing herein should be construed that a unit may not enlist the assistance of the OGC.

II. Definitions:

- A. Contract - For purposes of this policy, a contract is any agreement between two or more parties, one of which is the University (including any of its centers, departments, or other units), that creates an obligation, right, or liability for the University. There must be a University interest at stake. A contract may be called by other names, including agreements, grants, memoranda of understanding (MOU), memoranda of agreement (MOA), affiliation agreements, letters of agreement, letters of understanding, software

licenses, click-through agreements, purchases and sales of goods and services, and property agreements such as sales and leases. A contract does not require the payment of money or other compensation so long as there is consideration (give and take) by both parties. University contracts do not include agreements between different units within the University or agreements purely between private parties where the University has no obligations.

- B. OGC-approved template – These are templates that have been reviewed and approved by the OGC for use by the UWF community. OGC-approved templates have a footer in the template that identifies the template as approved by the OGC and includes a last revision date. Contracts utilizing OGC-approved templates without modifications may not require OGC review as further described in this Policy. Contracts that modify any of the language in an OGC-approved template that is not designed to be modified (that is, any changes other than the blanks that are to be filled in) must be reviewed by the OGC. Templates can be found on the Office of the General Counsel’s Confluence page or other location designated by the OGC.
- C. Thresholds – There are two thresholds set by UWF and used when considering contract review: the value of the contract and the term of the contract. They are:
 - 1. Value: less than or equal to \$75,000.
 - 2. Term: less than or equal to 3 years.

Generally, contracts that exceed one of these thresholds will require OGC review whereas contracts that are under both thresholds will not require OGC review. However, there are exceptions as described elsewhere in this policy.

III. Policy:

A. Responsibilities of Unit Initiating Contract

While acting in the scope of your employment, if you are entering into a relationship with a third party that places obligations on the University or one of its units, you are entering into a University contract subject to this Policy. The unit initiating the contract for the University is responsible for:

- 1. Reading the entire contract and determining that the contract language accurately reflects the unit’s expectations and negotiations with the other party(ies);
- 2. Following the appropriate and required review process for that unit;
- 3. Ensuring that the contract meets programmatic and University mission requirements;

4. Determining the contract is in the best interests of the University;
5. Ensuring the unit will use its best efforts to comply with the obligations the contract places on the University;
6. Confirming the unit has designated an individual to act as the contract manager, who will serve as the point of contact for contractual matters, maintain contractual records and documentation, monitor compliance and deadlines related to the contract, note the expiration date of the contract, and plan for renewal of the contract, if desired, in a timely manner; and
7. Ensuring the contract is sufficiently clear and consistent so that the University's obligations are easily understood.

After being satisfied that the above requirements are met, the initiating employee must submit the contract to the appropriate office or individual identified below.

Performance under the contract should not begin until all parties have signed the contract and the responsible University unit has obtained a fully signed copy for storage with its records.

B. Types of Contracts and Required Reviews

1. Procurement contracts.

- a. *Defined.* Contracts purchasing goods, tangible personal property, or services. Where required by law, contracts for certain goods and services must be formed only after the appropriate competitive solicitation process has been utilized. Certain types of procurement contracts are further addressed below.
- b. *Review.* All procurement contracts are submitted first for review by Procurement through a KREQ ticket unless the purchase is made using approved contracts for vendors listed on the UWF Go Shopping page. Procurement will request review by any other unit as necessary, including OGC. OGC review is required for any procurement contract that has a value greater than \$75,000 or a term longer than 3 years. Specific types of procurement contracts may require review even if below these thresholds as further described in this policy.
- c. *Go Shopping page purchases.* Procurement, in conjunction with OGC and other relevant units, has approved contracts for purchases from vendors as indicated on the [UWF Go Shopping](#) page. Purchases from these vendors are subject to the terms and conditions of the negotiated contracts and the limitations indicated for those purchases. While the underlying contracts utilized on the Go Shopping page must be reviewed by OGC, individual purchases from the Go Shopping page do not require review by Procurement or OGC.

2. Construction-related contracts (Procurement).
 - a. *Defined.* Contracts for construction, architectural, engineering, or similar construction-related services.
 - b. *Review.* Construction-related contracts that are not continuing contracts must be reviewed by Procurement and OGC. Continuing construction-related contracts must be reviewed by Procurement and OGC; requisition orders for specific scopes of work require authorization by Procurement but do not require OGC review.
3. Software contracts (Procurement).
 - a. *Defined.* Contracts for the purchase or licensing of software from a vendor for use on the UWF network or equipment.
 - b. *Review.* Software contracts are submitted to Procurement for review. Procurement in conjunction with the OGC shall establish thresholds and parameters where review by the OGC is required before approval and execution of the contract. ITS shall determine whether the software meets reasonable security specifications and whether its use would have an undesirable impact on existing electronic business processes. Software contracts with a value of \$25,000 or more over the term of the contract shall require review by the Controller's office.
4. Technology equipment (Procurement).
 - a. *Defined.* Contracts for the purchase of information technology hardware or other IT equipment for use with the UWF network.
 - b. *Review.* Technology equipment contracts are submitted to Procurement for review. Procurement in conjunction with the OGC shall establish thresholds and parameters where review by the OGC is required before approval and execution of the contract. ITS shall determine whether the hardware meets reasonable security specifications and whether its use would have an undesirable impact on existing electronic business processes.
5. Sponsored Research contracts.
 - a. *Defined.* Contracts for grants, subawards, and other awards by a governmental entity, foundation, or other external sponsor for research to be conducted by UWF researchers or administered by UWF personnel.
 - b. *Review.* All sponsored research-related contracts, contracts generating revenue in research related matters, and contracts requiring an A-133 audit shall be sent first to the Office of Research Administration and Engagement ("RAE"), regardless of the amount, to be reviewed and processed by RAE. RAE will send it to the OGC for review as required by other policies or procedures. A sponsored research

contract utilizing an OGC-approved template which does not exceed a value of \$75,000 and is for a term of no more than 3 years does not require OGC review.

If the sponsored research contract includes the purchase of goods and services by UWF, then a separate ticket must be submitted to Procurement for the purchase as described above in Procurement Contracts consistent with the Procurement policies and procedures.

- c. *Revenue generating contracts.* Contracts that generate revenue for sponsored research projects and other research related matters shall be reviewed by RAE as described above and in P-15.01 Revenue Generating Contracts, as it may be amended. Contracts that generate revenue that are not related to research shall be reviewed in accordance with P-15.01 Revenue Generating Contracts, as it may be amended.

6. Real property contracts.

- a. *Defined.* “Real property” is the legal term that refers to land, and real property may be unimproved (vacant land without any structures on it) or improved (land with buildings or other structures on it). Contracts concerning real property include leases, deeds, mortgages, promissory notes, easements, issuance of bonds, loan agreements, lease-purchase agreements, and other similar agreements. See also BOT 10.02, UWF Real Property Policy, as it may be amended.
- b. *Review.* All contracts for the purchase, sale, disposal, lease (either as landlord or tenant), creation of an easement, or other transaction affecting real property owned or leased by the University must be reviewed by the OGC, including contracts on OGC-approved templates. All leases must go through Facilities for review and tracking.

7. Property use agreements.

- a. *Defined.* Contracts for use of UWF property that do not create a property interest for the user. Property use agreements may be either at a cost to the user (e.g., premises use agreements, facilities use agreements, licenses to use) or without a charge to the user (e.g., right of entry agreements). Property use agreements are not leases; a lease creates a legal property interest for the tenant (lessee) to exclusively possess the defined space that is the subject of the lease.
- b. *Review.* Property use agreements on OGC-approved templates do not require OGC review if the contract value does not exceed \$75,000 and the contract term does not exceed 3 years. All other property use agreements require OGC review.

8. All other contracts.

a. *Defined.* Any contract not otherwise described above; these include:

- Affiliation agreements
- Articulation agreements
- Agreements for continuing education services
- Piggyback agreements (contracts that incorporate the terms and conditions of contracts entered into by other governmental entities with the same vendor)
- Contracts for foreign studies or with entities located outside the United States
- License agreements pertaining to the University's intellectual property (trademarks, copyrights, and patents)
- Collective bargaining agreements with unions
- Revenue generating contracts that are not related to sponsored research contracts or real property (both of which are addressed above)
- Non-disclosure agreements
- Any other contract not otherwise described

b. *Review.* If one of the above listed contracts is (1) on an OGC-approved template, and (2) the contract does not exceed the thresholds for value or term, then no OGC review is required. Under all other circumstances, OGC review is required.

9. At the request of the Board of Trustees or Chair, President, Vice President, or dean, director, or other head of a unit, the OGC shall review the contract regardless of any other criteria described in this Policy.

C. Renewal of Contracts

1. Procurement contracts. Renewals of contracts for the procurement of goods or services:

- a. Shall be reviewed by Procurement prior to renewal if the original contract with renewals was for a value or term that exceeded the threshold. Procurement will decide whether OGC review is needed.
- b. Do not require review by Procurement or OGC if the original contract with renewals was for a value and a term that was equal to or less than the thresholds.

2. Sponsored research contracts. Renewals of contracts for sponsored research shall be reviewed by RAE and OGC prior to renewal if the terms and conditions of the contract are being amended. However:

- a. An amendment of only the term of the contract so that the total term of the original contract and all renewals is less than the threshold does not require review by the OGC.

- b. An amendment of a point of contact for the contract does not require OGC review.
- 3. All other contracts. Renewals of all other contracts, i.e., contracts that are not for the procurement of goods or services nor sponsored research contracts:
 - a. Shall be reviewed by OGC prior to renewal if the original contract with renewals was for a value or a term that exceeded the threshold.
 - b. Are not required to be reviewed by OGC if the original contract with renewals was for a value and a term that was equal to or less than the thresholds.

D. Termination of Contracts

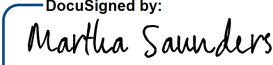
- 1. Early termination. Units shall consult with Procurement or OGC prior to terminating a contract before the term of the contract expires.
- 2. Expiration of the term of a contract. Units should consult with Procurement or OGC well in advance of the end of a contract if there are questions about automatic renewals; how to renew a contract that does not have an automatic renewal provision; or how to ensure a contract expires at the end of the current term.

E. Direct Support Organizations

With regards to the direct support organizations (DSOs), unless the DSO and UWF have agreed to utilize the Office of the General Counsel to provide legal services to the DSO, contracts in which the DSO is a party but UWF is not a party will require review by the OGC only when:

- 1. The DSO will utilize UWF funds or resources to meet the DSO responsibilities in the contract;
- 2. Section 1004.28, Florida Statutes, Board of Governors regulation 9.011, UWF regulation 5.016, the memorandum of understanding between the University and that DSO, or any other law or authority requires review or approval of the contract by the President or the Board of Trustees; or
- 3. The Board of Trustees or the President requests review of the contract by the OGC.

At all times each DSO is responsible for obtaining review of its contracts by its attorney to the extent that the DSO deems such appropriate and necessary.

DocuSigned by:

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Approved by: _____
Dr. Martha D. Saunders

Date: 12/12/2022

Authority: §1001.706, Fla. Stat.
BOG Reg. 1.001
UWF Reg. 5.016, Direct Support Organizations
UWF Reg. 6.0058, Contracts

Cross Ref: UWF Policy P-04, Authority to Sign Contracts and Other Documents
UWF Policy BOT-10, University of West Florida Real Property Policy
UWF Policy P-15 Revenue Generating Contracts

History: Created May 2018; revised February 2019, February 2020, December 2022

Last Review: December 2022