Office of General Counsel & External Affairs
Contract Review and Approval Process
As approved 04/19/2023 (Revised with Presidential Approval)

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1. Overview

This document, a revision of a long-standing policy (last revised January 29, 2017) of Tuskegee University (“TU” or the “University”), describes TU’s contract review and approval process and requirements, including the required reviews by the initiating departments, administrative officials, and the Office of General Counsel. The document also describes the signature authorities for contracts within the University. All personnel involved in processing contracts are advised to read this document and become familiar it in its entirety, as it contains important information that you will need when submitting a contract for review and/or approval.

2. Coverage

Generally, a contract is required in order to create an obligation on the part of the University to provide goods or services or to pay for goods or services. A contract is any legally enforceable agreement whether or not it is formally titled a “contract.” Contracts include, but are not limited to, consulting agreements, grant agreements, subcontracts, contracts for goods or services provided by or received by the University, letters of agreement, lecture or performance agreements, licenses, memoranda of understanding, master service agreements, athletic game contracts, statements of work, and terms and conditions related to all types of transactions. A document may be a binding contract even though one party provides something of value to the other party at no charge.
However, the mere fact that a person is mentioned in a grant document is insufficient to create an obligation on the part of the University to pay that person, in the absence of a contract between the University and that person. Moreover, a written contract is required, and legal approval is required, regardless of how the contract is to be funded (i.e., from Basic Budget or otherwise).

Additional policies regarding business and fiscal affairs, construction, capital projects and facilities may be found in the “Policies” section of the University website. Additional policies regarding research and sponsored programs may be found in the “Research and Sponsored Programs” section of the University website.

2.1 Contracts Requiring Legal Review

Generally, contracts to which Tuskegee University is a party must be reviewed and approved by the Office of General Counsel & External Affairs prior to signing. Signing a contract on behalf of TU may have legal implications for the University. Therefore, contracts signed without obtaining legal approval may result in disciplinary action and, if the University chooses not to honor the contract, result in personal liability for the person signing the contract. The Office of General Counsel & External Affairs cannot review or provide legal advice regarding personal contracts or contracts to which the University is not a party. The next section lists the types of TU contracts that are exempt from legal review.

2.2 Exemptions to the Legal Review Requirement

Exemptions from the requirement of legal review and approval do not exempt contracts from all other applicable and required TU approvals.

Currently, legal review and approval is not required for the following types of documents, as long as they are consistent with the budget of the originating business unit.

a. Bills of sale and invoices, if they are the product of and consistent with the terms of a previously approved contract invoices, if are the product of and consistent with a previously-approved contract;

b. Routine purchase orders for the purchase of non-specialty goods valued at less than $15,000 from a previously-approved vendor, where little decision-making is involved, and where the terms are not complex, unless the Business Office otherwise requests legal review;

c. Renewals of previously approved contracts where the terms and conditions do not deviate or depart from the terms and conditions of the contract that was previously approved;

d. Pre-approved and unmodified standard university contracts using templates approved after July 1, 2021, such as Letters of Appointment, Lecture or Artistic Performance Agreements, unless modifications are made to the terms and conditions. However, these contracts may not be inappropriately used. For example, a Lecture Agreement must not be used to contract with providers of services other than lectures.
3. **Contract Review Process**

3.1 **Initial Review by the Initiating Department**

Prior to submitting a proposed contract for review by the Office of General Counsel, the initiating department must conduct its own review of the proposed contract. This review should focus on the business implications of the terms and conditions of the contract. Before submitting a contract for legal review, the initiating department or contract originator must:

a. Obtain internal approval from the head contract originator’s operating unit (in accordance with that operating unit’s internal contract approval policy)

b. Read the contract and become familiar with its terms;

c. Become familiar with any laws, rules and regulations governing the contract
   
   (1) For example, if the contract is for a government grant, government contract or subcontract, the initiating department or contract originator must read and become familiar with the statues, regulations and policies governing the grant, contract or subcontract
   
   (2) The Office of General Counsel and the Office of Compliance reserve the right to inquire as to the contract originator’s knowledge of and familiarity with the applicable statues, regulations and policies

d. Assure that the contract addresses all of the **Required Elements**, listed in Section 3.3 (b) below

e. Assure that the contract does not include any of the **Disfavored Items** listed in Section 3.3 (c) below

f. Identify those terms to which it can or cannot agree, and what needs to be negotiated with the contractor. Examples of issues to consider include:
   
   (1) Whether the contract terms and conditions, including duties of the parties, are clear, consistent, and acceptable to the university and the department
   
   (2) Whether the college, department, or unit has the necessary funds and resources for this contract.
   
   (3) Whether the contract initiator can assure the University’s compliance with the obligations which the contract places on the University
   
   (4) Whether the contract is appropriate and serves the department’s mission and responsibilities
   
   (5) Whether the services provided are the most feasible for the University in terms of quality and cost
   
   (6) Whether the contract includes the entire understanding between the parties, or whether there are additional terms, or explanations or promises that are not included in the contract

3.2 **Submission of Contract Review Request Form**

Following its initial review, the Initiating Department must complete a **Contract Review Request form and submit the form to the Office of General Counsel in advance of the commencement of the contract term or term of performance**. The form will contain a contract checklist and will
request information that the Office of General Counsel & External Affairs will use during its the review of the contract.

To verify that you are using the updated version of the form each time you are submitting a contract, download the form at:

[url]

When completing this form, please include:

a. Brief background information about the purpose of the contract to aide in the review process, in addition to any comments or concerns you have regarding the contract terms, including the following:
   (1) Explanation of the transaction
      a) Who is supplying what goods or services to whom, in exchange for what and why?
      b) Is this a transaction that the Contract Originator or contracting department wishes to enter into?
      c) Why does the Contract Originator or contracting department wish to enter into the contract?
      d) Does the contract, as submitted for review, reflect any changes that the Contract Originator or contracting department has negotiated or suggested? If so, explain what those changes are.
      e) Are there any changes to the contract that the Contract Originator or contracting department would like to see? If so, explain what those changes are.
      f) What mechanism has been put into place to assure that the University will comply with its obligations under the contract?

b. Required documentation
   (1) Attach or include evidence of all other required approvals.
   (2) If the contract involves an expenditure on behalf of the University, indicate the source of funding (e.g., the GL account number).
   (3) If the contract is a renewal or amendment, attach the original contract and any previous renewals or amendments
   (4) For any new Statement of Work under an existing Master Services Agreement or similar document, attach the pertinent Master Service Agreement and any previous Statements of Work

Please submit the completed form to [email address] along with all of the contract documents and required documentation.

3.3 Legal Review

Contract reviews normally take up to ten business days. In those cases where the contract requires complex negotiations over terms and conditions, where a new contract needs to be drafted, or where there is a signing deadline, you are encouraged to include the Office of General Counsel &
External Affairs in the process as early as possible. Please submit a draft of the contract in advance to allow sufficient time for thorough legal review.

While the legal review frequently addresses whether the proposed contract terms are advantageous to the University, the legal review will also be informed by the particular subject matter expertise of the Contract Originator or initiating department, especially with respect to determining whether the contract is appropriate and advisable from a business and/or administrative perspective. However, the Office of General Counsel will be the final and ultimate arbiter of the legal validity of the contract. Provided that all required approvals are obtained, funds identified, and required signatures are secured, the final decision to enter into a contract is ordinarily the responsibility of the TU individual whose signature is required, and should take place only after all applicable university approvals have been obtained and after all required signatures have been secured. Persons supplying administrative approvals or required signatures are expected to do so only after they are satisfied that the contract, as drafted, is in the best interest of the University, from the perspective of the administrator in question.

a. Illustrative Considerations: The review by the Office of General Counsel & External Affairs is intended to at least address issues of legal sufficiency, including assurance that:

1. TU abides by State and Federal laws.
2. TU is operating in accordance with the policies and procedures of the University as duly authorized by Board of Trustees of Tuskegee University.
3. TU does not agree to any prohibited or disfavored clauses.
4. Risk Management concerns have been addressed. When appropriate, the Office of General Counsel & External Affairs will forward the appropriate contracts to the Office of Business & Fiscal Affairs or the University’s insurance broker, to assess risk management and insurance requirements.
5. The legal review may also consider whether the contract, taken as a whole, is in the interest of and to the advantage of Tuskegee University and addresses the University’s business concerns

b. Required Elements. A contract to be valid, must address the following minimum elements or be subject to rejection:

1. The contract must be in writing and contain the entire understanding between the parties
2. The contract must accurately identify all of the Parties
   a) The parties to the contract must each be a legal entity with capacity to contract, such as an individual, a legally existing partnership, or a corporation, or a government. Proposed contracts involving fictitious names will not be approved.
   b) Individual units of the University (schools, colleges, departments, programs, etc.) generally lack capacity to enter into contracts on their own and, as such, their contracts must be entered into in the name of the University.
c) In general legal review by the Office of General Counsel is limited to contract to which the University is a party.

(3) The contract must provide measurable detail about
   a) Which party is to provide what sort of performance
   b) How the amount of payment is to be determined
   c) The payment schedule (preferably measured by performance milestones)

(4) If the contract is with a vendor, it must incorporate the Tuskegee University Vendor Mediation and Arbitration Agreement.

(5) The contract must contain a statement of contract’s duration

(6) The contract lasting more than one year must contain a provision allowing termination for convenience

(7) The contract must contain a signature block
   a) The signature block must require the signature of all parties to the contract
   b) For contracts obligating the University in the amount of $4,999 or less, the contract must provide for the signature of a VP, Department Head, Dean or Director.
   c) For contracts obligating the University for amounts in excess of $4,999, the contract must provide for the signature of the President or the Chief Financial Officer or, in some cases, the Vice President for External Affairs and General Counsel

c. Disfavored Terms. A contract will be rejected, or its approval will be delayed, if it contains any of the following elements:
   (1) Automatic Renewal
   (2) Lengthy term or duration, especially for new relationships
   (3) Payment of a large sum in advance of service being provided
      a) The University’s preference is for
         • Payment after services or goods have already been provided, in proportion to the scheduled payment, or
         • Payment in installments tied to milestone deliverables
   (4) Contract term or term for performance has already commenced
   (5) Choice of governing law other than Alabama law
   (6) Provision for dispute resolution other than Alabama
   (7) Provisions requiring indemnification or assumption of liability on the part of the University
   (8) Provisions that the University will hold the other party harmless
   (9) Provisions that require the University to pay liquidated damages or penalties
   (10) Provisions authorizing injunctive relief against the University or recite circumstances which give rise to “irreparable harm”
   (11) Provisions that impose a statute of limitations (or deadline to sue) other than that provided by law
   (12) Non-compete clauses
   (13) Non-solicitation clauses
(14) Provisions authorization acceleration of payment (i.e., provisions that, under circumstances, the requirement of payment over time will be converted to a requirement of a lump sum payment)

(15) Provisions requiring binding arbitration in a manner inconsistent with the Tuskegee University Vendor Mediation and Arbitration Clause

(16) Provisions authorizing the other party to assign its contractual rights, duties or obligations

(17) Provisions obligating the University to pay liquidated damages or cancellation fees

(18) Provisions obligating the University to pay attorney’s fees and/or court costs

(19) Contracts which refer to terms and conditions which are not in the contract document but may be only be found outside of the contract document (e.g., on a company website, or in a separate document which has not been submitted for legal review)

(20) Perpetual licenses

3.4 Disposition

After reviewing each contract, the proposed contract will be returned to the requesting department with a memo indicating that:

a. The contract is approved as to legal form, in which case the signing authority may sign the contract; or
b. The Office of General Counsel has questions or concerns regarding the proposed contract as presented; or
c. The contract is approved as to legal form with modifications, in which case the changes must be communicated to the contractor by the initiating department, and the signing authority may sign the contract provided that the contractor has agreed to all the modifications; or
d. The contract is returned without approval as to legal form.

4. Signature Authority

Only authorized individuals may sign contracts on behalf of Tuskegee University. As such, contracts signed by unauthorized persons will be considered **per se invalid and wholly null and void** relative to any purported obligations and/or promises contained in such contracts and may result in personal liability for the unauthorized person signing the contract as well as the imposition of severe disciplinary action by the university to include potential immediate termination of employment. The appropriate signature authority for contracts at Tuskegee University is dependent on the type of contact and its value, as outlined below.

4.1 Contracts for the Purchase of Goods or Services:
Generally, only the President, the General Counsel & Vice President for External Affairs and/or the Vice President of Business & Fiscal Affairs (CFO) has the authority to sign any contracts, except as limited by the Tuskegee University Board of Trustees or by this document. Generally, the General Counsel & Vice President for External Affairs will not provide the signature on a contract that he or she has reviewed and with respect to which he or she has provided advice to the University. The University maintains responsibility to establish internal policies related to purchasing authority and purchasing limits, for all appropriate personnel within the University.

The table below outlines the current signature authorities, for contracts, for the procurement of goods and/or services:

<table>
<thead>
<tr>
<th>Annual Contract Value</th>
<th>Authorized Signatory</th>
</tr>
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<tbody>
<tr>
<td>Up to $4,999.99</td>
<td>• Vice Presidents,</td>
</tr>
<tr>
<td></td>
<td>• Deans,</td>
</tr>
<tr>
<td></td>
<td>• Department Heads, or</td>
</tr>
<tr>
<td></td>
<td>• Directors</td>
</tr>
<tr>
<td></td>
<td>Only one contract per vendor, within the same</td>
</tr>
<tr>
<td></td>
<td>fiscal year, is allowed at this level of signing</td>
</tr>
<tr>
<td></td>
<td>authority, unless a 2nd Level Approver (i.e., “Next</td>
</tr>
<tr>
<td></td>
<td>Level-up” Manager has authorized the requested purchase*</td>
</tr>
<tr>
<td>In excess of $5,000.00</td>
<td>• University President, or</td>
</tr>
<tr>
<td></td>
<td>• Vice President for Business &amp; Fiscal Affairs (CFO)</td>
</tr>
<tr>
<td>Engagement of Outside Legal Counsel and</td>
<td>• President,</td>
</tr>
<tr>
<td>consultants to Outside Legal Counsel</td>
<td>• CFO, or</td>
</tr>
<tr>
<td></td>
<td>• Vice President for External Affairs and General Counsel</td>
</tr>
</tbody>
</table>

4.2 Employment Contracts

The President, or the President’s expressed designee, has the authority to sign any contracts, except as limited by the Tuskegee University Board of Trustees.

4.3 Other Contracts

Many types of contracts, including grant agreements, subcontracts, and contracts in which the University is providing goods or services, must be signed by the President or the CFO, regardless of amount.

5. Questions and Additional Information

Questions regarding the contract review process, contract negotiations, new contracts, or contracts questions in general should be directed to contracts@tuskegee.edu or the Office of General Counsel & External Affairs at (334) 727-8872.