

# ***CONTRACTING SERVICES***

## **I. WHAT CAN CONTRACTING SERVICES DO FOR YOU?**

Negotiating

Drafting

Review

Manage the signature/approval process

Provide legal sufficiency review – as required by the State Attorney General and Controller

## **II. SIGNATURE DELEGATION**

The University's authority to enter into contracts is derived (by statute) from the Board of Governors and delegated to the President of the University who re-delegates authority to administrators. Dr. Frank approved revisions to delegated authority in December 2010. Current memorandums delegating signature authority are available on the Contracting Services web page.

Expenditure contracts need signatures from both Board delegates (transactional approval) and Controller delegates (expenditure approval). The same individual cannot sign on behalf of both the Board and the Controller. Contracts need to be approved by the Dean, Director or Department Head that is supervisory to the office or individual initiating the contract. Additionally, all high risk contracts and contracts for amounts greater than \$100,000 need to receive legal sufficiency review and approval from an attorney authorized to do so.

## **III. NEW CONTRACT FORMS/MANUAL/POLICIES**

As a result of opting out of the state fiscal rules, the format of contracts is no longer dictated by the State Controller's Office. The Special Provisions are still required by law, but not in format of special provisions. These provisions have been incorporated into contract terms on the new forms posted on the Contracting Services web page.

The Board approved, and then in May 2012, revised, system-wide Fiscal Rules. (The CSU "System" includes Colorado State University-Pueblo and Colorado State University-Global in addition to the Fort Collins Campus and the System administrative office in Denver.) Chapter 2 of the Fiscal Rules addresses expenditures and Chapter 3 addresses contracts. The CSU System Fiscal Rules are also available on the Contracting Services web page. CSU has recently promulgated and updated Rules and Procedures based on the System Fiscal Rules. Those have been posted on the web page for Business and Financial Services.

## **IV. WHAT ARE THE ESSENTIAL ITEMS TO BE INCLUDED IN ALL CONTRACTS**

**Correctly identify the parties** – CSU System Fiscal Rule 3.1 requires that all contracts be in the name of the Board: Board of Governors of the Colorado State University System, acting by and through Colorado State University, for the use and benefit of (name of department, office or division). Also include the formal name for the entity you are contracting with—an individual as a sole proprietor or the company, a governmental entity, corporation or LLC.

**Consideration** – what is being exchanged; services, rights or goods for money? Any amount to be paid must be calculable or "not to exceed."

**Term** – when does the contract start and stop? Doesn't need to be date; can be a measure of time. Generally, terms longer than five years are discouraged. A mechanism for renewal, if desired, must be explicit.

**Exhibits** – IF exhibits are referenced in the agreement, they **MUST** be attached. Conversely, if Exhibits are attached they **MUST** be referenced by and incorporated into the agreement.

**Statement of Work** – The statement of work should include the following information:

- description of the project including the purpose of the contract and benefit to University
- identification of products, deliverables & services to be performed/delivered
- identification of who will be completing the work
- instructions, specifications or requirements for deliverables
- timeline for completion of each deliverable, product or service
- description of what happens if timeline is not met
- amounts and schedule for payment, description of the event or date that triggers payment
- quality/standards for acceptance of the services, products or deliverables
- mechanism for correcting/modifying unacceptable deliverable

## **V. PROBLEMATIC CONTRACT TERMS**

If these terms appear in a contract that you have been asked to review or sign, you **MUST** contact either Contracting Services or the Office of General Counsel.

**Indemnification/Hold Harmless** – What it means: if our contracting partner is sued by a 3<sup>rd</sup> party for damages that arise out of CSU's activities/obligations under the contract, we have to step in and defend the contracting partner. Colorado Law permits the Board of Governors to indemnify contracting parties in certain limited circumstances. In turn, the Board has promulgated a policy (available on the Contracting Services web page) allowing the institutions to indemnify under even more limited situations.

**Obligation to pay attorneys' fees** – this is prohibited because it is an open-ended contingent liability. We can agree to pay attorneys' fees if we are ordered by the court to do so or if the amount of the liability is limited to a particular sum that is set aside to cover the obligation.

**Limitation on Liability** – What it means: if something goes wrong under the contract, the University's recourse is limited. Recent trend – compensation for damages is limited to amount paid under the contract. Is this really enough to compensate us if something goes wrong? Why is the company not willing to stand behind their product or service?

**University's Liability** – should always be subject to the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq.* This Act limits liability arising from damages caused by our negligence. It also controls the amount of damages we have to pay and dictates the procedure for suing the Board/University. These provisions also trigger protections for University employees who are acting within the scope of their employment. The Act does not limit damages if our acts are willful/wanton – intentional or with disregard for professional standards. And, it doesn't apply to breach of contract claims.

**Choice of Law/Venue** – we prefer Colorado law, jurisdiction, venue. Why? Colorado Governmental Immunity Act is only applicable if Colorado law governs the contract. Jurisdiction/venue – it's less costly and easier to defend lawsuits close to home. No travel/time costs. We are able to use the attorney general's office to defend the University. Evidence and witnesses are readily available. An additional consideration – agreeing to personal jurisdiction in another state's court potentially waives sovereign immunity in addition to governmental immunity.

**Binding Arbitration** – some arbitration is permitted under Colorado law, but it is very limited and the rules are very difficult to interpret and apply

**Confidentiality** – beware of broad demands to keep contracts confidential. Unless they contain trade secrets, personal or proprietary financial or commercial information, contracts are subject to disclosure under the Colorado Open Records Act.

**Export Control** – federal law imposes restrictions on exporting certain technology and products to certain countries and/or specific individuals. Significantly, a “deemed export” can be as simple as sharing a software license with a foreign student or faculty member. Requests for assistance from the University’s Export Control Officer should be routed through Sponsored Programs, the Office of General Counsel or Contracting Services. Additionally, all *international* contracts must be reviewed/approved by the Export Control Officer.

## **VI. PROCESSING & MANAGING CONTRACTS AND EVALUATING VENDORS & CONTRACTORS**

Generally speaking, a requisition should be entered into the Quali System as soon as the need for the goods or services is identified. If the vendor or contractor has included a quote or contract, it should be attached as a pdf to the requisition – even if incomplete. A funding source must be identified for expenditure contracts and a recipient account must be identified for revenue contracts.

It’s important to know and understand what your obligations are under the contract – reporting, record keeping, notices, etc. Who is going to be responsible for fulfilling those obligations?

It is also important to evaluate your vendors and contractors. Was their work high quality? Were they responsive to your questions/concerns? Did they handle themselves professionally? Did they have adequate resources to perform under the contract? Did they perform the activities in a timely manner? Contracting Services wants to know if you’ve had a bad experience!

## **VII. CONTACT INFORMATION**

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