

Mississippi State University
Contract Guidelines
July 2023

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1. Purpose

This document has been developed to assist all parties in better understanding the processes and procedures associated with contracts at MSU.

Note: All documents referenced within this document are available on the Procurement and Contracts website.

2. Rules

Contracts, agreements, memorandum of understanding or any other obligations or commitments to which the University will be held shall be entered into only after full compliance with these guidelines. The only exceptions are for the categories of contracts contained within the Delegation of Authority letters issued by the President to the Provost and Executive Vice President, the Vice President of Research and Economic Development, the Director of Technology Management, the Director of the Office of Sponsored Projects, and the General Counsel.

Authority to sign contracts, agreements, memorandum of understanding or any other obligations or commitments to which the University will be held has been delegated by the President to the Division of Finance and Administration, specifically to the Interim Deputy Director within the Office of Procurement and Contracts. No one else is authorized to sign a contract unless they have a Delegation of Authority letter from the President.

A contract is "an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law". Black's Law Dictionary, Seventh Edition. With that background, all documents to be executed on behalf of MSU and any of its subunits, whether the subunits are referred to as a Center, a Department, a College, or otherwise, and which will result in a "contract" between MSU and a third party, must be handled consistently and must contain terms and conditions that are consistent with all applicable State laws, MSU policies, and Board of Trustees policies.

Contracts **must** be signed by all parties prior to the initiation of any services being provided.

EXCEPTIONS - A contract or purchase order is not required for a one-time purchase of less than \$5,000, as long as nobody from MSU is being asked to sign anything. This means it is ok to purchase from a quote that references a website with terms and conditions, provided that an MSU employee is not required to physically sign anything.

A contract or purchase order is not required if using a p-card to pay utilities.

A contract or purchase order is required if MSU will be expected to pay on a regular basis (copier, pest control, etc)

There are certain types of services that do not require the use of a formal contract or purchase order. These services can be paid using the APDP (Accounts Payable Direct Payment) process. The exempt services are:

Advertising of employment opportunities. (All marketing agreements should be entered into with a contract. Copies of the proposed advertisement should be submitted with the contract and coversheet so the Office of Public Affairs can review)

Appraisal Services by certified/licensed appraisers (note to reviewers, do we want departments to be able to get an appraiser without getting procurement/legal input?)

Athletic Medical Services by accredited hospitals and medical clinics

Athletic Officials (SEC or NCAA only)

CVM Animal lab and medical fees

Employee Applicants (reimbursement for actual expenses only)

Hospital EMT and CPR training services

Moving/Transportation Services

No-Fee based, non-MSU personnel travel

Outside Catering Fees

Postal Charges (ie to Mailboxes, Etc., Campus & City Mail Services, etc.)

Project/Subject Participants

Telephone Services

Utilities

3. Contracts

Contracting process - The following guidelines should be followed in obtaining contract approval:

- A. Contract Owner Responsibilities - Each department should name at least one person to serve as a Contract Owner . The Contract Owner for each individual contract must sign the Consultant/Contract cover sheet. Effective October 17, 2022, Contract Owners, prior to submitting any contracts for approval, must complete Contract Training provided by the Office of Procurement and Contracts. Typical Contract Owner Roles and Responsibilities are below:

- The Contract Owner is the individual within the requesting department with the ultimate responsibility to ensure MSU receives the services and/or revenue set forth in the contract and that MSU pays the amount set forth in the contract for any services. To properly fulfill this function, it is imperative that the Contract Owner fully understand the scope of the contract as well as the requirements set forth in the agreement. Some of the aspects the Contract Owner may want to review are:
 - Verification that all services are being performed as set forth in the contract.
 - Verification that all revenues are being received as set forth in the contract.
 - Verification that all applicable bonds and insurance documents have been received and are determined to be adequate, if applicable. Typically, this would only apply to Construction contracts and high dollar contracts.
 - As revenue is received, the Contract Owner will make the appropriate deposit of revenue and submit a Contract Revenue Form to the Office of Procurement and Contracts. Contract Revenue Forms are not required if the total amount of revenue anticipated for the contract is \$10,000 or below.
 - On an annual basis, the Contract Owner may be asked to provide the Office of Procurement and Contracts with a summary of all revenues received as well as accurate accounting records which document the process used to verify revenues are in compliance with the contract.
 - Verification that the services have been received within the specified period.
 - Were services received equal or better than the quality required in the agreement.
 - Are charges consistent with the agreement.
 - Are revenues received consistent with the agreement.
 - Depending upon the dollar amount of the contract and the term of the contract it may be advisable to hire an accounting firm to audit the appropriate financial documents to ensure the revenues are appropriate and accurate. In some case it may be advisable to include this in the requirements of the agreement and have the contractor pay for this expense.

- The Contract Owner is typically the individual with the most knowledge about the needs to be met by the contract and how the contract will meet those needs. They will have a full understanding of the products or services to be received as

well as the timelines, level of quality, payment requirements, and other unique aspects of the agreement. If anyone has questions related to the product/service/terms/conditions/etc. the Contract Owner would be the individual who could answer such questions. It is anticipated the Contract Owner role could be filled by, but not limited to, any of the following: Primary Investigator, Lab Manager, Faculty Chaperone on a field trip or study abroad, etc.

If the Contract Owner leaves his/her position during the term of the contract, or the department changes the Contract Owner, it is the responsibility of the department to immediately notify P&C and to name a replacement for the Contract Owner who will assume all responsibilities listed above.

B. Contract Approver

- By signing the Contract Cover Sheet the Approver is attesting to the following:
- They have the budgetary authority to make all payments contemplated by the contract.
- They know the contract will further the mission of MSU
- They do not have or know of any conflicts of interest related to the agreement
- They have made a good faith effort to identify potential risks (financial, reputational, other) to MSU related to the contract and have taken reasonable actions to mitigate the risk and believe the risk to MSU is outweighed by the value received from the contract.

C. Classification Checklist - If you are contracting with an individual and not a company, the first step is to have the Employee-Independent Contractor Checklist completed and signed by HR. This verifies that the consultant/contractor is an independent contractor. The classification check list is good for one year (from the date signed by HR).

D. Service Contract - Once you have the Classification Checklist back from HR (please black out Social Security Number) if the Classification Checklist is required by B above, complete the relevant parts of the MSU Standard Contract for Services. Name and address in the first paragraph, dates in the second section (you can edit this section if you need to change the wording); scope of work in section B and payment and reimbursement terms in section C. Section C should include the method of payment. Will we pay on an hourly basis? A weekly basis? Monthly? Will we pay set amounts for certain deliverables? Will we pay the entire amount upon completion of

the contract? Will we pay any expenses? Will we pay for Travel? Is there a not to exceed amount? If the contractor accepts this contract, it will reduce the time and effort involved in gaining approval.

There are some departments who have developed a unique standard contract applicable to their specific needs when those needs are required over a period of time with various vendors. After this unique contract has been approved by P&C, the department is free to use the contract for future agreements.

If the contractor requires us to use their standard terms and conditions, we must conduct a great deal of additional legal review. If the contractor's proposed contract is in substantial agreement with our service contract, it is easiest to use our standard contract and have the contractor complete Part III (Exceptions) of the standard contract where it can identify the specific clauses which cause it problems and provide alternative language. This method is easier to review than an entirely new contract document.

If the contractor insists on using their own contract form, the same process should be used, but you must keep in mind the review process will take longer and there is a higher likelihood that changes will be required prior to approval. See Section 7 for additional information.

It should be noted that there are some contracts, like many maintenance agreements, where the contractor has a standard agreement which they are required to use. In these cases, the department is advised to submit the contractor's standard agreement with the understanding P&C will most likely attach the Standard Contract Addendum and approve the revised agreement in the hope that the contractor will accept the Addendum.

- E. Vendor in Banner - Check Banner to see if the contractor is listed as a vendor and confirm that their information is correct. If they are either not listed or something in Banner needs to be changed, then you will need to send the contractor a blank W-9. They will send their completed W-9 back to you (the department). If the W-9 contains a Social Security number then it must be sent back to you either via mail, or Filelocker. You will then need to either use mail or Filelocker to send the W-9 to Procurement and Contract (P&C) (instructions in Section 12). **Forms with Social Security numbers should NEVER be emailed.**
- F. Contract Cover Sheet - Complete the Cover Sheet and Routing Form for verification and documentation of appropriate level of approval. Instructions for completion of the Contract Cover Sheet and Routing Form are shown in Section 10.

- G. Scan the contract, cover sheet and Classification Checklist form (if required) to Procurement and Contracts, remembering to black out all Social Security Numbers.
- H. The department may prefer to submit the contract to P&C for review prior to the contractor signing the agreement. If this happens, P&C will review the contract, make any required changes, and, if appropriate, sign the contract. P&C will then send a pdf of the approved contract to the department who should forward the contract to the contractor and request the contractor to sign and return the contract to P&C with a copy to the requesting department.

Alternatively, the contractor may sign the contract prior to the contract being submitted to P&C. If this happens, P&C will review the contract, and, if appropriate, sign the contract. If revisions are required P&C will make the revisions or attempt to negotiate with the contractor. Upon approval P&C will then send a pdf of the approved contract to the department who should forward the contract to the contractor. The contractor will need to initial any revisions. At times, P&C will send the contract directly to the contractor.

- I. **Payment and Contract Payment Form.** After full/partial services have been rendered depending on the payment terms included in the Contract and the Contract Owner has fulfilled their responsibilities set forth in 3A, the department should submit; an invoice, a Contract Payment Form and a Direct Pay Voucher for the contract and any expenses eligible for reimbursement under the terms of the Contract, or, the Department may pay using the Procurement Card provided the contract meets the rules for ProCard use. It is possible that some of the blanks on the Contract Payment Form are not applicable in all cases. If a blank is not applicable the Contract Owner may insert N/A. These documents are to be submitted to Accounts Payable (AP) for processing. AP will submit the documents to the Purchasing Manager for review and approval of the Direct Pay document and the Contract Payment Form. The Direct Pay will then be forwarded to Disbursements for payment. If paying by Direct Pay the contract number should be included on the Direct Pay or a copy of the contract agreement should be attached as should any documentation required by the contract for expenses such as airfare receipt, hotel receipt, meal amounts mileage calculation etc. Except for routine copier maintenance, contracts payments are only allowed on the p-card if they do not require a contract payment form. See section c. below for allowable contract payments on the P-card.
 - a. A contract payment form is not required if the payment is being made for utilities or other services wherein a contract has not been approved by P&C.

- b. A single contract payment form may be used when paying multiple invoices related to a single contract. In the space requesting the amount of the invoice, insert the total amount of all invoices being paid.
 - c. Due to the lack of materiality, we have determined that the following contracts will not require a payment form.
 - Contracts, where the total expenditure over the term of the contract will be less than \$5,000
 - Contracts where the total contract amount is paid on one invoice (i.e. not multiple payments). In this case, the Contract Owner should sign the invoice to attest that all goods/services were received, and payment is authorized.
- J. AMENDMENTS – A contract can be amended provided the contract is current and has not expired. Depending on the complexity requested of the contract and the addendum, certain changes may take more time to process and may need additional approvals. Any request to do an addendum to a contract must be accompanied by a new contract cover sheet. Contact P&C for a sample addendum.

4. Simple Form Contract

In an attempt to reduce the amount of paper required when contracting for low dollar services, we have developed a Form Contract for Services, to be used when the contract is less than \$1,000 plus expenses. The Simple Form contract may be used following procedures set forth in Section 3.

5. Honorarium Letter/Reimbursement Agreement

An Honorarium Letter may be appropriate under any of the following conditions:

- The individual is performing a role in a voluntary capacity which will help further the mission of MSU.
- The individual does not fulfill the role on any regular basis.
- The individual is being reimbursed for travel only.
- Examples could include: An employee of another institution giving a lecture or training for MSU; An employee of another institution conducting a review of a program or process at MSU; etc.

The Honorarium Letter should only be used if the amount paid will be \$1,000 or less plus travel expenses.

The Contract Owner should first sign the Honorarium Agreement. It should then be signed by the individual who will receive the Honorarium. Finally, it should be submitted to P&C for approval.

If the Honorarium Agreement is emailed to P&C (**our preferred method**) it does not require a coversheet. If you choose to send the contract through campus mail, then a coversheet will be required to ensure that we have proper departmental contact information.

Upon approval, P&C will return it to the department who should forward a copy to the individual receiving the Honorarium.

After the event, the department should submit a Direct Pay Voucher for the Honorarium and expenses. A copy of the Honorarium agreement should be attached as should appropriate expense documentation such as airfare receipt, hotel receipt, meal amounts no receipts required, mileage calculation, etc.

If you have multiple individuals coming to the same event/meeting, let us know so we can assign the same contract number for all participants.

If you are not paying an honorarium, but are simply reimbursing for expenses, then you can choose to use the Reimbursement Agreement. All the above rules for Honorariums must be followed. Note that P&C will accept either form for reimbursements.

6. Research Experience Stipend Form

The Research Experience Letter should only be used when an undergraduate or teacher is part of a Research Experience program at MSU.

The department should fill in all blanks (date, name of participant, school, year, name of program, etc.).

The department should delete the paragraph that is not applicable (there is one paragraph applicable to undergraduates and one paragraph that is applicable to teachers).

Additional lines can be added to provide more details about the program if desired.

The Program Coordinator and the Contract Owner should sign the agreement.

The participant and parent/guardian (if the participant is a minor) should sign and date the agreement.

The agreement should be submitted to P & C. The Research Experience Stipend Form does not require a coversheet, provided the department gives adequate information to let P&C to let us know who should receive the signed agreement (the department

contact). Upon approval, P&C will return it to the department who should then forward a copy to the individual receiving the stipend.

For any other stipend, contact P & C for guidance. Most other stipends can probably be paid using one of the other contract forms or Honorarium form.

7. Contractor Refuses the Use of Our Contracts

In the event the contractor refuses to accept MSU's standard contract, send the contractor a copy of the Standard Contract Addendum and ask the contractor to incorporate it into the contract.

Have the contractor submit its proposed contract to the department, who may then submit it to P&C, along with the coversheet, for review. We will conduct the required review and will determine if the contract is acceptable. If appropriate, the contract will be forwarded to the Office of General Counsel to obtain a review for legal sufficiency. Upon completion of the review, P&C will make the required changes, sign the agreement, and return the contract to the department. The department should have the contractor initial the changes, sign the contract, and return it to P&C.

8. IHL Board approval

Contracts over \$250,000 and sale or purchase of land. IHL Board approval is required for all contracts of more than \$250,000. Contracts for the sale of land regardless of the sales price require IHL Board Approval, and contracts for the purchase of land over \$100,000 require IHL Board approval. When submitting a contract requiring IHL Board approval, the department should submit the proposed contract along with the following forms – Contract Cover Sheet and Routing Form, IHL Agenda Item, IHL Contract Attachment Form, and IHL Certificate of Ownership. The Contract and Agenda Item should be submitted in Word format. Contact your Purchasing Manager or the AVP & CPO for current copies of these forms. P&C will review the documents and submit to the President's office for inclusion on the IHL Board agenda. Note that the lead time on obtaining IHL approval is usually about three months or more, so departments are urged to start early.

Bookstore, Food service or athletic concessions. IHL Board approval is required for all bookstore, food service, or athletic concession contracts projected to generate aggregate total revenues of more than \$250,000 or if the term of such contract exceeds four years. When submitting a contract requiring IHL Board approval, the department should submit the proposed contract along with the following forms – Contract Cover Sheet and Routing Form, IHL Agenda Item, IHL Contract Attachment Form, and IHL Certificate of Ownership. Contact P&C for current copies of these forms. The Contract and Agenda Item should be submitted in Word format. P&C will review the documents and submit to the President's office for inclusion on the IHL Board agenda. Note that the lead time on obtaining IHL approval is usually about three months or more, so

departments are urged to start early.

Easements and Real Estate Leases. All easements and leases of land and office space require approval of the IHL Commissioner (up to \$100,000) or the IHL Board (over \$100,000). Any department that anticipates entering a new lease or renewing an existing lease should endeavor to complete the request at least three months in advance of the start date. When submitting a contract requiring IHL Board approval, the department should submit the proposed contract along with the following forms – Contract Cover Sheet and Routing Form, IHL Agenda Item, IHL Contract Attachment Form, and IHL Certificate of Ownership. Contact your P&C for current copies of these forms. The Contract and Agenda Item should be submitted in Word format. The department should contact Procurement and Contracts to receive copies of the documents.

IHL REQUIRED FORMS:

IHL Agenda Item – The instructions in the Agenda item Template should be followed so the individual evaluating the request has complete understanding of; the purpose for the lease; the method used to determine the price, size, location, etc. are competitive in the market; and all other pertinent information related to the lease. Submit in Word format.

IHL Contract Attachment Form – This is a checklist to verify the proper clauses are in the contractual agreement.

IHL Certification of Ownership – This is a form completed by the vendor indicating the ownership of the company

Real Estate Forms – Contracts involving real estate may require additional forms. Please contact P&C for guidance.

9. Contracts and Purchases Related to Information Technology equipment, Software and Services

All contracts and purchases of Information Technology equipment, software, and services, in excess of \$5,000, will be reviewed by the Chief Information Officer or his/her designee prior to processing by P&C

Departments should be aware of the information provided on the MSU ITS website under “Submitting Technology Project and Procurement Requests”

10. Completing the Contract Cover Sheet and Routing Form

The Contract Cover Sheet and Routing Form should be used when submitting contracts to Procurement and Contracts.

The Form should be completed as follows:

- Mandatory boxes must be completed. Optional boxes may be completed if a particular department or division would like additional documentation. It should be noted that some Divisions/Departments will require these fields to be completed when seeking upper-level approvals.
- Department – the Department requesting the agreement (mandatory)
- Contract Owner – The individual at the Department with knowledge of the needs and the goals of the agreement (mandatory)
- Consultant/Contract Name – the name of the individual or firm entering into the agreement with MSU (mandatory)
- Contract Number(if applicable) – if requesting an amendment or addendum to an existing contract, insert the MSU contract number (mandatory)
- Description of Consulting/Contract Services – Brief description of agreement (mandatory)
- Send Signed Contract to – The email address to which the department wants us to send the signed contract. This may be the Contract Owner or an possibly an administrative individual who will forward the contract to the Contractor and maintain the departmental files for the Contract.
- Reminder Notice – For contracts that may need to be renewed, the department can indicate if they wish to receive a notice reminding them of the need to pursue a new or renewal contract. This section allows the department to send a date on which the reminder will be issued. (optional)
- Term of Contract – The date the contract is to start and end. It should be noted that there is no legal authority to sign an agreement after the services have been received. The start date is the anticipated date when both parties have agreed to the contract. The end date is the anticipated date when the work will be completed. These dates should be the same as the dates shown in the contract. Unless you have exact dates (i.e.. a performance on a specific date) it is best to estimate a longer period to ensure work is not completed outside of the contract term. (mandatory except in rare situations)
- Total Anticipated Cost – The total cost over the life of the agreement (mandatory)
- Revenue Contract – anticipated revenue – The total anticipated revenue over the life of the agreement

- Conflict of Interest declaration – all parties approving the contract should be aware of and agree to the conflict-of-interest declaration.
- Reviewer – This is an optional field to be used at the discretion of the department or the division. Some approvers may require others in their organizational chain to review and sign off on a contract coversheet prior to the final approval.
- Approvals – Names, signatures, and dates of the individuals responsible.
 - Contract Owner – mandatory on all
 - Director or Department Head – mandatory on all
 - Vice President - Mandatory on all contracts of \$75,000 or more unless signed by the President or a direct report to the President – the Provost/EVP or other VP may be the final signature on any contract pertaining to his/her division regardless of the dollar amount
 - If a Vice President desires to bypass this approval process, they may submit a letter to P&C indicating the name(s) of the person/people who may submit contract requests without signed cover sheets. The letter must indicate the name of the person(s) that may submit the request as well as the maximum dollar amount for contracts which the individual may submit. These letters must be resubmitted on an annual basis. Please note, if such a letter is on file, the department must still complete and submit the coversheet but is not required to have the coversheet signed. It should also be noted, if this process is followed, the VP as well as all others involved with the agreement are agreeing to the conflict-of-interest statement shown on the Coversheet.
- The remainder is to be completed by P&C

11. International Payments

Any payment being made to a nonresident alien or foreign entity requires special attention and handling. Because of the complicated tax laws and regulations for these payments, we strongly request that you review the International Payment Procedures located on the Controller & Treasurer's website and/or call the Tax Compliance Officer (662-325-1751) well in advance of making a payment request. Having the correct documentation will make the process much easier and faster.

12. Filelocker Instructions

- a) Notify the individual that he/she will get an e-mail from Filelocker requesting an upload.

- b) You will login into Filelocker with your NetID and password by going to filelocker.msstate.edu.
- c) Click on the “request upload” button, a request upload box will pop up.
- d) In the “send request to e-mail” you will put the individual’s email address.
- e) In the “Add message to e-mail,” you can give instructions to the individual on how to upload their file and send back to you (see part j).
- f) In the “Other options” always leave the “force a virus scan for uploads files?” & “e-mail me when files are uploaded?” checked. You can also check the “CC me with notification.” This option works just like the cc in regular e-mail.
- g) Do not use the “allow multiple file uploads.” If you do, you will have to create a password for the upload request. You will then have to send the password to the individual before they can upload their file.
- h) Now click the “create request” button.
- i) Filelocker will automatically send an email to the individual reading “John Doe has requested that you upload a file to their account in Filelocker.”
- j) Once the individual receives the email, these are the steps they will take to send back the file:
 - 1) The individual will click on the link in the email.
 - 2) A Filelocker page will come up.
 - 3) The individual can add a message to the file.
 - 4) The individual will click on “upload a file”, they will select their file to upload and will click “open”
 - 5) Once the recipient has downloaded the file, Filelocker will automatically send an email back to the person that requested the upload.
- k) Once you receive the file from the individual you will follow the steps below to use Filelocker to email the file to ap-help@payables.msstate.edu:
 - 1) Click “Upload”
 - 2) Type your name and email address in the “Add notes to file” section

- 3) Leave "Scan for viruses" checked
- 4) Click "Upload a file"
- 5) Once your file loads, click the blue arrow
- 6) Click "Share This File"
- 7) Choose "Public"
- 8) Type ap-help@payables.msstate.edu in the "Email addresses" line
- 9) You can choose the CC option, but do not click the other two.
- 10) Click "Share" and you are done