

## Mississippi State University Contract Guidelines September, 2012

### 1. **Purpose:**

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

### 2. **Rules:**

- a. Sponsored program contracts shall not fall under these guidelines. All other 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.
- b. 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 Budget and Planning, specifically to the Director of Procurement and Contracts. No one else is authorized to sign a contract unless they have a letter from the President.
- c. 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.
- d. A letter from the President authorizing an individual to enter into a contract does not act as an exemption to the process set forth below.

### 3. **Contracts (other than Revenue Generating Contracts):**

- a. Contracting process - The following guidelines should be followed in obtaining contract approval:
- b. The first step is to have the Classification checklist completed and signed by HR. This verifies that the consultant/contractor is an independent contractor. If the contractor is not an individual this form does not need to be completed.  
<http://hrm.msstate.edu/forms/classification-checklist.pdf>
- c. Provide the consultant with the vendor information form. They will complete and submit with their w-9. This will allow us to pay them. If the contractor is already in Banner this step will not be needed.  
<http://www.procurement.msstate.edu/vendor/forms/vendorinfo.xls>
- d. Once you have the Classification checklist back from HR, complete the relevant parts of the service contract. <http://www.procurement.msstate.edu/contracts/services.docx> 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. Have the consultant/contractor sign the

agreement. If the contractor will accept this contract, it will greatly reduce the time and effort involved in gaining approval.

- e. There are some departments which 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.
- f. If the contractor requires us to use its "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, 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 entire new contract document.
- g. If the contractor insists on using its 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.
- h. 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 standard agreement with the understanding P&C will most likely attach the Mandatory Addendum <http://www.procurement.msstate.edu/contracts/mandatoryaddendum.pdf> and approve the revised agreement in the hope that the contractor will accept the Addendum.
- i. Complete the Consulting/Contract Services cover sheet for verification and documentation of appropriate level of approval. <http://www.procurement.msstate.edu/contracts/Consulting322.xls>. For contracts of less than \$5,000 the cover sheet must be signed by the requestor (MSU Investigator) and the Department Head. For contracts over \$5,000 but less than \$50,000, the cover sheet must be signed by requestor (MSU Investigator), the Department Head and the Dean/Director. For contracts over \$50,000 the cover sheet must be signed by requestor (MSU Investigator), the Department Head, the Dean/Director, and the appropriate Vice President/Provost. If a Vice President desires to bypass this approval process, they may submit a letter to Procurement and Contracts indicating the name(s) of the person/people who may submit contract requests without the cover sheet.
- j. Scan the contract, HRM form (if required) and cover sheet, and send to Brandy Moss. You may cc the Purchasing Manager or Director but, by sending to Brandy Moss we make sure it gets properly logged into our database.
- k. 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. P&C will then send a pdf of the approved contract to the department who should forward the contract to the contractor. At times, P&C will send the contract directly to the contractor.
- l. 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.

#### **4. Short form Contract:**

- a. In an attempt to reduce the amount of paper required when contracting for low dollar services, we have developed a Simple Form Contract for Services (when the contract is less than \$1,000 plus expenses). The form is at:  
<http://www.procurement.msstate.edu/contracts/simplecontract.pdf>
- b. The Short form contract may be used following procedures set forth in Section 3.

#### **5. Contractor Refuses the use of our contracts:**

- a. In the event the contractor refuses to accept MSU's standard contract, send the contractor a copy of the Mandatory Addendum and ask the contractor to incorporate it into the contract.  
<http://www.procurement.msstate.edu/contracts/mandatoryaddendum.pdf>
- b. Have the contractor submit its proposed contract to P&C 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, where we will sign the agreement.

#### **6. Recommended Procedure - For all Non-Revenue Generating Contracts over \$5,000:**

- a. The department should consider naming a Contract Administrator. Prior to the beginning of the contract the Contract Administrator should develop a Contract Administrator Tasks and Responsibilities document to be submitted to P&C with the contract. This Tasks and Responsibilities document, at a minimum should include:
  - i. Verification that all services are being performed as set forth in the contract;
  - ii. Verification that all applicable bonds and insurance documents have been received and are determined to be adequate; and
  - iii. Verification that all payments are in compliance with the contract and for services that have been received.

#### **7. Revenue Generating Contracts:**

- a. Contracts for artists and performances, while often creating revenue, should follow the procedures set forth in Section 3.
- b. Prior to initiating contract discussions with potential contractors the requesting department should submit a request letter to the Office of Procurement and Contracts (P&C). This request should clearly define the proposed scope of the project, the anticipated revenue, the intended procedure for entering into the agreement (RFP, negotiations, other), the intended use for the revenues, proposed timeline for the project and any other information that would aid in the review. In addition, the letter must be

signed by the requestor, the Department Head, the Dean/Director, and the Vice President/Provost.

- c. Upon receipt, P&C will review the proposal, evaluate the proposal in relation to other contracts currently on campus as well as other contracts being considered and will make a recommendation to the requesting department concerning final approval. P&C will notify the requesting department and will provide advice and assistance concerning the process to be followed for solicitation and negotiation of a contract.
- d. Some Revenue Generating Contracts will be reviewed and approved by General Counsel (GC) prior to final approval. If needed, P&C will be responsible for submitting the contract document to GC. The Director of Procurement & Contracts will be responsible for signing the contract. Contract services/relationships shall not be initiated prior to complete execution of the agreement (signed by both parties with a copy on file in the Office of Procurement and Contracts).
- e. 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 and the forms set forth in Section 9 b, c, d, and f, 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.
- f. **Recommended Procedure** - For all Revenue Generating Contracts the department should consider naming a Contract Administrator. Prior to the beginning of the contract the Contract Administrator, in cooperation with the department head and the Office of Procurement and Contracts will develop a Contract Administrator Tasks and Responsibilities document to be agreed to and signed by the three parties. This Tasks and Responsibilities document, at a minimum should include:
  - i. Verification that all services are being performed as set forth in the contract;
  - ii. Verification that all revenues are being received as set forth in the contract; and
  - iii. Verification that all applicable bonds and insurance documents have been received and are determined to be adequate.
  - iv. On a monthly basis, the Contract Administrator will be expected 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. P & C will provide a monthly summary of all such revenues to the President.

#### **8. Contracts in excess of \$250,000:**

- a. IHL Board approval is required for all contracts of more than \$250,000 and contracts for the sale or purchase of an interest in land, including easements. When submitting a contract requiring IHL Board approval the department should submit the proposed contract and the forms set forth in Section 9 b, c, d, and f, 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.

#### **9. Lease of Land, Office Space, Storage Space:**

- a. All leases of land, office space and storage space require approval of the IHL Commissioner (up to \$100,000) or the IHL Board (over \$100,000). Any department that anticipates entering into a new lease or renewing an existing lease should endeavor to complete the request at least three months in advance of the start date. The following

documents should be submitted to Procurement and Contracts for routing and approvals.

The department should contact Procurement and Contracts to receive copies of the documents

- b. 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
- c. IHL Contract Attachment Form – This is a checklist to verify the proper clauses are in the contractual agreement
- d. IHL Certification of ownership – This is a form completed by the vendor indicating the ownership of the company
- e. MSU Lease agreement – this should be completed showing the description of the lease as well as all costs
- f. MSU Contract Cover sheet – Complete the applicable sections and get all signatures up to and including the appropriate VP  
<http://www.procurement.msstate.edu/contracts/Consulting322.xls>

**10. Contracts and purchases related to Information Technology equipment, software and services:**

- a. All contracts and purchases of Information Technology equipment, software and services will be reviewed by the Chief Information Officer or his designee prior to processing by P&C.
- b. P&C will be responsible for forwarding appropriate documents to the CIO upon receipt from the various departments.