

## **Policy on Goods and Services Contracts**

### **Policy Statement**

The following provides policy guidance on roles and responsibilities for the development, completion and management of contracts at the University related to the procurement of goods and services.

### **Reason for the Policy**

An effective, efficient and compliant contract process requires clarity and understanding of the responsibilities of staff in schools and departments, vendors, central Purchasing staff, Office of the General Counsel and Risk Management. In addition, contract-related authority is quite role specific and must be understood to ensure contracts are developed, finalized, and enforced in a compliant manner. The policy also promotes an understanding of and consistent adherence to good business practices.

### **Primary Guidance to Which This Policy Responds**

This policy responds to all applicable Federal procurement laws and regulations, including but not limited to OMB Circular A-110 and the Federal Acquisition Regulation (FAR). For a complete listing of purchasing policies that incorporate additional information and links to these federal regulations, visit the [Purchasing page](#).

### **Responsible University Office & Officer**

Responsible University Office: Purchasing

Responsible University Officer: Vice President for Procurement Services

### **Who Is Governed By This Policy**

This policy applies to everyone working at the University, or working on behalf of the University, who plays a role in procuring products and/or services with University funds.

### **Who Should Know This Policy**

All University faculty and employees who make procurement decisions--including administrators in schools and departments who have primary responsibility for purchasing, and officers of instruction and research who make purchasing decisions-- have a particular obligation to be familiar with the requirements outlined in this policy.

## **Policy Text**

### **Contracts, Contract Amendments, Purchase Orders and Change Orders**

A contract is a legally binding agreement between two or more parties which, if it contains the elements of a valid legal agreement, is enforceable by law. A contract amendment occurs when an existing contract requires a modification. A modification may be needed because of any number of reasons, including an agreed extension for the period of performance. Examples of goods and services agreements include consulting agreements, software license agreements, hardware purchases, equipment servicing, and executive recruiting contracts.

It is important to note that a contract may be formed and become legally enforceable in many different formats, and with little or no formality. Certain types of contracts and equivalent commitments can even be formed orally or through actions, without the necessity of a written instrument. Care should be exercised so that written contracts are formed only in accordance with this policy. Oral contracts are not permissible under this policy. For example, purchase orders frequently (including standard pre-printed terms) become the parties' contract. In some cases, the purchase order is the single contract document; in other cases, special terms and conditions can be added to the purchase order. In some limited cases, a contract will not have an associated purchase order, but only have invoices that are paid against the contract such as hotel/event agreements, performing artists and case writers. In cases where the purchase order is the single contract document, a change order is how changes are made to that contract; in cases where there is a contract that supersedes the purchase order, a contract amendment must also accompany most change orders. (Please refer to the Procurement Mechanism policy for a full listing of contract requirements based on service type located at <http://procurement.columbia.edu/purchasing/mechanism.html>.)

### **Contract Signing Authority**

The authority to enter into and sign goods and services contracts on behalf of the University is limited to specific University personnel who have been authorized by the University Trustees or a specific written delegation. In most cases, the Vice President for Procurement Services is the officer authorized to sign goods and services contracts on behalf of the University. (Agreements where the University is the service provider, such as sponsored project agreements where the University is performing research, and subcontracts with third parties issued under these agreements, are handled by other university departments - please contact Sponsored Projects Administration). University employees who have been granted signature authority by the Trustees or a written delegation receive confirmation of that authority each year, and only employees with authority to sign contracts on behalf of the University may enter into or sign contracts. Any questions on whether a document or other proposed arrangement is considered a contract and questions on signature authority should be directed to the Purchasing Office.

## **Contract Development, Completion and Management Process, Role & Responsibilities**

### **Contract Development Process for Goods and Services Contracts**

It is the policy of the University to enter into written agreements for the purchase of goods and services. Oral and other non-written agreements generally should be avoided.

Certain types of goods and services can be ordered by the schools or departments through a simple purchase order. See the Procurement Mechanism Guide for further details. Once finalized, central purchase orders must be reviewed and approved by Purchasing.

Where Columbia policy does not permit the order of goods or services solely through the use of a purchase order, a more detailed contract will be developed. The contract development process begins once a school or department has identified a need for a service or good that requires an agreement beyond the University's standard purchase order. The contract development process includes the development of the contract document itself, along with the negotiation with the vendor to develop and come to mutual acceptance. Key elements of the contract include a scope of work, along with contract terms and conditions. The contract development process also involves the submission of required supporting documentation such as certificate of insurance and independent contractor questionnaire. During the contract development process, responsibilities of participants include:

**Requesting School/Department** – It is the responsibility of the appropriate staff in a school or department to:

- articulate the scope of work, additional terms and conditions known to the staff that may be necessary, any key vendor qualifications, and any other programmatic, functional or business factors that may need to be reflected in an agreement;
- follow University policy with regard to competitive sourcing or Single/Sole Source justification;
- provide the proposed vendor with the appropriate contract and supporting documents checklist, when dealing directly with the vendor;
- forward to Purchasing completed contracts, contracts that have been modified by vendor, vendor questions and items requiring negotiation, and supporting documentation;
- complete a Requisition when a Purchase Order needs to accompany a contract (See the Procurement Mechanism Policy);
- ensure that contracts are vetted and approved by Purchasing and that unauthorized staff in their school/department are not entering into contracts on behalf of the University;
- ensure that a contract and purchase order are obtained prior to commencing work.

**Purchasing Department** – It is the responsibility of the central Purchasing Department in Procurement Services to:

- work with the schools/departments to clarify scopes, terms, conditions and any other requirements;
- review and ensure completeness, correctness and compliance of supporting documentation;
- review all contracts and agreements; negotiate terms and conditions; propose modifications and additions to terms and conditions as appropriate and necessary;
- engage the Office of the General Counsel and/or Office of Risk Management to assess, possibly directly negotiate and resolve certain contract items

**Office of General Counsel (OGC):** The Purchasing Department and other units within the University frequently consult with the OGC where issues arise during the contract development process. In addition, the OGC will sometimes be asked to take the lead in developing and negotiating goods and services contracts, although even under these circumstances, the Purchasing Department will do a final review and retains signature authority.

**Risk Management Group (RMG):** The Purchasing Department and other units within the University frequently consult with the RMG regarding insurance requirements and other risk issues, particularly for contracts that deviate from set insurance levels for external vendors and service providers.

### **Contract Completion Process**

The contract completion process is the process by which a contract is finalized, and has two main activities: resolution of outstanding items and obtaining authorized signatures. During the Contract Completion Process, responsibilities of participants include:

**Purchasing Department** – the Purchasing Department is responsible for identifying and effectively communicating outstanding items that need resolution in order to finalize a contract and, where appropriate, to offer proposals in the service of finalizing a contract. The Vice President for Procurement Services, or his or her designee, is responsible for signing the final contract as the authorized signatory for the University.

**Office of the General Counsel** – the Office of the General Counsel may be responsible for negotiating and finalizing agreement on select terms and conditions, or for the entire agreement; OGC may also be responsible for resolving an impasse between the vendor and the Purchasing Department.

### **Contract Management Process**

The contract management process begins once a contract is finalized and a purchase order or other contract is generated, and continues through the life of a contract. The contract management process includes both the management of planned activities as outlined in the contract, and the management of unplanned situations and problems that arise in the course of

contract performance. During the contract management process, responsibilities of the participants include:

**Requesting School/Department** – It is the responsibility of the appropriate staff in a school or department to:

- Review work product, reports, deliverables, time sheets and any other documentation provided by a vendor and ensure they meet requirements;
- To follow up with the vendor on a timely basis to communicate about missing deliverables or deliverables that are not meeting agreed upon requirements;
- To review invoices submitted by the vendor, confirm that they contain the required information, ensure payment is accurate and appropriate per the contract, and process approved invoices on a timely basis. Also to communicate with the vendor on a timely basis about invoices that are not approved and the reasons for non approval;
- To alert the Purchasing Department about any disputes or contract performance issues that are occurring with the vendor, as well as contract performance issues that are the responsibility of the school/department;
- To initiate a contract amendment and change order when it has been determined that items such as compensation, duration, key terms, or scope from the original contract need to be modified. Contract amendments should be handled through the contract development process, described above.

**Purchasing Department** - It is the responsibility of the Purchasing Department in Procurement Services to:

- Assist schools and departments in resolution of contract disputes with a vendor. Communicate with and engage the Office of the General Counsel on contract disputes and performance issues as appropriate;
- Advise and assist schools and departments on unanticipated situations that arise which impact a contract;
- Work with schools/departments and vendors on developing and finalizing contract amendments and change orders. The Vice President for Procurement Services is responsible for signing contract amendments on behalf of the University.

**Office of the General Counsel** – the Office of the General Counsel may be responsible for ultimate resolution of a contract dispute or early termination. They may also be responsible for negotiation of terms and conditions for a contract amendment.

## **Contract Disputes and Non-conformance**

If the school or department becomes aware of a controversy between a contractor/supplier and the University as a result of a contractual relationship (i.e., breach of contract, mistake, misrepresentation or other cause for contract modification or recession) the contracting officer within Purchasing should be provided written notice (or “claim”) of the controversy in a timely manner. Contract claims, at a minimum, should include a statement of facts, adequate supporting data, and a request for how the controversy should be resolved. The contracting officer will confer with the Office of the General Counsel where there is a significant risk of litigation or as otherwise appropriate. If a settlement agreement is required, OGC will review or prepare the documentation, including a release if appropriate.

The University will seek to resolve the matter within a reasonable period of time. The University has the right to pursue alternate methods of resolution such as litigation, non-binding mediation, and arbitration. No litigation, mediation, or arbitration should occur without assessment and approval by the OGC.

## **Exclusions and Special Situations**

Not applicable.

## **Related Links**

- Annex Document – Vendor Expectations
- Contracts (Purchasing website) <http://procurement.columbia.edu/purchasing/>
- Requisition Policy <http://policylibrary.columbia.edu/requisition>
- Procurements Using Federal Funds <http://policylibrary.columbia.edu/procurements-using-federal-funds>
- Procurement Mechanisms Policy <http://policylibrary.columbia.edu/procurement-mechanisms-policy>
- Utilization of Local Business ([http://procurement.columbia.edu/purchasing/uls\\_biz.html](http://procurement.columbia.edu/purchasing/uls_biz.html))

## **Responsible Office**

Purchasing

## **Contact**

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