

Contracts Training For Purchases of Goods/Services Under \$75,000

Basic Training on FIU Contracts Policies and
Procedures for Departments

Agenda

- Purpose of the Training
- Contracts Defined
- FIU Contracts Policy
- Contract Procedures
- Contracts with Special Requirements
- Contract Administration
- Resources

Purpose of the Training

- This training is designed for those contracts purchasing goods/services:
 - Under \$75,000
 - Not software-related
- This training is to give those responsible for these type of contracts the tools to effectively review, negotiate, and process these contracts

Contract Defined

“An agreement between two or more persons which creates an obligation to do or not do a particular thing.” [*Black’s Law Dictionary, 6th ed.*]

In other words...

A legally enforceable promise

Contracts can have many names, such as...

- Agreements
- Memorandum of Understanding/ Agreement
- Appointment Letters
- Letter of Understanding
- Click-Through Agreements
- Purchase Orders
- Terms & Conditions
- Proposal Acceptance
- Licenses
- Non-Disclosure Agreements
- Sponsorship Agreements

How Can You Tell if it is a Contract?

- ✓ If it creates an obligation to do something OR not to do something on either or both parties
 - ✓ It's a contract

- ✓ While contracts can be made verbally, if a signature is required to create the obligation
 - ✓ It's likely a contract

If you have **any questions**, don't guess. Contact contracts@fiu.edu for assistance.

Why Does FIU Enter into Contracts?

Many reasons, some of which include...

- ✓ Further our mission (education and research)
- ✓ Buy goods or services
- ✓ Sell goods or services
- ✓ Employ faculty, staff, teaching assistances, etc.
- ✓ Establish affiliations
- ✓ Generate revenue
- ✓ Lease or rent space

Remember this training focuses on procurement contracts (i.e., buying goods or services)

FIU Contracts Policy

Office of the General Counsel (OGC) Policy states that OGC will conduct a legal review for procurement contracts when:

- ✓ The contract value is **over \$75,000, OR**
- ✓ It is a software agreement regardless of value

Remember that it's the department's responsibility to review all contracts (even if the OGC will be reviewing them)

- ✓ You will want to know what you are agreeing to!

Step 1: Review the Contract

- Read the entire contract
- Contracts should include clear and specific statements of your requirements and expectations, including:
 - Timing, date, place and description of performance or service
 - Deadlines, timelines, deliverables and due dates
 - Warranties and guarantees
 - Ownership of any intellectual property created
 - Quantity and quality of product
- Revise as necessary

Step 1A: Know Who's the Authorized Signatory

- ✓ Knowing who is the authorized signatory AND that they approve of the transaction will prevent problems later
- ✓ This is important because not everyone has the authority to sign a contract
- ✓ Unauthorized individuals who sign contracts on behalf of FIU expose themselves to possible personal liability and having the contract voided
- ✓ To learn who can sign, see:
http://finance.fiu.edu/purchasing/2sig_delegation.html

Step 2: Determine Whether a Contract is Less Than \$75,000

Per the FIU Purchasing Regulation FIU-2201:

- ✓ Take the total value of the contract for initial term
- ✓ **PLUS** all renewal costs

Can't divide the procurement contract to avoid the requirement of a competitive process (i.e., staying under \$75,000)

Example One:

Initial contract is	\$50,000
ALL renewals are	<u>\$10,000</u>
	\$60,000

Total is below the threshold

Example Two:

Initial contract is	\$50,000
ALL renewals are	<u>\$50,000</u>
	\$100,000

Total is above the threshold
Contact Purchasing!

Step 3: Choose the Proper Method

Option One: The ProCard

Is this a transaction that you would be permitted to use Option One: the ProCard?

✓ Check the Departmental Card Guidelines & Procedures Manual:

http://finance.fiu.edu/controller/Docs/Commodity_Card_Manual.pdf

If NO, go to the next option

Step 3: Choose the Proper Method

Option Two: The Unencumbered Process

- Is this transaction eligible for the Unencumbered Process?
 - ✓ Check the Allowable Unencumbered Payment List
<http://finance.fiu.edu/controller/Forms.html>

If eligible, complete the Unencumbered Request Form & follow the unencumbered payment process:
<http://finance.fiu.edu/purchasing/2procedures1.html>

Note: If the service being purchased is entertainment or a performance, use the OGC Contract Template

If NO, go to the next option

Step 3: Choose the Proper Method

Option Three: Purchase Order (PO)

- ❑ If the vendor does not require a signature, use our PO
 - ✓ Our PO has terms & conditions included in it

The FIU PO is NOT a proper form for a transaction with a complex scope &/or extensive deliverables

If NO, go to the next option

Step 3: Choose the Proper Method

Option Four: OGC Contract Template

- ❑ If, at all possible, use the OGC Contract Template:
 - ✓ Independent Contractor Agreement (for professional services)
 - ✓ See: <https://generalcounsel.fiu.edu/contract-forms/>

- ❑ Follow the FIU Contracts Template Process:
 - ✓ <http://finance.fiu.edu/purchasing/2procedures1.html>

If NO, go to the next option

Step 3: Choose the Proper Method

Option Five: Vendor Contract

- ❑ If the vendor **insists** on using its form, add the applicable supplemental addendum:
 - ✓ General
 - ✓ Entertainment-Performance
 - ✓ Hotel-Meeting Space
 - ✓ Library Subscription
 - ✓ Software License

See: <https://generalcounsel.fiu.edu/contract-forms/> and <http://finance.fiu.edu/purchasing/2procedures1.html> for instructions on usage

Step 3/Option Five: Vendor Contract (Cont.)

- If possible, obtain a Word version of the vendor contract so that changes can be redlined
- If a Word version is not available, revisions can be made to a pdf document electronically or to a print-out of the contract by hand
 - Please ensure all handwritten revisions are in **legible** print
 - Any revision to a pdf document must be marked by the department because it will require the initials of the vendor and the FIU authorized signatory by the change

Step 3/Option Five: Vendor Contract (Cont.)

- Revise the contracting name: “The Florida International University Board of Trustees”
 - This is important to change because this is our legal name
- Incorporate the Supplemental Addendum by adding the language: “The attached Supplemental Addendum is hereby incorporated by reference.”
 - This must be done above the signature line
 - If you fail to do this, the Supplemental Addendum (with all of our terms & conditions) will not be part of the agreement
- Complete Contract Request Form in TCM & finish the contracting process in TCM

Contracts with Special Requirements: Click-Thru Agreements

- University employees **should not** accept click-thru agreements
- If a click-thru is necessary, follow these steps in this order:
 - If possible, provide the vendor with written notice of that we cannot accept the agreement as presented
 - Try to obtain an email address for the vendor or their website
 - Request that they allow us to print, review, revise as necessary so that both parties sign the contract
 - Follow our standard vendor process

If you were unsuccessful at this step, continue to the next one

Click-Thru Agreements (Cont.)

- After you have provided the vendor written notice that FIU does not accept click-thru agreements & the vendor is still not cooperating
 - Obtain department head approval (i.e., Director, Dean or VP)
 - Email the vendor either directly if you have an email address or an email address on their website) advising them:
 - You are not an authorized signatory for FIU and do not have the authority to enter into agreements on behalf of the University, AND
 - The agreement is not enforceable

Click-Thru Agreements (Cont.)

- Additionally refer them to the Signature Delegation page on the Purchasing website for the formal notice:
http://finance.fiu.edu/purchasing/2sig_delegation.html
- This webpage states that only those individuals with signature authority can bind the University, even with click-thru agreements
- This email to the vendor puts them on notice about this
- You should keep the email and any additional documentation on file for your records
 - You will need it if ever audited for ProCard usage
- After **all** these steps are done, you can proceed with the click-thru purchase

Contracts with Special Requirements: Hotel Agreements

- FIU has Master Agreements with a number of hotels
 - Use these hotels because the negotiating work has already been done
 - All hotel agreements, addendum templates and the procedure are available on the Purchasing website at http://finance.fiu.edu/purchasing/4contra_master_hotel_agreements.html
- If the hotel you want to use is not on the list, follow the vendor contract process
 - OGC has an addendum for hotel-meeting space:
<https://generalcounsel.fiu.edu/wp-content/uploads/sites/26/2014/07/Hotel-Meeting-Space.pdf>

Contract Administration

- Once a contract has been executed, the department is responsible for the contract administration
- Below is a list of examples of contract administration activities:
 - All vendor deliverables are completed & delivered to FIU
 - All FIU deliverables are completed and delivered to vendor
 - All deadlines are met and timelines adhered to
 - Payments are made as outlined in the contract
 - Insurance certificates are maintained up-to-date and on file by department during the term of the contract

Contract Administration-More Examples

- Services do not exceed the term of the contract
- Calendar the termination date with sufficient time before the termination date occurs in order to determine whether a renewal or extension is needed
- Issues, such as vendor non-compliance, are reported to Purchasing to ensure they're addressed appropriately with the vendor
- If contract renewals, extensions or amendments are needed, the department must contact contracts@fiu.edu for assistance

Resources

Purchasing Services Website:

<http://finance.fiu.edu/purchasing/>

OGC Forms:

<https://generalcounsel.fiu.edu/contract-forms/>

Office of the Controller Contact List:

<http://finance.fiu.edu/controller/ContactUsDept.html>

Office of the Controller Forms:

<http://finance.fiu.edu/controller/Forms.html>

Signature Delegation:

http://finance.fiu.edu/purchasing/2sig_delegation.html

One-on-One Contract Questions/ Assistance:

Email: contracts@fiu.edu

Questions?

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