

# Purchasing Contracts Basics

Basic Guidance on FIU Purchasing Contracts'  
Policies and Procedures for Departments

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# What is a Contract?

- “[a]n agreement between two or more persons which creates an obligation to do or not do a particular thing...A legal relationship consisting of the rights and promises constituting an agreement between the parties that gives each a legal duty to the other and also the right to seek a remedy for the breach of those duties.” [*Black’s Law Dictionary, 6<sup>th</sup> ed.*]
- In other words...  
A contract is a legally enforceable promise.

# Contracts can have many names...

- Agreement
  - Purchase Order
  - Memorandum of Understanding
  - Terms and Conditions
  - Appointment Letter
  - Proposal Acceptance
  - Letter of Understanding
  - License
  - Non-Disclosure Form
  - Sponsorship Agreement
- If it requires a signature and creates an obligation of some sort on either party then it should be handled as a contract. If ever in doubt, please contact [contracts@fiu.edu](mailto: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.
  - Address transactions with our students
  - Establish affiliations
  - Generate revenue
  - Lease or rent space
- The Office of the General Counsel's FIU Policy 150.105 outlines that legal review by OGC is not required for **contracts for the purchase of goods or services** when the value of the contract is less than \$75,000.
  - Therefore, this training solely addresses the procedures for contracts for the purchase of goods and services when the value of the contract is less than \$75,000.
    - Examples include hotel contracts, performance agreements, consultant agreements and maintenance agreements.

# Determine the Value of a Contract

- Per the FIU Purchasing Regulation FIU-2201, “the total value of the contract shall be the purchase price for the initial term plus all renewal costs.”
- The Board of Governors Regulation 18.001 and FIU’s Regulation FIU-2201 provide that the purchase of commodities and contractual services shall not be divided to avoid the requirement of a competitive process.
- Once it has been established that the value of the contract is less than \$75,000, the department must determine which is the most appropriate contract form. If the value of the contract exceeds \$75,000, please contact Purchasing Services.

# Choose the Contract Form

- If appropriate, use the contracting forms in the following order:
  1. **FIU Credit Card** to issue payment (following the FIU pcard guidelines and procedures);
  2. **Unencumbered Request Form** to issue payment (purchase must be allowed per the allowable unencumbered payment list; Service/Entertainment Agreement must be completed if required per the unencumbered payment procedures);
  3. **FIU Purchase Order** (may be used if the quote has terms and conditions so long as those do not require any signature and the vendor will accept the FIU PO in place of a signature);
  4. **OGC Contract Templates**, whenever possible;
  5. **Vendor's Contract Template**, when none of the above options will work.

# Determine What to Include in the Contract

- The legal terms and conditions will be addressed in the standard template used, this will vary depending on the contract form selected.
- The business and operational terms must be addressed by the department reviewing the 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

# Contract Procedures

## Signature Delegation

- The FIU Board of Trustees has given the President authority to enter into contracts for “The Florida International University Board of Trustees”.
- The President has delegated a part of his authority, with limits, to certain individuals. These individuals may sign contracts on behalf of FIU. Some of them have further delegated their authority.
- Individuals may only sign contracts on behalf of FIU when they have been delegated authority in writing and the delegation is recorded in the Office of the General Counsel. All authorized delegations are outlined in detail on the Purchasing website at: [http://finance.fiu.edu/purchasing/2sig\\_delegation.html](http://finance.fiu.edu/purchasing/2sig_delegation.html)
- Unauthorized individuals who sign contracts on behalf of FIU expose themselves to possible personal liability.

# Contract Procedures

## Unencumbered Payment

- To determine if the unencumbered payment is allowed for a given purchase, refer to the allowable unencumbered payment list available on the Office of the Controller website at:  
<http://finance.fiu.edu/controller/Forms.html>
- To determine if a Service/Performance Agreement is required for the unencumbered purchase, refer to the allowable unencumbered purchases flowchart available on the Purchasing website at:  
[http://finance.fiu.edu/controller/Docs/AllowableUnencumberedPaymentProcess\\_PurchasesLessThan75k.pdf](http://finance.fiu.edu/controller/Docs/AllowableUnencumberedPaymentProcess_PurchasesLessThan75k.pdf)
- If a Service/Performance Agreement is required, complete the contract template, which is available on the OGC website at <https://generalcounsel.fiu.edu/contract-forms/> and follow the directions on Contract Templates Procedures available on the Purchasing website at <http://finance.fiu.edu/purchasing/2procedures1.html> for processing.

# Contract Procedures

## FIU Purchase Order

- If payment cannot be made with the FIU Credit Card or via the Unencumbered Payment Process, a Purchase Order is required.
- A purchase order may serve as the contract. If the vendor has issued a quote, does not have a contract requirement or has general terms and conditions that do not require signature, and the department does not identify the need for a more detailed contract, the purchase order will serve as the contract.
- The FIU purchase order includes all of FIU's terms and conditions, by referencing them on OGC's website, and is a binding document signed by the Director of Purchasing. Any specifications or scope that is important to the purchase can be added into the body of the purchase order.
- If a signed contract is required, either by the vendor or the department, then the proper contract process would be followed and once the contract is executed the purchase order, referencing the contract will be dispatched.

# Contract Procedures

## Independent Contractor Agreement

- If a formal, signed contract is required and the Unencumbered Payment Process cannot be used for the purchase, the next best option is the Independent Contractor Agreement.
- This is an FIU created contract template, to be used for term purchases, that stipulates all of the most important terms and conditions for protection of the university similar to how a vendor's contract will contain all of the terms and conditions most relevant to the protection of the vendor.
- The template is available on the OGC website at <https://generalcounsel.fiu.edu/contract-forms/> and instructions for how to complete the template and process it are outlined in the Contract Templates Procedures available on the Purchasing website at <http://finance.fiu.edu/purchasing/2procedures1.html>.

# Contract Procedures

## Vendor Contracts

- If the vendor has a contract form that they require be used for the purchase and they will not accept our purchase order or our Independent Contractor Agreement in place of that contract, then the department must review the vendor's contract for processing.
- Steps for review of vendor contracts:
  - Read the entire contract and ensure that all business and operational terms are in line with the department's business needs and cover all the relevant details and deliverables – revise as needed;
  - Revise the contracting name: “The Florida International University Board of Trustees”;
  - Incorporate the Supplemental Addendum: “The attached Supplemental Addendum is hereby incorporated by reference.”;
  - Attach the appropriate Supplemental Addendum (General, Entertainment Performance, Hotel-Meeting Space, Library Subscription, Software License, Federally Funded Projects);
  - Identify the appropriate FIU signatory and type in his/her name and title on the contract signature lines and on the Supplemental Addendum signature lines;
  - Complete Contract Intake Form.

# Contract Procedures

## Vendor Contracts Cont'd

- Ideally a Word version of the contract can be obtained from the vendor and a redline with all FIU revisions can be created for vendor's review. A clean copy can then be signed. 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 **marked** revision requires the initials of the vendor and the FIU signatory by it; department must mark the spot for initials – Purchasing will obtain the actual initials when signatures are obtained.
- The supplemental addendum templates are available on the OGC website at <https://generalcounsel.fiu.edu/contract-forms/>; the contract intake form is available on the Controller's website at <http://finance.fiu.edu/controller/Forms.html#PurForm> and a checklist and flowchart outlining the submission process is available on the Purchasing website at <http://finance.fiu.edu/purchasing/2procedures1.html>.

# Contract Procedures

## Click-Thru Agreements - Option 1

- University employees who are not authorized signatories should not accept click-thru agreements.
- If possible (i.e. if you have an email address for the vendor or find an email address for them on their website), you should provide the vendor written notice of this and request that they allow us to print, review and revise and have the contract and have it signed by both parties, per our standard contract process.
- Once the vendor has been made aware of our no-click thru policy and, if they agree, you should work with them to process the click-thru like a standard contract.
- After you have provided the vendor written notice, and only if they do not provide the alternative of signing the contract, you may proceed to Option 2.

# Contract Procedures

## Click-Thru Agreements - Option 2

- If approved by a department head (director, Dean or VP). You may send an email to the vendor (either to someone directly if you have an email address for a contact of the vendor or find an email address for them on their website) letting them know that you are not an authorized signatory for FIU and do not have the authority to enter into agreements on behalf of the University. The agreement is not enforceable.
- Additionally you should refer them to the Signature Delegation page on the Purchasing website for the formal notice:  
[http://finance.fiu.edu/purchasing/2sig\\_delegation.html](http://finance.fiu.edu/purchasing/2sig_delegation.html). There's language on this webpage that 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 can then proceed with the click-thru purchase.

# Contract Procedures

## Hotel Agreements

- FIU has Master Agreements with a number of hotels. 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](http://finance.fiu.edu/purchasing/4contra_master_hotel_agreements.html).
- Whenever possible, departments are advised to use these hotels since FIU has already negotiated the terms and conditions with them. The overnight room rates have also been negotiated with these hotels on behalf of the university.
- Rather than entering into a contract with the hotel, that would require review and revision by the department, the department can complete the hotel addendum form and follow the procedure for submission. This makes the contracting process much quicker and easier for the departments.

# Contract Administration

- Once a contract has been executed, the department is responsible for the contract administration. This involves ensuring that all the following activities are completed:
  - All vendor deliverables are obtained by 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;
  - Services do not exceed the term of the contract; if contract renewals, extensions or amendments are needed department must contact [contracts@fiu.edu](mailto:contracts@fiu.edu) for assistance;
  - Issues, such as vendor non-compliance, are reported to Purchasing to ensure they're addressed appropriately with the vendor.
- This is not a comprehensive list and activities may vary depending on the contract terms but ultimately, someone at the department should be responsible for contract administration for every contract the department enters into.

# Resources

Purchasing Services Web Site:

<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](http://finance.fiu.edu/purchasing/2sig_delegation.html)

One-on-One Contract Questions/ Assistance:

Email: [contracts@fiu.edu](mailto:contracts@fiu.edu)