





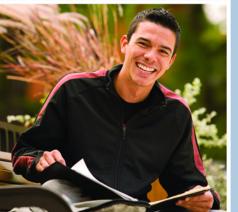








Office of the General Counsel





Legal Review by the OGC

- Pre-approved form agreements do <u>NOT</u> require further legal review (unless the legal provisions are changed)
- OGC review of the legal terms of contracts is required when
 - The actual or estimated value of a contract is \$50,000 or more
 - Includes contracts that might incur over time an aggregate value of \$50,000 or more
 - A contract involves "Special Risk"



What is "Special Risk"?

- Contracts involving a third party's use of DePaul's <u>intellectual property</u> (such as university logos, marks, artwork, symbols, or copyrighted materials);
- Contracts involving the <u>lease or purchase of real estate</u>;
- Contracts requiring DePaul to <u>indemnify or insure an outside party</u>;
- Contracts involving <u>off-campus educational programs or activities</u> (such as international affiliation agreements, study abroad contracts, and student internship/service-learning contracts);
- Contracts that will give any provider of goods or services <u>access to private</u> or confidential information (such as information protected by FERPA, HIPAA, or the Gramm-Leach-Bliley Act);
- Contracts that may expose DePaul to <u>significant risk or liability</u>; and
- Contracts involving the authority to <u>open or maintain banking accounts</u> for the university



Exceptions to the Special Risk Category

- Contracts for domestic hotel/lodging, catering, restaurant, meeting space and individual car rental do <u>not</u> require legal review regardless of whether such contracts fall into a "Special Risk" category.
- Procurement's rules regarding requisitions still must be followed. Generally, if any of the contracts above are over \$3,500 in value, a requisition must be opened with Procurement.



Retention of Contracts Not Reviewed by the OGC

- If the OGC does not review a contract, the department should <u>not</u> send the signed contract to the OGC.
- Departments should file and maintain their original signed contracts. Almost always, retaining electronic copies is acceptable.
- Signed contracts must be saved for ten years.



Electronic Signatures

 With the vast (vast) majority of contracts, pdfed signatures, faxed signatures, and electronic signatures (i.e. DocuSign) are acceptable.



Common Contract Terms

Okay	Hmm	Term
✓		Assignment
✓		Waiver
✓		Governing Law (Illinois preferred)
✓		Bankruptcy
✓		Severability
✓		Amendment/Modification
✓		Arbitration
✓		Waiver of Jury Trial
✓		Forum Selection
	\checkmark	Indemnification
	✓	Insurance
	✓	Automatic Renewal

If in doubt, ask me! mmerjan@depaul.edu or (312) 362-6372 (x2-6372)



Indemnification

- Legal term meaning to compensate or reimburse a party for loss or damages it sustains.
- We see it frequently in contracts when one party agrees to "defend or indemnify" the other for claims brought by a third party.
- It is a way to shift risk.
- Sometimes, DePaul must indemnify the other party to a contract.



Signatory Authority/Bid Exemption DePaul Executive Officers



President A. Gabriel Esteban, PhD



Executive Vice President Sherri Sidler



Provost Salma Ghanem



Secretary of the University Kathryn Stieber

Master Services Agreements

- A master services agreement ("MSA") is a special type of contract that is commonly used when purchasing goods or services multiple times over a longer period of time from the same vendor, but the specifics (e.g. quantity, specifications) of each order are not known up front.
 - For example, an MSA may be used for a general contractor who is on campus many times and it would be impractical to sign a new contract for each job.
- Issues to consider when deciding to enter into a new MSA:
 - How many orders will be placed with this vendor?
 - What terms are needed for the contract?
 - Is the estimated value over \$3,500?
 - Is the estimated value \$50,000 or is there "special risk" as defined by the Contract policy requiring legal review?
 - Is the estimated value over \$25,000?
 - > The term "master services agreement" is not a proper noun and some companies or other entities may use the term differently than DePaul.

What Happens When a PO is Needed?

Department Responsibility:

- > Opens a requisition and attaches quotes, contract and contract review form to the requisition
- Waits to hear back from OGC with comments.
- Works with vendor to agree on the recommended changes
- Obtains contract signatures and forwards the duly signed contract to Procurement

OGC Responsibility:

- > Receives/Reviews contract review form and contract from Procurement
- Reviews legal terms
- Submits comments/recommended changes to department
- Approves requisition after review is complete

Procurement Responsibility:

- Reviews requisition; approves and routes requisition to OGC and other approvers, if needed
- Advises department to make recommended changes to the contract per OGC
- Advises department to have the contract duly signed
- Sends purchase order, signed contract and standard terms to vendor
- Forwards signed contract to OGC for filing

What Happens When a PO is Not Needed?

(Certain specialized contracts and contracts under \$3,500)

Department Responsibility:

- ➤ If a contract is \$50,000 or more in value and/or contains a special risk, fill out a contract review submission form and submit both the form and contract to contractreview@depaul.edu
- Waits to hear back from OGC with comments
- Works with vendor to agree on the recommended changes
- Obtains contract signatures and forwards the duly signed contract to OGC

OGC Responsibility:

- Receives/Reviews contract review form and contract from department
- Reviews legal terms
- Submits comments/recommended changes to department



Successful Planning

- Know the organization's policies and procedures for purchasing.
- Ask for assistance from Procurement!
- Treat each supplier with equal consideration.
- Maximize the value for each dollar spent.
- Be knowledgeable about your decisions.



Questions



Resources

- Office of the General Counsel
- > Procurement