Purchasing and Contracting on Behalf of DePaul

Procurement Services
Office of the General Counsel

Revised November 1, 2021
Legal Review by the OGC

• Pre-approved form agreements do **NOT** 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
    
    o 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 **intellectual property** (such as university logos, marks, artwork, symbols, or copyrighted materials);
- Contracts involving the **lease or purchase of real estate**;
- Contracts requiring DePaul to **indemnify or insure an outside party**;
- Contracts involving **off-campus educational programs or activities** (such as international affiliation agreements, study abroad contracts, and student internship/service-learning contracts);
- Contracts that will give any provider of goods or services **access to private or confidential information** (such as information protected by FERPA, HIPAA, or the Gramm-Leach-Bliley Act);
- Contracts that may expose DePaul to **significant risk or liability**; and
- Contracts involving the authority to **open or maintain banking accounts** for the university.
Exceptions to the Special Risk Category

• Contracts for domestic hotel/lodging, catering, restaurant, meeting space and individual car rental do not 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 **not** 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

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<td>Assignment</td>
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<tr>
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<td></td>
<td>Waiver</td>
</tr>
<tr>
<td>✓</td>
<td></td>
<td>Governing Law (Illinois preferred)</td>
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<tr>
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</tr>
<tr>
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<td></td>
<td>Automatic Renewal</td>
</tr>
</tbody>
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If in doubt, ask me! [mmerjan@depaul.edu](mailto: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.
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](mailto: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