



Idaho State University

POLICIES AND PROCEDURES

Contract Approval and Execution

ISUPP 1060

POLICY INFORMATION

Policy Section: *Governance/Legal*

Policy Title: *University Contract Approval and Execution*

Responsible Executive (RE): *General Counsel*

Sponsoring Organization (SO): *Office of the General Counsel*

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I. INTRODUCTION AND PURPOSE

As a state entity, Idaho State University is subject to compliance with federal and state laws and regulations regarding procurement of goods and services. This policy defines those employees of the University who are authorized to execute contracts on behalf of the University and describes the procedure for review and approval of contracts prior to execution.

II. DEFINITIONS

- A. **Authorized Signatory:** An individual authorized pursuant to this policy (inherent authority) or an individual properly holding delegated authority as described in this policy to sign University Contracts on behalf of the University.
- B. **Executed Contract:** A University Contract as defined below with the authorized signatures necessary to become effective.
- C. **Delegatee:** The employee who is officially authorized to sign a University Contract on behalf of a Delegator.

- D. **Delegator:** The employee who has authority to sign a University Contract on behalf of the University who transfers (“delegates”) the employee’s signature authority to another University employee.
- E. **Delegation of Signature Authority:** The formal recorded conveyance of signature authority from an individual with inherent authority as described in this policy to another University employee to sign a University Contract.
- F. **Inherent Signature Authority:** Authority granted by SBOE or this policy to sign contracts on behalf of the University by virtue of their position.
- G. **Sponsored Project:** A grant, contract, cooperative agreement, subgrant, subcontract, consortium agreement, purchase order, memorandum of understanding, or similar instrument (hereafter collectively referred to as a “Sponsored Project”) that formalizes the transfer of money or property from a sponsor in exchange for specified activities (e.g. research and development, instruction, public services, etc.), and may require specified deliverables such as detailed financial and/or technical reporting by the recipient. Performance is usually to be accomplished within a specified time frame, with payment subject to revocation, and may include provisions related to intellectual property and publication rights. The University’s Office of Sponsored Programs is responsible for accepting and administering Sponsored Projects.
- H. **Total Contract Value:** The entire monetary value of the contract as measured by the initial contract period plus any options to renew or any options to buy additional supplies or services. For example, a three-year contract for \$5,000 per year has a Total Contract Value of \$15,000.
- I. **University Contract:** A contract or agreement between two or more parties, one of which is the University (or any of its units), which obligates the University in any manner or is otherwise intended to have a legal effect. A document may be a University Contract regardless of the title of the document. For example, a University Contract may be titled a memorandum of understanding, license, affiliation agreement, quote, purchase order, scope of work, “click” agreement, end user agreement, lease, purchase agreement, letter of understanding, or simply “terms and conditions” referenced in a purchase order or quote.

In general, agreements are not University Contracts if the University is not a party, if the agreement involves purely private interests, or if the agreement is between the ISU Foundation and a non-University third-party. Questions concerning whether a document is a University Contract should be directed to the Office of the General Counsel.

III. RESPONSIBILITIES AND PROCEDURES

A. University Contract Protocols

1. Approval and Execution of Contracts

All University Contracts must be in writing, conform to this policy, and be signed by an Authorized Signatory, whether the contract is an expense contract (the University is paying money), revenue contract (the University is receiving money), or a zero-dollar contract (no money is exchanged but there are other obligations).

Contracts signed by any individual who does not have documented signature authority are not binding on the University. Performance on a University Contract may not begin prior to full approval and approved signature.

A University official entering into any kind of agreement or other document placing obligations on the University or any of its units should presume they are negotiating a University Contract and this policy applies. All University Contracts, whether or not routed for legal review, must be consistent with the overall mission of the University, within the operational capacity of all University units that may be obligated by the contract, and within approved budget. Contracts must also comply with all applicable University policies and state and federal laws. If a University Contract is exempt from legal review, it is the Authorized Signatory's obligation to ensure compliance with all requirements.

All Authorized Signatories must complete training as designated through the Office of the General Counsel prior to signing any University Contract. Signature authority is not deemed effective until all required training has been completed.

Any Contract reviewed and authorized before this policy's adoption that was in compliance with the then-existing policy remains in full force and effect. Any Contract not signed as of this policy's adoption is void and of no effect unless it is authorized as set forth under this policy. Any Contract modification or extension made after this policy's adoption is subject to review and authorization under this policy.

2. Responsibilities of an Authorized Signatory

Each Authorized Signatory must:

- a. Read each proposed University Contract in its entirety and determine whether execution of the contract is in the best interest of the University.
- b. Ensure all required reviews and all internal approvals required for each proposed University Contract have been completed.

- c. Ensure the contract terms of each proposed University Contract accurately reflect the negotiated statement of work, meet the originating department/unit's expectations, and adequately protect the University's interests.
- d. Verify each proposed University Contract complies with all University policies and procedures.
- e. Ensure no proposed University Contract will generate unrelated business income unless approved in advance by the appropriate personnel in the Finance Division.
- f. Sign each approved University Contract in the name of "Idaho State University" and only within the limitations of the signatory's authority.
- g. Assign each executed University Contract to a contract manager as outlined below.
- h. Participate in required signature training prior to signing any University Contract and complete refresher training at least once every three (3) years.

B. Legal Review of University Contracts

1. University Contracts Not Requiring Legal Review

a. Contracts Using University-Approved Templates

Subject to the Purchasing Policy and the requirements for review by additional offices below, University Contracts utilizing templates approved by the Office of the General Counsel do not require legal review, so long as (a) no changes have been made to the form other than filling in blanks such as contracting parties, dollar amounts, term, and details regarding the scope of work of the parties, (b) the contract amount is within a unit's budget authority, and (c) the Authorized Signatory has verified use of the most current approved template. Approved templates will be listed on the Office of the General Counsel website.

b. Small Purchases or Service Contracts with a Total Contract Value Under \$10,000 USD

Subject to the Purchasing Policy and the requirements for review by additional offices below, units may generally review and process a contract with a dollar value below \$10,000 USD on a vendor's template without further legal review and approval so long as they meet the requirements of this policy and the vendor approves use of ISU's standard contract addendum. Such purchases and contracts may include, but are not limited to, authorized purchases with a University-issued purchasing card, hotel reservations, transportation, food, and meeting space.

2. Mandatory Legal Review of University Contracts

All University Contracts must be reviewed and approved by the Office of the General Counsel prior to execution unless exempted from review. University Contracts shall be submitted for review in accordance with the standard contract review process described on the Office of the General Counsel website.

a. The Office of the General Counsel will review each proposed contract to ensure:

- i. The contract does not contain any prohibited clauses;
- ii. The contract is consistent with state and federal law;
- iii. The contract is consistent with University policies and rules;
- iv. Risk management concerns have been reasonable addressed; and
- v. The contract is consistent with any predecessor documents.

b. Mandatory Review Regardless of Contract Value

The following University Contracts must be submitted for legal review regardless of the Total Contract Value or use of an approved template:

- i. Contracts regarding the leasing, licensing, sale, or rental of any real property that involves the University as a lessor, lessee, licensee, or licensor.
- ii. Contracts requiring Idaho State Board of Education approval under SBOE policy V.I.
- iii. Contracts involving University intellectual property or trade secrets or which purport to grant intellectual property rights to or from outside entities.
- iv. Contracts for licensing technology arising from University inventions and other creations, including agreements with terms governing patent and copyright registration, the generation and dissemination of royalties, or confidentiality and non-disclosure provisions.
- v. Contracts with any potential to share FERPA or HIPAA-protected information with a third party.

C. Additional Review of All University Contracts

The following offices must review and approve certain types of University Contracts prior to signature. Each reviewing office will coordinate with the Office of the General Counsel as needed.

1. Purchasing

Contracts for the procurement of goods and services must be made in accordance with the laws of the State of Idaho and all Purchasing Policy and Procedure requirements, such as requirements for a formal bidding process or a sole source justification when necessary.

2. Office of Sponsored Programs

Contracts for Sponsored Projects, regardless of funding amount, must be routed directly to the Office of Sponsored Programs (OSP). OSP will refer contracts for goods or services funded by grant money to Purchasing or the Office of the General Counsel as needed. For University Contracts involving expenditures under Sponsored Projects, the Principle Investigator is responsible for ensuring all requirements of the External Sponsored Agreement are met.

The following University Contracts must be submitted to the appropriate official in the Office of Sponsored Programs for review and approval:

- a. Non-disclosure or confidentiality agreements.
- b. Material transfer agreements.

3. Information Technology Services

The following University Contracts must be submitted to Information Technology Services for review and approval:

- a. University Contracts for the purchase of software. Renewals for purchases previously reviewed and approved by Information Technology Services do not need to be submitted again.
- b. Any University Contract which includes an information technology component or is designated by Information Technology Services as requiring review. For purposes of this policy, an information technology component includes any software licenses which involve access to student data or interface with University systems; hosted information technology solutions on University systems or cloud-based systems; any agreement providing or allowing access to University systems, networks, or data; and any agreement providing or allowing external sources access to University data or similar components.
- c. Any University Contract which involves the transfer or storage of personally identifiable information, education records, sensitive data, or data that may be subject to export control must be reviewed by the University's Chief Information Officer or designee.

University Information Technology review will ensure conformance with University ITS standards, adequate security and support requirements, and risk mitigation.

4. Marketing and Communications

The following University Contracts must be submitted to the Office of Marketing and Communications for review and approval:

- a. University Contracts involving commercial filming or photography on campus.
- b. University Contracts involving the use of University branding, including the University's name, trademarks, or logos.
- c. Advertising or promotional agreements under which advertising or promotion will be placed on campus or commercial activity will take place on campus, either separate from or alongside University branding.

5. Facilities Services

- a. All University Contracts for construction services or capital improvements, including but not limited to design, construction, and real estate must be submitted to Facilities Services for review and approval.

6. Office for Research Compliance

The following University Contracts must be submitted to the appropriate official in the Office for Research Compliance for review and approval:

- a. Any University Contract involving the use of human or animal subjects, recombinant DNA, or biological materials.
- b. The purchase or shipment of controlled substances or items.

7. Export Control

The following University Contracts must be submitted to the Export Control Office for review and approval:

- a. Contracts that involve the shipment or transfer, by whatever means, of controlled items, software, technology, or services out of the United States or involve the disclosure of certain information or data to foreign nationals in the United States.
- b. Contracts with any foreign entity, university, or research institute.
- c. Contracts that contain restrictions on publishing the results of work funded by the contract. A prepublication review of less than 60 days is allowable.
- d. Contracts that limit the nationality or citizenship of those working on the project. This can include limiting the use of software to certain persons.

8. HIPAA

The following University Contracts must be submitted to the HIPAA Compliance Officer for review and approval:

- a. Contracts that involve the actual or potential creation, storage, use, disclosure, or transmission of clinic patients' Protected Health Information (PHI) or students' Personally Identifiable Information (PII), maintained by or on behalf of the University.
- b. Licensing agreements that use third-party software systems, including no-cost software, that have any potential for use and disclosure of PHI or PII.
- c. Contracts that purport to require a Business Associate Agreement.
- d. Contracts between an existing Business Associate or a subcontractor of a Business Associate.

D. Contract Retention

The originating department or unit is responsible for administration and retention of fully executed University Contracts in a manner consistent with instructions from the OGC. Each University Contract must have an assigned Contract Manager, who may be the Authorized Signatory or another designated employee. Contract managers shall:

1. Possess a complete understanding of the contract business terms;
2. Serve as a primary contact for the contractor;
3. Monitor contracts for compliance with contract business terms;
4. Maintain a complete record of contract information;
5. Ensure adherence to additional requirements particular to contracts funded in whole or in part with federal money;
6. Determine and document necessary contract modifications; prepare timely contract amendments as needed; and coordinate with other offices listed above as appropriate or when required (such as Purchasing and the Office of Sponsored Programs).
7. Monitor contract end dates to allow sufficient lead time for renewal or re-solicitation;
8. Review and approve invoices for payment of satisfactory work performed or supplies provided;
9. Document significant contract complaints, disputes, and terminations; and
10. Ensure completion and documentation of contract close-out actions.

All University Contracts should be stored in the issuing unit and must be retained in accordance with state law and the Idaho Higher Education Record Retention Schedule as provided by the Idaho State Board of Education.

E. Responsibility for Determining “Best Deal”

The Office of the General Counsel is not necessarily qualified to determine whether the proposed contract represents “the best deal” for the University with regard to price, quality, or efficacy of goods or services. Therefore, determination of the best deal for the University is the responsibility of the initiating unit, Authorized Signatory, and Purchasing Office, when necessary.

IV. CONTRACT REQUIREMENTS AND PROHIBITED PROVISIONS

As an agency of the State of Idaho, the University does not accept certain contractual provisions as described below.

A. University Name

The correct name of the University, “Idaho State University,” must appear on all University Contracts.

B. Governing Law and Venue

The University requires Idaho governing law and jurisdiction for all University Contracts unless the agreement is with another public agency, in which case the agreement may remain silent on governing law and jurisdiction. If a party insists on governing law or jurisdiction of another state or country, then the Authorized Signatory must consult with the Office of the General Counsel for guidance.

C. Indemnification/Hold Harmless

The University requires deletion of any requirement for the University to “indemnify” or “hold harmless” another party to a contract for damages or losses resulting from claims against the other party. If a party insists on indemnification then the Authorized Signatory must consult with the Office of the General Counsel for guidance.

D. University Insurance

The University generally cannot agree to provide insurance greater than or different from the statutory self-insurance provided by the State of Idaho. Idaho law provides for tort liability self-insurance with limits of \$500,000 per occurrence. Authorized Signatories must ensure University Contracts do not obligate the University to provide insurance it does not possess. If excess coverage or additional insured is required on a particular contract then

the Authorized Signatory must consult with the Office of the General Counsel and University Risk Management for guidance.

E. Confidentiality

The University is subject to Idaho's Open Records laws, which require disclosure of certain records maintained by the University, with some limited exceptions. The University cannot agree to a confidentiality requirement that does not provide an exception for disclosures required by law.

V. AUTHORITY TO SIGN UNIVERSITY CONTRACTS

A. Authorized Signatory

The president has authority to sign any and all contracts for the University. Administrators for the following units are granted inherent authority by this policy to sign contracts as Authorized Signatories. Authorized Signatories can sign all contracts within the course and scope of their official duties, subject to University and Idaho State Board of Education policy, applicable law, and any of the following express limitations:

- Vice Presidents and Provost
- Chief of Staff
- Athletic Director
- General Counsel and Chief Compliance Officer
- Chief Fiscal Officer
- Chief Information Officer
- Chief Marketing & Communications Officer
- Chief Facilities Officer
- ISU Purchasing Department personnel may only sign contracts related to the procurement of goods and services in accordance with the purchasing policy

These administrators may delegate signature authority to certain administrators within their units in accordance with the delegation procedure described below.

B. Signature Delegation Procedure

This section defines the proper Delegation of Signature Authority to execute University Contracts. The proper delegation of authority to execute University Contracts is required to

minimize and/or mitigate financial, legal, and related risks and to ensure appropriate fiscal and management controls are in place for the benefit of the entire University.

All delegations are to a specific employee in a specific position within the University at the time of the delegation. The authority associated with an appointment may not be exercised prior or subsequent to the effective dates of employment or appointment. When there is turnover in a position, the new individual holding the position must seek, in writing, a specific Delegation of Signature Authority.

University Officials with delegated signature authority can only sign within the scope of their delegated authority.

1. Use and Retention of Delegation Form

All delegations of signature authority must be in writing on the approved delegation of authority form provided by the Office of the General Counsel. The delegation must include the contract or types of contracts the delegate is authorized to sign, the term of delegation, and any limitations on the scope of the delegated authority, including dollar thresholds.

All delegation of authority forms should be stored in a central location determined by the Office of the General Counsel.

A delegation of authority shall become effective on the date the delegation form is fully executed. Delegations shall continue until revoked by the Delegator or modified because the delegate leaves the position or has duties and responsibilities changed to broaden or lessen the areas of delegation. Any Delegation of Signature Authority may be revoked by any Delegator higher in the chain of delegation. The University president has ultimate authority to revoke any signature authority at any level, including those specified by this policy.

2. Subdelegate Qualifications

Delegations of authority are appropriate where the delegation will enhance effectiveness and efficiency without risking the integrity of the internal control necessary for accountability. No delegation shall be made of all or substantially all of the powers held by any person making a delegation or where checks and balances would be minimized. Authority can only be delegated to the extent the Delegator has the authority to bind the University to a legally enforceable obligation.

Individuals who receive delegated authority shall have active involvement with the activity being conducted and have sufficient knowledge of the University policies, rules, laws, regulations, and procedures to ensure compliance. No Delegation of Signature Authority may be made to an individual below the unit director level. The person

delegating signature authority does not give up accountability or responsibility to ensure all contracts are reviewed and approved in accordance with policy and budget requirements.

3. Delegation Management

Each Delegator and the Office of the General Counsel is responsible for managing and monitoring all delegations of signature authority. This includes maintaining official files of all delegations of authority and conducting annual reviews of all delegations to ensure they are revised as necessary.

The Delegator must maintain proper control and management of the Delegator's area of authority and remains ultimately accountable for all actions taken by the Delegate. The Delegator shall take into account and maintain appropriate internal controls including separation of duties, reviewing reports, sampling completed transactions, and monitoring the effectiveness of the controls established.

4. Required Training

All delegates must complete signature authority training through the Office of the General Counsel prior to signing any University Contract. Signature authority is not deemed effective until the training session has been completed. All delegates must complete "refresher" training at least once every three (3) years in order to maintain an Authorized Signatory status.

VI. CONTRACTS MADE IN VIOLATION OF POLICY

Contracts made in violation of this policy, i.e. without proper authorization, signatures, or review by the appropriate offices, are voidable at the discretion of the individual who should have had signature authority for the contract.

Employees who make or sign contracts in violation of this policy may be subject to additional mandatory signature authority training, revocation of signature authority, and potential personal liability for the contract and any damages caused to the University. Repeated or intentional violations of this policy may be considered a violation of the professional standards expected of University employees and may result in disciplinary action up to and including dismissal.