



Division of Legal Affairs Contract Review and Approval Process

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http://www.kennesaw.edu/legal/contract_review_and_approval_process.pdf

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1. Overview

This document describes the legal review requirements for KSU contracts, the required reviews by the initiating departments, and outlines the signature authorities for contracts within the university. Please read the document in its entirety, as it contains important information that you may need when submitting a contract for legal review.

2. Legal Review of KSU Contracts

A contract is any legally enforceable agreement whether or not it is titled “contract.” Contracts include, but are not limited to, letters of agreement, lecture or performance agreements, licenses, memoranda of understanding, and terms and conditions related to all types of transactions. All KSU contracts must be in writing. An agreement may be a binding contract even though one party provides something of value to the other party at no charge. Therefore, the University may have an interest even though there is no financial transaction. The correct legal name of KSU, which should appear on all of KSU’s contracts, is “Board of Regents of the University System of Georgia by and on behalf of Kennesaw State University”.

2.1 Contracts Requiring Legal Review

Generally, contracts to which Kennesaw State University is a party must be reviewed and approved by Legal Affairs prior to signing. Signing a contract on behalf of KSU may have legal implications for the university. Therefore, contracts signed without obtaining legal approval may, if the university chooses not to honor the contract, result in personal liability for the person signing the contract. Legal Affairs cannot review or provide legal advice regarding personal or non-KSU contracts. The next section lists the types of KSU contracts that are exempt from legal review.

2.2 Exemptions to the Legal Review Requirement

The exemption from legal review and approval does not exempt contracts from all other applicable and required KSU approvals, depending on the nature of the contract. The following types of contracts are currently exempt from legal review:

- I. Routine purchase orders, bills of sale, invoices, if they do not contain any terms and conditions; or
- II. Renewals of existing contracts approved by legal affairs within the previous five years, unless the terms and conditions of the renewal are different than those previously approved; or
- III. Pre-approved and unmodified standard university contract templates, such as the Lecture or Artistic Performance Agreements, unless modifications to the terms and conditions are needed. However, these contracts may not be inappropriately used. For example, a Lecture Agreement must not be used to contract with providers of services other than lectures; or
- IV. Contracts for the purchase of software, statistical data, online products and services, and lab and research materials, if both of the following conditions apply:
 - i. Value of the contract is \$4,999.99 or less.
 - ii. The product is for localized use within the department making the purchase, and not for campus-wide use.

3. Contract Review Process

3.1 Initial Review by the Initiating Department

This review should focus on the business implications of the terms and conditions of the contract. The initiating department must determine what it can or cannot agree to, and what needs to be negotiated with the contractor. Examples for issues to consider during this review include:

- I. The contract terms and conditions, including duties of the parties, are clear, consistent, and acceptable to KSU and the department.
- II. The college, department, or unit has the necessary funds and resources for this contract.
- III. The contract is appropriate and serves the department's mission and responsibilities.
- IV. The services provided are the most feasible for the University in terms of quality and cost.
- V. The contract includes the entire understanding between the parties, without additional oral explanations or promises that are not included in the contract.

Following the review by the initiating department, a Contract Review Request Form must be completed. The form contains a contract checklist and requests information that Legal Affairs uses during the review of the contract. To verify that you are using the updated version of the form each time you are submitting a contract, download the form at (http://www.kennesaw.edu/legal/contract_review_request_form.doc). When completing this form, please include brief background information about the purpose of the contract to aide in the review process, in addition to any comments or concerns you have regarding the contract terms. Please send the completed form to contracts@kennesaw.edu, along with the all the contract documents.

3.2 Legal Review

Contract reviews normally take up to five business days. In those cases where the contract requires complex negotiations over terms and conditions, a new contract needs to be drafted, or if there is a signing deadline, you are encouraged to include Legal Affairs in the process as early as possible. Please submit a draft of the contract in advance to allow sufficient time for thorough legal review.

- a) The review by Legal Affairs insures that:
 - I. KSU abides by State and Federal laws.
 - II. KSU is operating in accordance with the policies and procedures of the Board of Regents of the University System of Georgia and Kennesaw State University.
 - III. KSU does not agree to any prohibited clauses.
 - IV. Risk Management concerns have been addressed. Legal Affairs will forward the appropriate contracts to Risk Management for review of insurance requirements.
- b) After reviewing each contract, the proposed contract will be returned to the requesting department with a memo indicating that:
 - I. The contract is approved as to legal form, in which case the signing authority may sign the contract; or
 - II. The contract is approved as to legal form with modifications, in which case the changes must be communicated to the contractor by the initiating department, and the signing authority may sign the contract provided that the contractor has agreed to all the modifications; or
 - III. The contract is returned without approval as to legal form.

It is important to know that the legal review determines the legal validity of a contract, as opposed to whether the contract is appropriate from a business and administrative perspective. The final decision to enter into a contract is the responsibility of the KSU department initiating the contract, and should take place only after all applicable university approvals have been obtained.

4. Signature Authority

Only authorized individuals may sign contracts on behalf of KSU. The appropriate signature authority is dependent on the type of contract and its value, as outlined below.

4.1 Contracts for the Purchase of Goods or Services:

The President, or the President's designee, has the authority to sign any contracts, except as limited by the Board of Regents (BOR Policy Manual 2.5.4). Purchasing Agents may also execute

contracts, as their authority is delegated to them, at the entity level, from the Georgia Department of Administrative Services (DOAS). It is the University's responsibility to establish internal policy related to purchasing authority and purchasing limits, for all appropriate staff within the University.

The table below outlines the current signature authorities, for contracts, for the procurement of goods or services:

Annual Contract Value	Authorized Signatory
Up to \$9,999.99	<ul style="list-style-type: none"> ▪ Vice Presidents ▪ Deans ▪ Department Heads ▪ Directors <p>Only one contract per vendor, within the same fiscal year, is allowed at this level of signing authority, unless a 2nd Level Approver (i.e., "Next-level-up" Manager has authorized the requested purchase.*</p>
Up to \$50,000.00	<ul style="list-style-type: none"> ▪ University Buyers and Contracting Officers, within the Office of Procurement & Contracting
Up to \$99,999.99 – Open Market Purchases	<ul style="list-style-type: none"> ▪ University Procurement Officer (CUPO/APO) ▪ Assistant Director of Procurement & Contracting ▪ Procurement Manager
\$100,000 and above	<ul style="list-style-type: none"> ▪ Vice President for Operations and Chief Business Officer ▪ Assistant Vice President for Operations
Unlimited for Purchases from Statewide Contracts, Existing State Entity Contracts, Statutory or Mandatory Contracts, SPD Pre-Approved Piggyback Purchases, SPD Pre-Approved Consortia and Cooperative Purchases	<ul style="list-style-type: none"> ▪ University Procurement Officer (CUPO/APO) ▪ Assistant Director of Procurement & Contracting ▪ Procurement Manager ▪ University Buyers and Contracting Officers, within the Office of Procurement & Contracting

* It is recognized that under certain circumstances, additional work by the same vendor may be required in the same fiscal year. For example, additional work may be required outside the scope of the first contract; the contractor may be the only party with the requisite expertise to do the work; different departments, acting independently, may seek the same contractor, etc. Such examples may require additional approval from the "Next-level-up" Manager.

This delegation may be rescinded at any time upon written notification or automatically upon cessation of a delegee's service in their specified capacity in which case, the delegee's

signature authority automatically passes to their successor. The delegation conveyed may not be further delegated to any other person.

4.2 Other Contracts:

The signature authority for other types of contracts depends on the scope of the contract and which unit within the University is entering into the contract. For example, a memorandum of understanding between KSU as a whole and another university must be signed by the President. A contract between a KSU college and another entity must be signed by the college Dean.

5. Questions and Additional Information

Questions regarding the contract review process, contract negotiations, new contracts, or contracts questions in general should be directed to contracts@kennesaw.edu or 770-499-3562.