



Eastern Kentucky University

Policy and Regulation Library

Administrative Regulation: 6.2.2ADR

Responsible Office(s): Office of University
Counsel, Department of University Procurement

Effective: December 7, 2023

Next Review Date: Fall 2026

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Contract Review, Approval, and Execution

Statement

To fulfill Eastern Kentucky University's ("EKU" or "University") teaching, research, and service functions, it may be necessary to enter into legally binding agreements ("contracts") with other entities and external parties, including individuals and governmental entities. The purposes of this Regulation are to ensure that University Contracts are reviewed and executed following the appropriate University procedures, and that business units have the tools, resources, and as appropriate signatory authority needed to assess risk, and enter into Contracts that best serve the University.

While acting in the scope of your employment, if you are entering into any type of relationship with a third party that places obligations on the University or one of its units, you are entering into a University Contract subject to this Regulation.

This Regulation applies to agreements including but not limited to the following: Clinical Placement/Affiliation Agreements, Software Agreements/Terms and Conditions, Artist/Entertainer Agreements, Event Speaker Agreements, Grants, Memorandums of Agreement/Understanding, and Personal Service Contracts. Pre-existing Contracts reviewed and authorized prior to the adoption of this Regulation shall remain in full force and effect; however, any modification or extension of such Contracts shall be reviewed and authorized in accordance with this Regulation.

This Regulation also applies to Procurement Contracts, which is any type of contractual agreement that obligates the University to provide or receive payments, services, goods, gifts or use of University property, facilities or other resources, to or from a vendor or third party. As Procurement Contracts are governed by KRS 45A, the Procedures prescribed below conform to those legal standards for this type of Contract.

Each Contract is subject to this Regulation regardless of whether it has been drafted by the University, a vendor, or a third party. Additionally, ALL Contracts must be reviewed by the Office of University Counsel for approval prior to signature by a University

designee. Failure to obtain proper review can leave the person who signs the Contract at risk of personal liability.

The Eastern Kentucky University Board of Regents, under the provisions of KRS 164A.560, has delegated responsibility for the financial management of the University to the University President. This authority may be delegated by the President, in writing, to certain administrative officers of the University as outlined in this Regulation. The University may be committed in these respects only in a manner consistent with this delegation.

In making these delegations the President has established minimum levels of responsibility for approval of transaction documents and Contracts. All general and specific delegations of authority under this Regulation shall be consistent with these minimum levels of responsibility. Although signatory or approval authority may be delegated below the minimum levels of responsibility, the assigned official remains fully responsible for all transactions executed under the delegated authority.

Entities Affected

All University Employees.

Procedures

I. General Contract Procedures

- All University Contracts must be sent to the Office of University Counsel for review before obtaining signatures to enter into a contractual arrangement. University Counsel is the unit responsible for reviewing all Contracts for legal content and sufficiency in accordance with federal and state law. University Counsel is the final authority on interpretation of the law.
 - Should the proposed Contract require review by either Procurement or Information Technology (IT), these entities should review the Contract prior to, or in conjunction with, review by University Counsel.
- After its review, University Counsel will return Contracts to the originating department. All necessary deletions, insertions, or changes to the contractual terms and conditions in compliance with Kentucky law or University policy will be noted by University Counsel in the Contract returned to the originating department.
- The originating department is required to make the changes to the contract in accordance with University Counsel's instructions and communicate these changes to the third party contracting with the University.

- After all appropriate approvals have been received and documented and both parties are in mutual agreement to the terms, both parties must sign the Contract before any action called for in the Contract can occur. The originating department is responsible for ensuring that the Contract is fully executed (signed by both parties), and it is University practice that the University is the final signer of the contract.
- Pre-approval may be given for certain recurrent form Contracts (i.e. residence hall contracts, student loan agreements, and similar) at the discretion of University Counsel. Any such pre-approval will be conveyed by University Counsel to the originating department in writing, and any changes made thereafter to such form Contracts require University Counsel review.
- Agreements and Contracts involving the award of external funding to the University shall be processed through the Office of Sponsored Programs in accordance with Academic Regulation 4.4.7 and signed by the University's authorized official as designated by the President.
- Agreements concerning personnel or facilities related to programs including Minors shall be governed by University Policy 9.3.5 and signed by the University authorized official as designated by the President.

II. Procurement Procedures

- General Purchasing includes the approval and processing of all purchase requisitions submitted by University departments.
 - All agreements and Contracts involving procurement shall be requisitioned through the Purchasing Division and comply with KRS 45A (Model Procurement Code).
 - University departments can procure goods/services by using one of the following means:
 - JAGGAER eProcurement System or
 - EKU Procurement Credit Card (restrictions apply). The originating department should contact the Department of University Procurement for further guidance and assistance regarding restrictions currently on the use of such credit cards.
- **Purchasing Methods:**
 - EKU abides by the Commonwealth of Kentucky's Model Procurement Code (KRS 45A) and by the University and federal directives, regulations, and policies related to the procurement of goods and services for the University.
 - Per KRS 45A.075, Contracts will be awarded using one of the following methods:
 - Competitive Sealed Bidding, pursuant to KRS 45A.080;

- Competitive Negotiation, pursuant to KRS 45A.077, 45A.085, 45A.090, or 45A.180;
- Noncompetitive Negotiation, pursuant to KRS 45A.095; or,
- Small purchase procedures, pursuant to KRS 45A.100.
- The Department of University Procurement acts as the “purchasing officer,” as defined in KRS 45A.030(26), and, accordingly, has the authority to make a determination in writing as to what procurement method will be used. The Department of University Procurement should be contacted by the originating department early in the purchasing process to advise on the appropriate purchasing method and other necessary steps.

Purchasing Requirements for Goods:

- Purchasing goods totaling less than \$40,000 requires quotations provided in writing from potential vendors as follows:
 - Purchases totaling less than \$5,000 require at least one (1) quote.
 - Purchases totaling between \$5,000-\$19,999 require at least two (2) quotes.
 - Purchases totaling between \$20,000-\$39,999 require at least three (3) quotes.
- Purchases totaling \$40,000 or more will require a formal bid or Request for Proposals (RFP) process. Bids will be used to select the vendor that provides the best value for the University pursuant to KRS 45A, and RFPs will be used when factors other than price are considered in selecting a vendor. The originating department should contact the Department of University Procurement for further guidance and assistance.

Purchasing Requirements for Services:

- Purchasing services totaling \$9,999 or less requires at least one (1) quotation provided in writing from potential vendors.
- Originating departments purchasing services that total \$10,000 or more should contact the Department of University Procurement for further guidance and assistance. Generally:
 - For services not requiring a Personal Services Contract (PSC), three (3) quotes are required. Quotes must be provided in writing from potential vendors.
 - Services that require a PSC, as determined by the Department of University Procurement in consultation with University Counsel, will require an RFP to be issued from the Department of University Procurement. The originating department should contact the

Department of University Procurement for further guidance and assistance.

- Originating departments should send copies of quotes obtained to the Department of University Procurement. The Department of University Procurement acts as the “purchasing officer,” as defined in KRS 45A.030(26), and, accordingly, has the authority to process a bid/RFP when it is in the best interest of the University.

Originating departments should contact the Department of University Procurement when:

- A purchase or project expected to total \$40,000 or more;
- Procuring services expected to total \$10,000 or more;
- Unsure about the total cost of goods/services;
- Making multi-year purchases; and,
- Questions regarding purchasing procedures exist.

III. Software Contracts

In addition to review by the Department of University Procurement and University Counsel, software purchases are required to be reviewed by EKU’s Information Technology, who is responsible for ensuring that software purchased and used by the University can be safely integrated into EKU’s existing networks and systems as well as for ensuring such purchases are necessary and not duplicative.

As with all other Contracts, University Counsel reviews software Contracts to ensure legal compliance; however, software Contracts are frequently presented as non-negotiable by software vendors and may contain terms and conditions that are legally problematic for governmental entities like the University. Objectionable provisions commonly found in these types of agreements include but are not limited to arbitration clauses, choice of law and forum provisions, limitations of liability, and indemnification language as well as other provisions that clearly conflict with Kentucky law. Vendors using “Click-Through” Contracts are hereby on notice that the University will not be bound to any Contract term or condition that conflicts with Kentucky law, including but not limited to KRS 45A, this Regulation, or any other university policy.

Nothing herein is intended to limit the ability of the Department of University Procurement, University Counsel, and EKU’s Information Technology to approve purchasing software and/or accepting any “Click-Through” Contract for software that is reasonably necessary for a legitimate University function when no available substitute can reasonably be obtained under an acceptable agreement.

IV. Signatory Authority

Generally, no person is authorized to sign/approve a Contract unless the authority to do so has been formally assigned either according to this Regulation or through delegation in writing. The President has delegated specific authority for approving Contracts for certain services and activities to University administrative officers, including the Director of Procurement, Provost, Vice Presidents, University Counsel, Associate Vice Presidents, Deans and the Athletics Director, who are authorized within their area of responsibility to make and sign certain contracts.

While those with signatory authority may delegate such authority in writing, the accountability associated with signing/approving Contracts cannot be similarly delegated. Accordingly, signatory authority should only be delegated after careful consideration and with appropriate instruction to the receiving party. The delegator is responsible for the supervision of employees to whom they have delegated authority and, as such, retains full accountability for the transactions that individuals approve on a signatory authority's behalf. Sub-delegations are discouraged but, where necessary, may be made as warranted for the effective and efficient operations of the areas of responsibilities; however, in no event should the use of sub-delegations be excessive and result in an unfettered proliferation of University personnel with signatory authority. This is another area in which those with signatory authority are expected to exercise their discretion responsibly.

Signatory authority for Procurement Contracts for any good or service, regardless of dollar amount, resides with the Director of Procurement, University Controller, Senior Vice President for Finance and Administration, and/or the President.

V. Records Retention

The Department of University Procurement shall maintain signed purchasing Contracts. A copy of the signed final Contract must be sent to the Office of University Counsel as well. All other signed Contracts shall be retained by the originating department responsible for signing the agreement, and a copy of the Contract should be sent to University Counsel.

The Contract must be kept on file for at least the period of the contract plus five (5) years, unless the University's record retention schedule dictates a shorter or longer retention period. The record retention schedule can be found online at records.eku.edu.

Definitions

- **Click-Through Contract:** May also be referred to as “click wrap,” “click and accept,” or “web wrap” and requires a prospective licensee to click an “accept” button (or equivalent) on a web page before software can be purchased or licensed or used. For purposes of this Regulation, this type of Contract also includes any

shrink wrap agreement that accompanies packaged software as well as any other form agreement to purchase, license, or use software that the vendor will not amend to eliminate a conflict with Kentucky law, this Regulation, or any other University policy.

- **Contract:** For the purposes of this Regulation, a “contract” is any agreement between two or more persons, one of which is the University or any of its units, that creates a legally binding obligation to do or not to do a particular thing. A contract may or may not involve the exchange of money. This definition does not include agreements between different units within the University.
- **Procurement:** Procurement means the purchasing, buying, renting, leasing, or otherwise obtaining of any supplies, services, or construction. It includes all functions that pertain to the procurement of any supply, service, or construction item, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- **Personal Services Contract:** A Personal Services Contract is an agreement whereby an individual, firm, partnership, or corporation is to perform certain services requiring professional skill or professional judgment for a specified period of time at a price agreed upon. It includes all price contracts for personal services between a governmental body or political subdivision of the Commonwealth and any other entity in any amount.
- **Signatory Authority:** For the purpose of this regulation, "signatory authority" is a formal delegation that allows University personnel to sign or otherwise enter into an agreement on behalf of the University.

Responsibilities

See “Procedures” section of this Regulation.

Violations of the Regulation

Contracts signed by employees that conflict with this Regulation in any way may be deemed void. Employees who deviate from the processes in this Regulation may be held personally liable for the financial and other obligations contained in the offending Contract and may be subject to disciplinary action under University Regulation 8.3.3, up to and including termination of employment.

Interpreting Authority

- KRS 45A
- KRS 164 and 164A
- Federal and Kentucky state law

Regulation Adoption Review and Approval

Regulation Issued

<u>Date</u>	<u>Entity</u>	<u>Action</u>
December 7, 2023	President	Approved