Office of
Contract Administration/
Contract Compliance

Contract Administration Training
Department Personnel

- **Kristen Gibson**  
  - Associate General Counsel/Executive Director
- **Anamaria Rubinstein-Palla**  
  - Sr. Assistant General Counsel
- **Tom Tracy**  
  - Assistant General Counsel
- **Mary Armintor**  
  - Executive Secretary
Organizational structure:

- Office of the Chancellor/President
  → Office of General Counsel
  → Contract Administration

Kristen Gibson
Associate General Counsel, Executive Director of Contract Administration

Anamaria Rubinstein-Palla
Sr. Assistant General Counsel

Tom Tracy
Assistant General Counsel

Mary Armintor
Executive Secretary
Overview of Our Responsibilities

- **Administer and Review** Contracts
  - answer contract questions
  - receive and process contracts (ensure all necessary paperwork is included)
  - review and modify contracts for legal compliance
  - route contracts for signature
- **Provide protection** to the University
  - Legal Compliance
    - Review contracts to ensure they are legally sufficient and compliant with University policies and state law
  - Proper Signature Authority
  - “Best Value” to the University
  - Maintain Contract Records
    - Both electronic and physical versions
- **Provide training** to facilitate compliance with laws and University policies
- Other business-related legal **advice** in structuring University transactions
Our Workload

• On average, our department processes approximately 1,200 to 1,500 contracts per year

• Breakdown:
  – approximately 112 contracts per month
  – approximately 5 contracts per work day

• These agreements vary in complexity from standard agreement forms to negotiated deals taking several months to complete

• This does not include the various non-contract functions we provide (compliance, advice, training, reporting, etc.)
Contract approval at the University involves two primary functions:

1. **Office of Contract Administration**
   - ensuring that the contract complies with University requirements (SAMs, MAPPPs, Board of Regent Policies, signature authority, etc.)

2. **Office of General Counsel/Contract Compliance**
   - ensuring that the contract is legally appropriate and compliant
Goals for our Department

• to help ensure University complies with applicable laws and policies
• to be an ally to our clients (the various departments)
  – help accomplish mutual UH goals; we’re all on the same team
• to be an educational resource
• to be timely (taking into consideration our dept. size)
• to be practical
  – how can we help make contract processes easier/more efficient?
• to be innovative
What is Considered a Contract?

- Contract
- Agreement
- Purchase Order
- Memorandum of Understanding
- Terms and Conditions
- Letter of Intent
- License
- Ticket
- …and more (e.g., letter, email, phone call)
Contract Process: Overview

1. Need for services
2. Choose a contractor
3. Choose a contract
4. Submit proper documents for approval
5. Execute the contract
6. Send one fully executed contract to Contract Administration
1. UH Department needs to obtain a good, service, license, etc. (expense); or

2. UH Department wishes to provide a service (revenue)

   – Either way, a contract is required for this to occur
   – Exceptions to requiring a contract for a good include commonly available goods, such as office supplies (you can use a purchase requisition) or when goods are acquired through Purchase Orders (refer to MAPP 04.04.01)
Contract Process (cont’d.)
Step Two: Choosing a Contractor

• **Procurement Method**
  – Informal phone bids, Request for Proposal, Request for Qualification, direct negotiation, etc.

• **Basis for Best Value** (factors to consider as set forth in SAM 03.A.05, section 7.1)
  – purchase price
  – reputation of the vendor and vendor’s goods/services
  – extent to which vendor’s goods/services meet University’s needs
  – University’s past relationship with vendor
  – impact on University to comply with laws and rules relating to Historically Underutilized Businesses (HUBs) and to the procurement of goods or services for person with disabilities
  – long term cost to University
  – any other relevant factor a private entity would use in selecting a vendor

• “Best value” must be determined prior to contract execution
Step Three: Choosing a Contract

Standard v. Nonstandard contracts

• Must decide between standard or nonstandard form
  – We prefer our standard forms because they provide appropriate protection to the University and they have already been approved for legal sufficiency (also, generally results in a shorter review period for Contract Admin.)

• University Standard Form
  – Found on our UH website at:

• Nonstandard Form
  – Any other form not previously designated as “standard”
  – A standard form used with substantive alterations
Written vs. Oral Contracts

• University policies require all contracts to be written
• Be careful what you write in emails or orally state to a vendor because it is possible to enter into contracts through these means of communication
• Do not rely on another party’s oral assurances that are inconsistent with the terms in the contract
Using Standard UH Contract Forms

- Why it’s important
- Our website (http://www.uh.edu/legal-affairs/contract-administration/index.php)
Using Standard UH Contract Forms (cont’d.)

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Important Contract Provisions

- **Statement of Services**
  - This is the essence of the contract. This is the good/service UH is purchasing or providing.
  - It should be as detailed as possible. If a dispute arises, a contract is only as good as what you can later prove to be the terms of the contract.
  - Does the agreement adequately set forth the deliverables expected from the vendor?
  - Do NOT assume the other party knows what is expected of them.
  - Attach a more detailed description if necessary (this will not make the contract nonstandard).

- **Payment Provisions**
  - Good example:
    - “This contract is not to exceed $10,000. Payments will be made according to detailed and specific invoices submitted by Contractor on a monthly basis. University will make payments within 31 days of receipt of such invoices.”
  - Bad examples:
    - “as invoiced”
    - “payment of $10,000”
Contract Process (cont’d.)
Step Four: Complete Proper Documents

• All contracts should go through your DBA. The DBA will submit the contracts to Contract Administration.
• DBA may submit the hard copies of the contract or the electronic version via email.
• If applicable, submit:
  – Recommendation for Award Form
  – Alternative Dispute Resolution Form
    • Nonstandard expense contracts
  – Any attachments, exhibits, external references
    • Must read the document
Contract Process (cont’d.)
Submitting Documents Electronically

- We encourage departments to submit documents electronically. It streamlines the process of our office.
- We prefer to receive Word versions of any non-standard contract, but we will work from PDF documents as well.
- Your DBA may email the contract file to contractadmin@uh.edu.
Contract Process (cont’d.)
What can depts. do to expedite the process?

• **Start early.** Large volumes of contracts are routed through Contract Administration. Allowing adequate time for a thorough review is extremely helpful.

• **Attach everything.** Ensure that all exhibits, appendices, addenda, and terms and conditions are all attached.

• **Complete Forms.** Ensure that the contract coversheet and other internal forms (e.g., Recommendation for Award form, if applicable) are filled out completely.

• **Review from business standpoint.** Ensure that the contract has been reviewed/approved from a business standpoint by the applicable business personnel. Please provide a memo to our department with any business terms you are concerned with or would like changed.
Contract Process (cont’d.)

Step Five: Execute

- We prefer the other party sign the contract first
- Confirm contract has proper UH signature authority and is signed by both parties before services begin
- Confirm all modifications to the contract have been initialed by both sides
- Please make sure Contract Administration is given a fully executed contract
Signature Authority

• Who can bind the University contractually?
  – Only certain individuals have authority to sign University contracts

• Potential personal liability for persons signing a University contract without having appropriate signature authority.

• See:
  – Policies from Board of Regents, UH and UH System (including SAMs, MAPPs, etc.)
  – Chancellor/President Delegation
Signature Authority (cont’d.)

- http://www.uh.edu/president/about/delegations/index.php
Signature Authority (cont’d.)

- Chancellor delegates authority to principal officers based on her website page
- Principal officers may further delegate their authority to other individuals at the University through delegation memos that can be found on our website
- These delegation memos must be sent to our office so that we can update our files accordingly
Contract Amendments

• Once a contract has been fully executed by both parties, the only way a department should change the terms in the contract is by a written amendment

• Amendment Process
  – Coversheet, contract, etc. through same process
  – Submit one copy of the original contract and any previous amendments. We need to know exactly what is being amended.
  – Submit one contract coversheet
    • put the total contract amount on the coversheet (i.e., the amount of the original contract plus all amendments)
  – Execute by the same signatories as the original agreement unless higher signature authority is required
Timeframe for Submitting Agreements to Contract Administration

<table>
<thead>
<tr>
<th>Agreement Type:</th>
<th>Advance days in which agmt. should be submitted:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard contracts</td>
<td>At least 10 business days</td>
</tr>
<tr>
<td>Non-standard contracts</td>
<td>At least 15 business days</td>
</tr>
<tr>
<td>Consulting contracts</td>
<td>At least 30 business days</td>
</tr>
<tr>
<td>Contracts requiring Chancellor/President signature</td>
<td>Add an additional 7-10 business days to above timeframes</td>
</tr>
<tr>
<td>Contracts requiring Board of Regents approval</td>
<td>At least 60 calendar days</td>
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</tbody>
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* Special rules apply for certain agreement types (such as consulting agreements, leases, etc.).
Business decisions –
- Contract Administration is not responsible for determining whether each contract encompasses a “good” business decision
- the department should carefully **read and understand** the contract obligations
- the department official signing the contract is accountable for its subject matter and business terms
- see contract Cover Sheet, which states:
  - “I have read this contract entirely. I am satisfied with its description of the goods and services to be provided to the University (including, for example, warranties, delivery terms, acceptance period, and maintenance terms). **I am also satisfied with the description of the University’s obligations** (including, for example, scope of work, payment due dates, late charges, tax, charges, insurance, and confidentiality requirements) and all other provisions of this contract, **except as noted in any attached memorandum.**…… I acknowledge responsibility to ensure that all good faith efforts are employed in seeing that all terms, conditions, and responsibilities of the contract are met.”

Legal decisions –
- Contract Administration reviews contracts to ensure compliance with the law and University policy
“Consulting service” means the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Texas Government Code 2254.021(1)

The first step is determining whether a service is truly consulting. Please contact our office before making this determination.

Timing – start early (at least 30 days in advance)
Professional Services Agreements

- Professional services include services directly related to: Accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising; or professional nursing
- Contracts for these services should not be awarded based on competitive bids, but on qualifications and for a fair and reasonable price
- Report to LBB if services over $14,000
Revenue Agreements

- **Revenue agreements**
  - Currently, all revenue agreements need to be submitted to our office for tax reporting purposes
  - Standard revenue contracts under $25,000 can be executed and acted upon before being sent to Contract Administration
  - All other revenue agreements need to first be approved by Contract Administration before execution
Historically Underutilized Businesses (HUBS)

• Resources: Texas Gov’t Code Chapter 2161, MAPP 04.01.08, SAM 03.B.02; BOR Policy 55.04

• The University encourages all vendors to participate in procurement sought by the University

• In certain circumstances there may be specific procedures that should be followed when encouraging HUB participation
Standard Contract Addendum

• It is a two page document that can be attached to most non-standard agreements under $25,000. It must be signed by both parties along with the contract.

• It addresses many of the substantive legal topics our office looks to include in contracts.

• Then the contract can be treated as if it were a UH standard contract under $25,000. Follow same procedures.
Requests for Proposals

- **Requests for Proposals ("RFPs")**
  - Purchasing Department will handle a majority of these issues
  - Contract Administration strongly encourages competitive bidding in order to obtain best value.
  - Purchasing has a standard template to complete. When completing the template please provide a detailed statement of services and compensation section as possible. Otherwise, you may end up comparing apples to oranges. Our office can advise in this regard if necessary.
  - Please submit the RFP to Purchasing as early as possible because the process may take several weeks
  - Then a contract usually needs to be negotiated with the selected vendor
Leases

• All leases must be approved by Contract Administration

• When the University is the lessee there is a specific process involved in choosing space

• Certain terms and conditions must be included in the contract

• Contact Contract Administration as early in the process as possible

• Signature authority, state reporting requirements, etc.
Consequences of Not Following Procedures

- Potential personal liability - Any individual executing a contract on behalf of a state agency without authority to do so may be personally liable for damages flowing from repudiation of the contract. **Thomas, Richardson Runden & Co., Inc. v. State of Texas**

- Delayed turnaround time - Contracts submitted without proper documents will be held up until necessary paperwork is submitted

- Internal Audits by University
  - May reveal improper RFAs, improper signature authority, etc.

- External Audits
  - State Auditor’s Office will audit UH departments on a random basis and publish reports based on its findings
Important Takeaways

1 – carefully read and understand the obligations in the contract; does the contract reflect the intent of the department as to all provisions?

2 – contracts must be fully-executed before the parties perform any duties set forth in the contract

3 – contracts must be in writing and signed in accordance with UH signature authority

4 – when one exists, use UH standard contract forms (downloaded from the Contract Admin. website, not from your computer)
5 – follow contract processing timeframe requirements (avoid “emergencies”)

6 – unless exceptions apply, do not fully execute a contract until after the contract has been reviewed/approved by Contract Administration

7 – consulting agreements are subject to very specific processes and timeframes

8 – if you have any questions/concerns about contracts, first contact your Department Business Administrator, then Contract Administration

9 – the person originating the contract on behalf of UH is responsible for the contract from beginning to end
Office of
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713-743-5654
http://www.uh.edu/legal-affairs/contract-administration/index.php