



BOISE STATE UNIVERSITY

University Policy 6030

University Contracts

Effective Date

July 1978

Last Revision Date

April 05, 2024

Responsible Party

Chief Financial and Operating Officer and Vice President for Finance and Operations, (208) 426-1200

Office of the General Counsel, (208) 426-1203

Scope and Audience

This policy applies to all personnel involved in negotiating, executing, and administering University Contracts and to all University Contracts.

Additional Authority

- Idaho Constitution, Article VIII, Sections 1-2
 - Idaho Constitution Article VII, Section 10, 11 and 13
 - Idaho Code Title 29, Chapter 1
 - Idaho Code Title 59, Chapter 10
 - Idaho State Board of Education Policies, Sections V.I and J.III.3
 - All University policies relating to the subject matter of a University contract
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1. Policy Purpose

To define the general parameters through which a University Contract may be created, the general requirements for University review and approval of a University Contract, and the establishment of who in the University is authorized to Execute University Contracts.

2. Policy Statement

Any writing, document, agreement, or understanding between two or more parties that is intended to create or memorialize obligations or liabilities on the part of the University or any of its Units is a University Contract for purposes of this policy, regardless of the title of such writing, document, or agreement. All University Contracts must be approved by the Office of the General Counsel prior to executing or otherwise binding the University to such contract, unless expressly exempt from review by this Policy. University Contracts may only be Executed by an authorized University official with delegated signature authority as further provided herein. This policy applies regardless of financial commitment - 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).

3. Definitions

3.1 CFOO

The office of the Chief Financial and Operating Officer and Vice President for Finance and Operations of Boise State University.

3.2 Contract

Any legally enforceable agreement between two or more parties, whether written or oral.

3.3 Contract Value

For purposes of this policy, Contract Value is determined based on the cumulative total dollar value of the University Contract over the entire term. For example, assume the University hires Ms. Smith to consult on a project. The University agrees to pay Ms. Smith \$7,500 annually for certain consulting services and the Contract term starts August 1, 2016, and terminates July 31, 2019. The total value of the Contract would be \$7,500 times three (three years), or \$22,500. Revenue Contracts and expense Contracts are treated the same for purposes of this policy. Although the University strongly disfavors Contracts that auto-renew indefinitely, in the event a University Contract renews indefinitely, such Contracts are treated as having an “indeterminate” value and must in all cases be routed through OGC, with an estimated total spend, and Executed by the CFOO.

3.4 Execute or Sign

For purposes of this policy, the term “Execute” or “Sign,” as related to a University Contract, means to act with regard to a University Contract with the intent to legally bind the University. Actions may include but are not limited to signing a written document, by hand or electronically, submitting a purchase order, clicking online terms or accepting or purchasing a product subject to online terms, accepting products that contain “shrinkwrap” terms or engaging in any other process logically associated with a University Contract with the intent to Sign or symbolize acceptance of the record or in any manner which may bind the University or any of its Units to the University Contract.

3.5 OGC

Boise State University Office of the General Counsel.

3.6 Sponsor

An external entity that provides funding for a Sponsored Project, or as otherwise defined in University Policy 5030 (Office of Sponsored Programs).

3.7 Sponsored Project

A grant, contract, cooperative agreement, sub grant, subcontract, subrecipient agreement, master agreement, task order, consortium agreement, purchase order, or memorandum of understanding (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 specific 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. It may include provisions related to intellectual property and publication rights. The University’s Office of Sponsored Programs in the Division of Research and Economic Development is responsible for accepting and administering Sponsored Projects.

3.8 Unit

A department, office, division, college, or other component of the University.

3.9 University Contract

A Contract between two (2) 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. This excludes internal agreements between one or more Units of the University that do not involve

any external entity. A document is 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, “clickthrough,” “clickwrap,” or “shrinkwrap” agreement, end user license agreement, user agreement, services agreement, lease, purchase agreement, letter of understanding, “terms and conditions” referenced in a purchase order or quote, among other things.

4. Purpose of University Contracts

- a. All University Contracts must be consistent with the overall mission of the University and any Units of the University that may be implicated. Any Special Procedures required (see Section 7.4) must be completed and documented prior to execution.
- b. All University Contracts must comply with all applicable policies of Boise State University, the Idaho State Board of Education, the State of Idaho, as well as applicable state and federal laws and regulations.
- c. All University Contracts must be in furtherance of an authorized public purpose and cannot be used to promote the private or personal interests of an individual or private party. Any University funds expended or committed in a University Contract must serve a public purpose, and the University must receive adequate consideration. University Contracts may not subsidize or benefit a private entity or private individual without a corresponding benefit to the University’s mission.
- d. All University Contracts involving the award of a Sponsored Project shall be routed directly to the Office of Sponsored Programs. The Office of Sponsored Programs is the University Unit responsible for reviewing, negotiating, coordinating, and accepting University Contracts received from Sponsors (Sponsored Projects). The Office of Sponsored Programs will be the party responsible for administering such University Contracts and fulfilling applicable requirements of this Policy.
- e. All University Contracts involving expenditure of monies provided by a Sponsor, involving federal financial assistance, or otherwise involving or implementing a Sponsored Project shall be routed directly to Purchasing, utilizing the procedure set forth on the Purchasing website for Sponsored Project Purchases.

5. Form of University Contracts

Oral Contracts and informal agreements via email, verbal, or other means are prohibited. Although a Contract may be formed and binding on the University, even if not in a formal

executed writing, all University Contracts should be reduced to writing and conform to this policy.

6. Execution of University Contracts

6.1 Signature Authority Required

For the purpose of this policy, signature authority refers to the authority to Execute a Contract on behalf of the University. Only a University official with delegated signature authority may Execute a University Contract. See Section 8, “Delegation of Signature Authority.” Executing a University Contract without authority may render the entire agreement void, may subject the signer to personal liability for any obligations to the other party(ies), and may result in disciplinary action, up to and including termination. It is the signer’s obligation to ensure compliance with this policy prior to executing a University Contract.

6.2 Execution by Unit

If the Contract Value is within a Unit’s signature authority, the individual(s) within the Unit with the appropriate level of designated signature authority may Execute the University Contract. It is the responsibility of the Unit to ensure the original documents (or counterparts) have been Executed by all parties and that a record of the final, Executed copy is retained for the University’s records to the extent required by University Policy 1020 (Public Records).

6.3 Execution by CFOO

All University Contracts with a Contract Value outside a Unit’s signature authority must be Executed by the CFOO, or in the CFOO’s absence by their formal designee, and require legal approval prior to signature. The approved University Contract will be sent by OGC to the CFOO for signature. This includes University Contracts with an “indeterminate” Contract Value, including those that cannot be calculated or reasonably estimated based on the information provided in the University Contract.

6.4 Types of Signatures Accepted

Electronic signatures are preferred, although handwritten signatures may be required in certain circumstances. Electronic signatures must be completed utilizing a platform that provides authentication and must be permitted by the contract terms. Further information regarding accepted electronic signatures is available on the [OGC website](#) or by contacting OGC. For the purpose of this policy, any type of signature accepted hereunder shall be deemed and referred to herein as a “signature.”

7. Approval Requirements

Unless exempt in accordance with Section 7.3, all University Contracts must be submitted for review and approval by OGC prior to execution or other acceptance of the University Contract. Special Procedure Contracts (see Section 7.4) are subject to the additional procedures that must be satisfied prior to execution. Approval of the Idaho State Board of Education may be required in accordance with applicable Idaho State Board of Education policies, and may be requested by the CFOO. Approval by Idaho State Board of Education will be requested by the CFOO when required.

7.1 Contract Routing and OGC Approval

All University Contracts that are required to be approved by OGC must be submitted in accordance with the checklists and instructions posted on the [OGC website](#). Prior to submission, the Unit should review the University Contract to make sure the University Contract is consistent with the business transaction the Unit has agreed to (e.g., payment terms are as agreed, performance metrics, timing of performance, scope of work is accurate, etc.), this Policy, and that any Special Procedures required are completed or substantially in progress. Concerns may be addressed by the Unit prior to submission or noted to OGC for review and negotiation. The Contract or transaction should be approved by the appropriate Unit level manager (e.g., Dean, Associate Dean, Director, Assistant Director, Associate Director, Business Manager, Manager, Associate Manager, Assistant Manager, Senior Manager, VP, or Associate VP) before submission to OGC.

7.2 OGC Approval Requirements

The following types of University Contracts require approval by OGC regardless of Contract Value.

- a. All University Contracts not otherwise subject to an express exemption under this Policy.
- b. Affiliation agreements, collaborative agreements, community and institutional partnerships, internship agreements, and clinical placements that are not on a University-Approved Form.
- c. Excluding Sponsored Projects, Contracts involving intellectual property rights (e.g., inventions, copyrights, trademarks, trade secrets, etc.) of the University that are not on a University-Approved Form. See University Policy 1090 (Intellectual Property), for more information, including Contracts involving publication.
- d. Contracts for banking services, financial services, student debit cards, and collection of indebtedness.

- e. Contracts with terms or provisions regarding tuition waivers (See Idaho State Board of Education Policy, Section V.T. - Fee Waivers), discounts, or involving admission, matriculations of students, international programs, scholarships, or financial aid.
- f. Air charter Contracts.
- g. Athletic Contracts, including sponsorship agreements not reserved for third parties (i.e., Bronco Sports Properties) and broadcast rights agreements, but excluding game or “contest” agreements.
- h. Excluding Sponsored Projects, Contracts involving the exchange of personally identifiable information, education records, or other sensitive data or information.
- i. Real estate leases, license agreements, and other material contracts involving the transfer, exchange, sale or use of real property that are not on a University-Approved Form.
- j. Excluding Sponsored Projects, Contracts involving research/testing on human or animal subjects, or the purchase or use of controlled substances or any Contracts involving the purchase or use of genetic material.
- k. Any Contract involving unusually high risk or exposure for the University, contemplating a unique obligation on the part of the University, or involving important health or safety issues.
- l. Contracts on a University Approved Form with requested changes (excluding Sponsored Projects) or with a Contract Value that exceeds the Unit’s signature authority

7.3 Exemptions from OGC Approval

7.3.1 Contracts with Contract Value less than \$20,000

A Unit may review, negotiate, and process University Contracts with a dollar value less than \$20,000 without OGC review or approval, subject to the following conditions:

- Proposed Contract negotiators must attend a mandatory training and secure approval from the CFOO and OGC prior to negotiating University Contracts without legal approval. All University Contracts should be negotiated in accordance with the Contract Handbook provided by OGC and this policy.

- Negotiating authority does not grant the authority to Execute Contracts. In all cases, University Contracts may only be Executed by an individual with delegated signature authority and the signer is ultimately responsible for ensuring the University Contract complies with this policy, any other applicable University policies, state and federal laws and any applicable Sponsor requirements as well as any procurement requirements (obtaining quotes or bidding) and any other Special Procedures required based on the Contract type

7.3.2 Contracts Using University-Approved Forms

The following University-Approved Forms do not require legal review if (a) no changes have been made to the form other than filling in blanks such as dollar amounts, term, and details regarding the operational arrangements of the parties and (b) the Contract Value (throughout the entire term of the Contract) is within a Unit's signature authority. If a University-Approved Form is available, the approved form should be used instead of a vendor or third-party form. The following are considered Approved University Forms:

- Contract for Services, available through the [OGC website](#).
- Local Engagement Agreement, available through the [OGC website](#).
- Other templates that may be listed and available through the [OGC website](#), subject to any usage restrictions placed on their use and provided on the [OGC website](#).
- Templates drafted by OGC and approved for a Unit's use in particular circumstances (e.g., Affiliation Agreements, Facility Use Agreements). Such forms may only be used by the Unit for which they are approved and for the purposes for which they are approved. Unit Templates must be reviewed by OGC every five (5) years.

7.3.3 Additional Unit-level Exemptions from Legal Review

On request by a Unit, OGC may grant additional exemptions from legal review (for example, hotel Contracts or bus charter Contracts). Such exemptions will be granted at the discretion of OGC on a case-by-case basis, subject to approval of the CFOO, and documented by the CFOO and OGC in a memorandum outlining the exemption.

7.4 Special Procedure Contracts

Certain types of University Contracts are subject to additional University procedures or approvals regardless of Contract Value. These University Contracts must comply with the special procedures identified on the [OGC website](#) under "Special Procedure Contracts" prior to execution.

8. Delegation of Signature Authority

8.1 Overview

This section defines the proper delegation of authority for University officials 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 that appropriate fiscal and management controls are in place for the benefit of the entire University.

8.2 Idaho State Board of Education Assignment of Authority

The University has a centralized system of signature authority. Idaho State Board of Education Policy, Section V. Subsection VI. grants to the President, as chief executive officer of the University, the authority to conduct and engage in business transactions for the institution and grants to the President the ability to delegate such authority for business transactions, Contracts and procurements in accordance with University policies. The President hereby delegates to the CFOO, as Bursar, the authority for business transactions, Contracts and procurements, including the authority to enter into and Sign any University Contract relating to such transactions, and to further delegate this signature authority to University Officials, as provided in Section 8.3. The Bursar is responsible for appropriate reporting of Contracts to the President and the Idaho State Board of Education.

8.3 CFOO Delegation

University Officials cannot Execute or otherwise bind the University to University Contracts, regardless of Contract Value, without the express written approval of the CFOO. The CFOO may authorize limited delegation of signature authority to University officials (e.g., Deans, Provost, Vice Presidents, Executive Directors, and Director and others) deemed to have the requisite knowledge, judgment and operational need to exercise such authority by the CFOO. All delegations of signatory authority must be in a writing Executed by the CFOO. Authority may be revoked at any time for any reason, in the sole discretion of the CFOO.

8.4 Authority to Positions

University officials may not obligate Unit facilities, programs, or services over which they do not have authority. All delegations shall be based on an individual's position within the University at the time of the delegation. The authority associated with an appointment may not be exercised by an individual not currently holding the delegated position prior to or subsequent to the effective dates of employment and/or appointment. Upon departure or separation of any individual from a position with signature authority, that person's authority shall be deemed to be automatically revoked effectively immediately upon such separation or departure from the stated position.

8.5 Delegate Responsibility

The person to whom authority is delegated has the responsibility to ensure commitment and adherence to Idaho State Board of Education and University policies, as well as programmatic and/or University objectives or requirements; verify the availability of funds for anticipated budgetary commitments; obtain legal and/or risk management review where required; monitor the Contract development process to facilitate prompt Contract resolution; secure all necessary signatures; and oversee proper performance of all Contract commitments. Delegates must complete signature authority training upon appointment and every three (3) years thereafter.

8.6 Unauthorized Commitments or Agreements

Individuals do not have the authority to Execute or otherwise bind the University to University Contracts unless there is a valid delegation of authority from the CFOO. Any University Contract Executed without properly delegated authority is voidable by the University. If you are a student or employee or are otherwise associated with the University and Execute a University Contract without authority, you may be held personally responsible for the Contract; you may face legal actions against you individually; and, you may be subject to the full range of disciplinary actions by the University, up to and including termination of employment.

9. Execution and Approval of University Contracts

Upon completion of legal review, OGC will notify the Unit and provide additional guidance regarding execution of the Contract. The approved University Contract and Routing Form will be returned to the requesting Unit or forwarded for signature to the CFOO, or the appropriate University official. The Unit is ultimately responsible for carrying out the terms of the University Contract and monitoring compliance with the University Contract after execution.

9.1 Execution by Unit

If the total Contract Value is within a Unit's signature authority, the individual(s) within the Unit with the appropriate level of designated signature authority may Execute the Contract. It is the responsibility of the Unit to ensure the original documents (or counterparts that contain facsimile signatures or scanned PDF copies of original signatures) have been Executed by all parties and that a record of the final, Executed copy is retained for the University's records, in accordance with the University Policy 1020 (Public Records).

9.2 Execution by CFO or Applicable University Official

If the Contract Value is above a Department's signature authority, the Contract will be signed by the CFOO, or in the CFOO's absence, by their formal designee. Contracts with an indeterminate or variable amount can only be signed by the CFOO or their formal designee.

This includes Contracts that cannot be calculated based on the information provided in the Contract and may be based on a percentage or variable amount. For example, if the University paid Ms. Smith \$150 per hour for the term of her Contract, that would be considered indeterminate because the final Contract Value is unknown.

9.3 Approval by Idaho State Board of Education

If the Contract Value is between \$1,000,000 and \$2,000,000, approval of the Idaho State Board of Education Executive Director is required prior to signature. If the Contract Value is \$2,000,000 or more, approval by Idaho State Board of Education board members is required prior to signature (approval by the full board occurs during its bi-monthly meetings). Notwithstanding the foregoing, certain Division of Research and Economic Development personnel can Sign University Contracts for Sponsored Projects for unlimited amounts. Idaho State Board of Education approval will be requested by the CFOO. Additional Idaho State Board of Education approval requirements may apply depending on Contract type.

10. Legal Considerations: University Contracts Terms Requiring Special Consideration

Certain University Contract provisions are prohibited by State law (“Prohibited Provisions”). Entering into any Contract with Prohibited Provisions may render the Contract void, may subject the signer to personal civil and/or criminal liability, and may result in disciplinary action, up to and including termination. There are additional University Contract provisions that are discouraged and permitted only in limited circumstances because the provisions are discouraged by State or University policy and/or subject the University to unforeseen costs and risks (“Non-preferred Provisions”). Conversely, there are certain University Contract provisions that, with very few exceptions, should be included in every Contract the University enters into (“Preferred Provisions”) because the provisions are necessitated by laws or policies applicable to the University. Please consult OGC for additional information on such provisions.

10.1 Prohibited Provisions

The University does not have authority to bind the University or the State of Idaho to any of the following terms. If a University Contract contains a Prohibited Provision, the term, and in some instances, the entire Contract, will be void pursuant to Section 67-9213, Idaho Code.

10.2 Terms Incurring Liability in Excess of Appropriation/Indemnification

The University cannot incur any indebtedness or liability beyond the term of the current Fiscal Year. In particular, the University cannot agree to “indemnify” or “hold harmless” the other party to a University Contract. Unless specifically authorized by the Idaho Legislature, terms

requiring the University to indemnify another party are subject to the provisions of Idaho Code 59-1015, Idaho Code, and require an appropriation by the Idaho Legislature. Indemnification provisions not specifically authorized by the legislature or subject to appropriation are void pursuant to Section 67-0213, Idaho Code, and Section 59-1016, Idaho Code.

10.3 Sovereign Immunity and Insurance

Terms waiving the sovereign immunity of the University (State of Idaho) in any manner are prohibited. The State of Idaho, including the University, has waived its sovereign immunity for torts as described in the Idaho Tort Claims Act, Idaho Code title 6 chapter 9. The University is limited to insurance coverage provided through the State of Idaho, which is generally limited to \$500,000.

10.4 Required Certifications

Idaho Code Section 67-2346, Idaho Code Section 67-2359, and Title 18, Chapter 87, Idaho Code, each prohibit the University from entering into certain contractual agreements, and require certification from contracting parties in certain circumstances, including certifications relating to ownership of companies, certifications relating to boycotts of goods or services, and certifications relating to the provision of abortion services. In the event certifications are required but not obtained, criminal penalties may be imposed and the Contract may be void

11. Confidentiality

The University is subject to Idaho Public 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 circumstances where disclosure is required by law.

12. Non-preferred Provisions

12.1 Governing Law, Jurisdiction, and Venue outside Idaho

The University, as a state entity, is subject to Idaho law and cannot vary the legal provisions governing the University by Contract. The 11th amendment to the United States Constitution provides limitations on the jurisdiction of federal courts over claims against the State of Idaho. Idaho Code Section 29-110 provides that Contract terms prohibiting a party from enforcing its rights in Idaho courts is void. IDAPA 38.05.01.112, approved by the Idaho Legislature in 2015, provides that terms subjecting the State of Idaho to the jurisdiction of the courts of other states are void.

12.2 Arbitration

Idaho Code Section 29-110 provides that any term of a Contract subjecting a party to arbitration conducted outside the State of Idaho is void. The University typically does not agree to arbitrate disputes; mediation is a preferred method of seeking to resolve disputes without suit.

12.3 Waiver of Jury Trial

The University will not consent to a waiver of jury trial.

12.4 Contractual Limitation on Actions

Idaho Code Section 29-110 provides that any term limiting the time to enforce a party's rights under a contract to a time shorter than provided in Idaho law is void.

12.5 Limitations on Liability

As a public entity representing Idahoans, requests to limit the liability of a contractor are discouraged and may be authorized only in limited circumstances.

13. Preferred Provisions

There are certain provisions that should be included in every University Contract, including termination for fiscal necessity for any Contract with any University obligations or liabilities beyond the current Fiscal Year. Please contact OGC for additional information.

13.1 Termination for Fiscal Necessity

Idaho Constitution Article VII, Section 11 prohibits an expenditure in excess of a legislative appropriation. Idaho Code Section 59-1015 prohibits Idaho agencies and officers from entering into Contracts that create any expense or liability in excess of an appropriation. Idaho Code Section 59-1016 provides that any such Contract is void. IDAPA 38.05.01.112, approved by the Idaho Legislature in 2015, contains the same provisions. An appropriation can be reduced under Idaho law through "give backs" and "hold backs" issued by the executive branch. When the University enters into a Contract, it must contain the term allowing for termination for fiscal necessity to comply with these provisions. Variation of this term cannot be offered.

14. Additional Terms

Additional terms may be required based on the nature of the University Contract. For example, Sponsored Projects and Contracts issued under Sponsored projects generally have required "flow-down" terms that must be incorporated. Please contact OGC for further guidance or refer

to the “Boise State University Supplemental Terms”; for Sponsored Projects, please contact OSP16.

15. Forms

Contract Routing Form

<https://www.boisestate.edu/generalcounsel/>

16. Related Information

Office of General Counsel Website

https://www.boisestate.edu/generalcounsel/contract-administration/independent-contractors/OGC_website

Signature Requirements on University Contracts

<https://www.boisestate.edu/generalcounsel/contract-administration/independent-contractors/>

Revision History

February 1999; October 2007; September 2013; February 2017; March 2020; April 05, 2024