The content of this presentation was the most up-to-date information available at the revision date. However, policies, procedures and guidelines may be updated during an academic year. Please refer to the University Policy website or the most current version of these policies, procedures and guidelines.

Revised 5/31/2016
UWG Contract Compliance 101

Learning Objectives

- Understand the components of a contract
- Identify prohibited language in a contract’s terms and conditions
- Understand who can sign contracts that bind the institution
- Understand the role of the department when executing contracts
- Understand the process for submitting a contract to Purchasing Services
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What is a contract?

- An agreement between two or more competent parties in which an offer is made and accepted, and each party benefits. The agreement can be formal, informal, written, oral or just plain understood. Some contracts are required to be in writing in order to be enforced.

- An agreement between two or more parties which creates obligations to do or not do the specific things that are the subject of that agreement.

- This presentation does not apply to Statewide Contracts which have been reviewed and negotiated by the State of Georgia.
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MANDATORY STATEWIDE CONTRACTS

EXISTING STATE ENTITY CONTRACTS

STATUTORY SOURCES OF SUPPLY DESIGNATED AS MANDATORY CHOICE OF EITHER:

- Products certified as Mandatory by the State Use Council, which includes some products provided by the Georgia Enterprises for Products and Services ("GEPS")
- Georgia Correctional Industries Administration products which have been certified as Mandatory by the Commissioner of the Department of Corrections ("GCI")

CHOICE OF ANY OF THE FOLLOWING:

- GEPS Preferred Products (i.e. those items not certified as mandatory)
- SPD Pre-Approved Piggyback Purchases*
- SPD Pre-Approved Consortia and Cooperative Purchasing*
- Open Market Purchases*
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Who can sign contracts?

- Ability to sign contracts is restricted to a limited number of University individuals.
- Department Head **cannot** sign contracts.
- If you sign a contract you can be held personally liable.
- Approval matrix is available on the Controller’s website.
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• Contract Costs
  ➢ Any contract totaling $25,000 or more must be competitively bid.
  ➢ Must receive 3 quotes for items between $5,000 - $24,999
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Contracts are also referred to as:
   a) Terms and Conditions  
   b) Agreements
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• Contracts can be one (1) page or multiple pages.
• Contracts can be on-line versions like software agreements (i.e. when you click “I Accept.”)
• You should not agree to the terms of new on-line agreements (i.e. for software or IT related purchases) until they are reviewed and approved by ITS and Purchasing
• Look out for Master Service Agreements or contracts that references some other “agreement”
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- Verbal contracts can also bind the University
- Do not enter into any verbal contract with a vendor
- For example, don’t allow the vendor to provide a good or service with the understanding that he/she will “send the contract later”
- By accepting the good or service you have accepted the terms of the contract and obligated the University.
Why is it important for department budget managers to know how to execute a proper contact?

- The department is procuring the services and have direct contact with the vendor first
- The Department usually sees the paperwork before purchasing does
- The obligations of the contract must be agreeable to both parties (Vendor and the University...not the department)
- Departments should carefully read the contract to ensure they agree to certain terms and conditions that are outside the scope of Purchasing (i.e. food, lodging or other requirements issued by vendor)
- Reduce the time involved in working out contract issues with the vendor
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• A contract is a legal and binding instrument governing the responsibilities of both parties.
• The State of Georgia’s contract law is very specific.
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State of Georgia Contract Law

• What are the major components of a contract?
  ➢ Who are the parties?
  ➢ What is the length of the contract i.e., “Term”?
  ➢ How much will it cost?
  ➢ What are the obligations of both parties?
  ➢ Governing law?
  ➢ Who signs?
Who are the parties?

Typically there are only 2 parties.

- The University is stipulated as “The Board of Regents on and behalf of the University of West Georgia”
- The University represents the Board of Regents and, as such, the State of Georgia.
- The requesting department IS NOT a party in the contract.
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What is the length of the contract e.g. “Term”?

➢ The Initial Term of any contract cannot exceed 12 months. It can be less but not more.
➢ The contract can be renewed for up to 4 one-year renewal periods.
➢ The contract should follow the fiscal year July 1st – June 30th.
➢ However, a contract can start at a later date and cross fiscal years.
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Prohibited Legal Language:

➢ There are several types of prohibited legal language that will prevent the University from being able to sign a contract

➢ If vendor won’t remove the prohibited legal language, the University’s Legal Council must agree to allow an exception or the purchase can not be approved.
Prohibited Legal Language

- Language that extends the contract beyond 12 months. Also known as multi-year contracts.
- The vendor can never force us to renew. University must decide whether or not we want to renew.
- Example of Prohibited Language: “This agreement will remain in effect for a period of two years beginning June 1, 2010.”
- Correct Language: The term of this contract is July 1, 2010 to June 30, 2011. It may be renewed for four (4) one-year renewal periods at the sole option of the University.
Prohibited Legal Language

- Language that stipulate "automatic renewals" of an agreement

- Example: Term. “This Master Agreement shall become effective upon the Effective Date and shall remain in effect during the Term as set forth in the Initial Statement of Work or any subsequent Statement(s) of Work.

- Agreement continues until written notice of termination by either Party at the conclusion of an existing “Statement of Work(s)” as described below.
Is this Language OK?

**Service Term:** Unless otherwise specified on the Order Form, the “Effective Date” of this Agreement is the date it is accepted by an authorized representative of Customer and shall continue for period of twelve (12) months (the “Initial Term”). Prior to the end of the Initial Term and each additional term, vendor shall notify Customer of its intent to renew this Agreement for a successive one (1) year additional term at least ninety (90) days prior to the scheduled expiration date of the then current term. Such notification shall include the current pricing charged by vendor, with applicable adjustment for overages or shortages incurred during the prior term, if applicable. Customer shall have sixty (60) days from date of such notice to reject the proposed renewal and terminate this Agreement at the end of the then current term, or to accept the renewal of the Agreement as set forth in the notice. Customer’s failure to respond to the vendor notice within said 60-day period shall be deemed to be an acceptance of the renewal of this agreement.
Is this Language OK? - NO

**Service Term:** Unless otherwise specified on the Order Form, the “Effective Date” of this Agreement is the date it is accepted by an authorized representative of Customer and shall continue for period of twelve (12) months (the “Initial Term”). Prior to the end of the Initial Term and each additional term, vendor shall notify Customer of its intent to renew this Agreement for a successive one (1) year additional term at least ninety (90) days prior to the scheduled expiration date of the then current term. Such notification shall include the current pricing charged by vendor, with applicable adjustment for overages or shortages incurred during the prior term, if applicable. Customer shall have sixty (60) days from date of such notice to reject the proposed renewal and terminate this Agreement at the end of the then current term, or to accept the renewal of the Agreement as set forth in the notice. Customer’s failure to respond to the vendor notice within said 60-day period shall be deemed to be an acceptance of the renewal of this agreement.
Prohibited Legal Language

Language that has “Hold Harmless and/or Indemnification” language

Example: Licensee shall indemnify and save harmless Licensor, its affiliates, and their respective officers, directors, employees and agents against all demands, claims, actions, liabilities, losses, costs, damages or expenses whatsoever (including reasonable attorneys’ fees) resulting from or arising out of the use of the vendor’s website or any portion thereof.

Found in almost all contracts
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Prohibited Legal Language

- Language that has "additional charge or fees" language.
  - Example: Licensee shall indemnify and save harmless Licensor, its affiliates, and their respective officers, directors, employees and agents against all demands, claims, actions, liabilities, losses, costs, damages or expenses whatsoever (including reasonable attorneys’ fees) resulting from or arising out of the use of the vendor’s website or any portion thereof.

- Language pertaining to taxes, late payment or surcharge fees are also prohibited.
Rational: Since UWG receives appropriations from the General Assembly, we cannot commit to fees that are unknown or may be additional to the amount agreed upon (i.e., interest, attorney fees, late payment fees).

Prohibited by state law...we can’t accept someone else’s legal fees.
Prohibited Legal Language

- Language that require the University to establish "credit" with the vendor.
- Rational: State law does not permit the state to extend credit to anyone.
Prohibited Legal Language

- Language that require the University to “increase insurance coverage” with the vendor.

- Rational: UWG is covered by the State Tort Claims Act, and cannot increase coverage or add anyone as an “additional insured” on the policy.
Prohibited Legal Language

- Language that require the University to agree to “Waivers of jurisdiction; arbitration; laws of other states”.

- Rational: The Attorney General represents UWG in litigation, therefore UWG cannot enter into terms that address the way disputes will be handled, such as 1) under laws of a state other than Georgia, 2) by arbitration, or 3) by waiving service of process.
What is the department’s role in contract compliance?

• Inform your vendor of potential legal language that is in violation of state law before you submit the contract to purchasing.

• Purchasing Services will review the entire contract and will contact the vendor for all required changes.
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Submitting your contract to Purchasing Services

• Submit your contract for review to the UWG Contracts Manager
  
  ➢ Terms & Conditions can sometimes be on the back of the contract

• Do not sign or have signed any contracts at this point.

• Submit all price information which is subject to procurement review to ensure compliance with state purchasing guidelines.

• All bid and sole source procedures must be adhered to.
What will Purchasing Services Do?

- Review Purchase Request for compliance with state purchasing guidelines
- Review contract for completeness
- Contact vendor for changes, if necessary
- Secure Signatures
- Process Contract
- If planning ahead, you can submit contract ahead of time for review prior to the purchase request being submitted.
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Examples of Contracts
• Atlanta Parent Magazine
• 7th Bar Entertainment
• Amusement Masters (Before revisions)
• Amusement Masters (After revision)
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Summary:

• Do not sign anything!
• Obtain electronic copy of contract if possible.
• Submit to Purchasing ASAP for review.
• No terms beyond one year or automatic renewals
• No hold harmless or indemnification language
• No additional charges or fees
• Can’t establish credit
• Can’t increase insurance coverage
• Can’t agree to laws of another state
• Plan ahead!!!
Questions?

Contact:
Purchasing Services
Contracts Manager
678-839-5075