



Overview of the Contract Review Process

Michael P. Huff, Chief University Counsel, UAH
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Introduction to the UAH Office of Counsel

- Mike Huff, Chief University Counsel
- Stephen Rogers, University Counsel
- Logan Matthews, University Counsel
- Caroline Aiello, Paralegal
- Nancy Loehr, Administrative Assistant



Introduction to the UAH Office of Counsel

- As UA System employees, we provide comprehensive legal services to the Board of Trustees, both directly and through assisting UAH and its affiliated entities with legal issues.
- Comprehensive defined: of large scope; covering or involving much; inclusive. (Dictionary.com)
- Day to day, our office reviews issues ranging from employment law, government contracts, intellectual property, free speech, and the list goes on.

PRACTICE AREAS

Athletics & Sports

- Athletics Compliance
- Athletics Operations
- Gender Equality
- Student Athlete Issues

Authorizations & Regulations

- Accreditation
- Health Care & Insurance
- Program Integrity & Gainful Employment

Campus Police, Safety & Crisis Management

- Cybersecurity
- Disaster Planning & Response
- Distressed & Suicidal Students
- Guns on Campus

Compliance & Risk Management

- Compliance Programs
- Risk Management

Constitutional Issues

- Equal Protection
- First Amendment & Free Speech
- Guns on Campus
- Political Activity

Discrimination, Accommodation & Diversity

- Affirmative Action
- Disability Discrimination
- Race, National Origin & Campus
- Sex & Sexual Orientation Discrimination

Ethics

- Corporate Responsibility
- Ethical Obligations of Higher Ed Lawyers

Faculty & Staff

- Academic Freedom
- Family & Medical Leave Act (FMLA)

Governance

- Corporate Responsibility
- Foundations & Affiliated Entities

Immigration & International Activities

- Employment
- Foreign Students
- International Campuses/Programs
- Study Abroad

Intellectual Property

- Copyright & Fair Use
- Patents
- Technology Transfer
- Trademark & Licensing

Investigations

- External Investigations
- Internal Investigations

Practice of Higher Education Law

- E-Discovery
- FOIA & Public Records
- Lawyers New to Higher Education

Real Property, Facilities & Construction

- Construction Projects & Contracts
- Environmental Health & Safety

Research

- Export Control
- Grants, Contracts & Sponsored Research
- Research Misconduct & Conflict of Interest
- Technology Transfer

Sexual Misconduct & Other Campus Violence

- Clergy Act
- Investigations
- Sexual Misconduct-Employment
- Title IX

Students

- FERPA
- Financial Aid
- Student Conduct
- Student Organizations

Tax

- Compensation & Benefits
- Endowments & Gifts
- Tax-exempt Funding
- Unrelated Business Income Tax

PRACTICE AREAS

WEEK OF MARCH 25, 2024

Athletics Operations
Gender Equality
Student Athlete Issues

Authorizations & Regulations
Accreditation
Health Care & Insurance
Program Integrity & Gainful Employment

Disaster Planning & Response
Distressed & Suicidal Students
Guns on Campus

Compliance & Risk
Compliance
Risk Management

First Amendment & Free Speech
Guns on Campus
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AFFIRMATIVE ACTION
Disability Discrimination
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Ethics
Corporate Responsibility
Ethical Obligations of Higher Ed Lawyers

Faculty & Staff
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Construction Projects
Environmental Health & Safety

Export Control
Grants, Contracts & Sponsored Research
Research Misconduct & Conflict of Interest
Technology Transfer

Clergy Act
Investigations
Sexual Misconduct-Employment
Title IX

FERPA
Financial Aid
Student Conduct
Student Organizations

Compensation & Benefits
Endowments & Gifts
Tax-exempt Funding
Unrelated Business Income Tax



Introduction to the UAH Office of Counsel

- In addition to those areas, OOC routinely handles contract review on a day-to-day basis.
- Annually, OOC receives and reviews approximately 900 contracts.
- Provide legal review, not a review and approval of business terms.
- Assist with an analysis of the legal risks of moving forward when counter-parties will not alter terms.



AGENDA

- Why does OOC require an Intake Form?
- What purpose does my contract serve?
- Where does my contract go?
- What do I submit with my contract?
- Detailed Review of the OOC Contract Intake Form
- Additional Issues



Why does OOC require an Intake Form?

- Prior to 2020, the contract review process had no formal intake procedures and consisted of individuals from all over campus forwarding contracts and other legal issues to OOC.
- OOC would receive varying levels of documentation, and follow-up communications took up most of the review time. Very difficult.
- Current procedures ensure that the contracting process is both efficient and accurate, and the CIF assists with achieving those goals.



Why does OOC require an Intake Form?

- Not unique: After reviewing the contract procedures at a number of comparable institutions (15-20), the Contract Intake Form was created to address several issues that we will discuss today. Excerpt from UA:

Departmental Role in the Contract Process

Before submitting a contract to Contract Management the requester should:

- Obtain the contract in an editable file format – *Word documents are preferred.*
Please note that the University will not sign a contract in a vendor's e-signature system. If provided in that manner, please request in another format outside of their system.
- Ensure all referenced and controlling documents are attached for review. This includes, but is not limited to, terms and conditions, attachments, order forms, appendices, additional terms referenced within a document by hyperlink, etc.
- Seek any necessary approvals that may be required (see "Thresholds and Other Things to Know" section above for examples)



Input all business terms of the contract including, but not limited to, term dates, pricing, contact information, etc., with the exception of signing. The legal name of the University is "The Board of Trustees of The University of Alabama."

Contract Submittal

- Submit contract to Contract Management using the on the [Contract Submittal](#) page. Be sure to include with your submittal:
 1. Detailed explanation of the purpose of the contract
 2. For software/IT related contracts, include a completed [Software-IT Information Form](#)
 3. Confirmation of any required approvals
 4. Vendor contact information

What happens to my contract after submittal?



First Question: What purpose does my contract serve?

- First, ask yourself, “What am I trying to accomplish?”
- Are you purchasing goods or services?
- Are you entering into an agreement that does not involve acquiring something, such as an MOU, a gift agreement, or an affiliation agreement?
- The answer to this question is going to determine where your contract goes, and who can help you with any questions.



Where does my contract go?

- If you are acquiring something, even at no cost, your contract is going to route to Business and Procurement Services.

Step 4: Submit the contract for review as to legal form. All contracts for the procurement of goods and services, even where no payment is required, should be submitted along with this completed form to UAH's Business and Procurement Services (<https://www.uah.edu/business-services/faculty-staff/procurement-services/who-to-contact>) in accordance with their procedures. If your contract is not for the procurement of goods or services, follow the above steps and submit your contract, related documents, and this form to: Nancy Loehr, nloehr@uasystem.edu. Examples of agreements that do not involve the procurement of goods and services include affiliation agreements, gift agreements, or MOUs. Construction contracts managed by the UAH Campus Architect may also be routed directly to the UAH Office of Counsel.



What do I submit?

- First, if you are unfamiliar with the process, reach out to Business and Procurement Services and ask for help.
- There are a number of issues that must be taken into account before you reach a final contract, including the Alabama bid law, independent contractor issues, UA Board rules, etc.
- Submissions to Business and Procurement services will involve a differing set of documents than a contract that comes directly to OOC.



The UAH OOC Contract Intake Form

- The UAH OOC requires a completed Contract Intake Form, including all supporting documentation, before it can review a contract. The CIF is an OOC form prepared to help us gather preliminary information.



OFFICE OF COUNSEL CONTRACT INTAKE FORM

CONTAINS REQUEST FOR LEGAL ADVICE / ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

This form must be completed and submitted with all contracts for review. **Any contract submitted without this form completed in its entirety will be returned.**

I. REQUESTING UNIVERSITY DEPARTMENT/OFFICE

1. Department/Office Name: _____
2. Contact person: _____
3. Telephone and email: _____



The UAH OOC Contract Intake Form

- Deadline: If your contract needs to be expedited, you should let Business and Procurement Services know that on the form.
- Please provide the reason to prioritize. Remember, you are asking us to move you in line above all else.

II. DEADLINE

1. **Submission Date:** _____ Is there an impending deadline? If yes, dated needed: _____

Please allow at least 3 weeks from the date OOC receives the request. If you need your matter reviewed sooner, please indicate and state your reason below for the expedited need. Notations like "Needed ASAP," "Expedite," or "RUSH" are not sufficient as they do not provide OOC with enough information to justify prioritizing your matter over other matters. During times of increased workload for the OOC, review may take longer than 3 weeks.

Reason for request to expedite: _____



The UAH OOC Contract Intake Form

- Please also understand that, if your contract is routing through Business and Procurement Services, the review time by OOC will run from the date OOC receives the document from BPS.
- It will likely take some time from the stated “submission date” to route through BPS.

II. DEADLINE

1. Submission Date: _____ Is there an impending deadline? If yes, dated needed: _____

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Reason for request to expedite: _____



The UAH OOC Contract Intake Form

- Please submit your contracts as early as possible.
- A common issue that presents significant risk is performance of services before a contract is finalized.
- Example: OOC receives a contract for review on Feb. 13, 2024. The stated Scope of Work indicates that services will be provided on February 5th, 7th, 12th, and 14th of 2024.

The problem is obvious – entering into the contract either after, or during, the performance of services does not adequately protect either party. Contracts allocate risk, and without one you are exposing UAH, and potentially yourself, to potential liability.



The UAH OOC Contract Intake Form

- Step 1: Read your contract.
- You are responsible for complying with the terms, and only you know if they are correct.
- The contract may point to other controlling documents that you need to collect for OOC review.

III. CONTRACT REVIEW PROCESS

Step 1: Read your contract. UAH departments are responsible for negotiating the business terms of their contract, reading the contract before submitting for review as to legal form, and ensuring that all terms are clear, accurate, and meet the department's needs. Basic business terms of a contract include: the duration of the contract, responsibilities, and obligations of each of the parties, insurance, warranties, not-to-exceed cost, and payment terms. Review by the OOC as to legal form ensures that UAH contracts comply with applicable UAH procurement policies and applicable state and federal laws, but does not serve as review or approval of the underlying transaction. The OOC is always available as a resource to discuss and assist with any contracting questions or concerns.



The UAH OOC Contract Intake Form

- Step 1: Read your contract.
- Example: Assume you intended to enter into a \$2,000 contract with a term of three (3) years. In the contract presented by the counterparty, they mistakenly type \$20,000, and indicate a term of (2) years.
- Without you catching that, OOC has no way to know that those terms are inaccurate. Only you know your intent.

III. CONTRACT REVIEW PROCESS

Step 1: Read your contract. UAH departments are responsible for negotiating the business terms of their contract, reading the contract before submitting for review as to legal form, and ensuring that all terms are clear, accurate, and meet the department's needs. Basic business terms of a contract include: the duration of the contract, responsibilities, and obligations of each of the parties, insurance, warranties, not-to-exceed cost, and payment terms. Review by the OOC as to legal form ensures that UAH contracts comply with applicable UAH procurement policies and applicable state and federal laws, but does not serve as review or approval of the underlying transaction. The OOC is always available as a resource to discuss and assist with any contracting questions or concerns.



The UAH OOC Contract Intake Form

- Step 2: Ask the counterparty if changes are accepted to the T&Cs and, if so, in what form?
- Preferred method is our University Addendum. It is much easier to prepare, shortening review time.
- If redlined changes to their terms are required, please obtain a Word version.

Step 2: Ask the counterparty if changes are accepted to the terms and conditions and, if so, in what form they are accepted. Prior to initiating any review, the OOC must know whether or not a counterparty will accept proposed changes to the terms and conditions of a contract. If the counterparty states that it does accept suggested revisions, determine whether an addendum is permitted (a separate document that addresses the changes), or if the counterparty requires redlined changes to its actual contract documentation. If a redline is required, the contract must be submitted to the OOC in Microsoft Word format. **As indicated below, you must attach to this form proof of the counterparty's response to these questions.**



The UAH OOC Contract Intake Form

- **NOTE:** If you are utilizing a UAH form as your contract, such as the PSC, you do not need to ask the counter-party about changes.

Step 2: Ask the counterparty if changes are accepted to the terms and conditions and, if so, in what form they are accepted. Prior to initiating any review, the OOC must know whether or not a counterparty will accept proposed changes to the terms and conditions of a contract. If the counterparty states that it does accept suggested revisions, determine whether an addendum is permitted (a separate document that addresses the changes), or if the counterparty requires redlined changes to its actual contract documentation. If a redline is required, the contract must be submitted to the OOC in Microsoft Word format. **As indicated below, you must attach to this form proof of the counterparty's response to these questions.**



The UAH OOC Contract Intake Form

- **Step 3:** Complete the Contract Intake Form.
- **All** sections must be complete, and all supporting documentation provided before OOC can review the contract.

Step 3: Complete this Contract Intake Form. The faculty/staff member responsible for management of the contract should complete **all** sections of this form. If you have any questions about completing this form, please contact Nancy Loehr in the UAH Office of Counsel at nloehr@uasystem.edu with "Contract Intake Form Question" in the subject line.



The UAH OOC Contract Intake Form

- Contract Description: OOC needs details on the purpose of the contract – not just “purchase software,” for example.
- What are you actually doing with the software? There is a difference between designing missiles and performing accounting functions.

A. CONTRACT DESCRIPTION

1. Detailed Summary of Contract Purpose:

Vendor/Counterparty Name _____



The UAH OOC Contract Intake Form

- Supporting Documentation: Did the counterparty state in writing they would review proposed changes?
- OOC requires email backup documentation to support the answer given.
- Again, you do not have to ask the counterparty if you are using a UAH form. Just put “NA” in the blank.

2. In response to your inquiry in “Step 2” above, did the counterparty agree that it would review proposed revisions to the contract?

Yes No

Please provide backup documentation (copy of the email or otherwise) to substantiate your response to this question.



The UAH OOC Contract Intake Form

- If the counterparty states that they will review proposed changes, can those changes be presented by an addendum as opposed to a redline?
- OOC requires backup documentation to support the answer given.

3. If the answer to question 2 was "yes," did the counterparty indicate that changes by addendum would be accepted?

Yes No

Please provide backup documentation (copy of the email or otherwise) to substantiate your response to this question.



The UAH OOC Contract Intake Form

- If the counterparty states that redlines must be presented, did you obtain a Word version of the document?
- If not, did you convert the document to Word and review it for accuracy?

4. If the answer to question 3 was "no," did you obtain a Microsoft Word version of the contract to be redlined?

Yes No

If not, please attempt to convert the document to Word and edit the converted version to ensure its accuracy before submission for review.



The UAH OOC Contract Intake Form

- NOTE: We've provided a questionnaire that you can forward to a counterparty as a shortcut.

Contract Questions for Counterparty:

1. Will you consider changes or revisions to your contract?
2. If you will consider revisions, may we provide our proposed changes in an addendum to the contract? (If you require redlined revisions, please provide your contract in Word form.)
3. Please provide all terms and conditions that you contend are applicable to the contract, including but not limited to any terms and conditions that are expressly incorporated into the contract and maintained on your website.
4. Does your office have an existing contract with UAH, UA, or UAB on this same type of issue? Please provide a copy of that contract.



The UAH OOC Contract Intake Form

- OOC/UAH needs certain information to address specific risks, one of which is data access and security.
- These questions allow OOC to tailor the contract terms to these specific types of information.

5. Will Vendor at any time have access to any Personal Identifiable Information (PII), to include FERPA, HIPAA, and/or other protected personal information to include current and former students, employees, volunteers, vendors, contractors, etc.?

Yes No

o *If yes, please provide the nature of the information to be accessed, the format (electronic, hard copy, etc.), and the expected number of records to be included:*

o *If yes, will any of the information be transported off campus, either digitally, electronically, or in hardcopy format(s) or will any of the information be hosted in the cloud?* _____



The UAH OOC Contract Intake Form

- If your contract involves software, question 6 requires specific approvals before moving forward.
- Processing data, and interacting with the UAH network, are risky activities.

6. Does your submission include a contract for software, software as a service (SaaS, aka "cloud services"), IT systems (hardware and/or software), data processing services, point-of-sale systems/services, or any other product or service that either:

- provides vendor with direct or remote access/connectivity to the UAH IT network (directly, remotely, and/or via VPN) for any reason;
- provides vendor with access to UAH data in any form (electronic, hardcopy, or otherwise);
- provides vendor with direct or remote access to any UAH data system, whether such system resides on the UAH network or not;
- provides a system or software that UAH or the vendor will utilize to process data containing PHI, PII; or
- provides a system or software that UAH or the vendor (either directly or through a third party) will utilize to process card transactions.



The UAH OOC Contract Intake Form

- Malcolm Rice, Chief Information Officer (for software/IT), and Kevin Bennett, Chief Risk and Compliance Officer, must review the contract prior to it moving forward for OOC review.

"Data processing" in this context means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

Yes No

If yes, please contact Kevin Bennett, kevin.bennett@uah.edu, and Malcolm Rice, ricem@uah.edu, for approval prior to submitting your contract to the OOC. If you have questions as to whether your contract falls within any of these categories, please ask Mr. Bennett and/or Mr. Rice to assist you with your assessment. Please include Mr. Bennett and/or Mr. Rice's communication with you indicating that you can proceed with review of your contract.



The UAH OOC Contract Intake Form

- Final checklist to complete the form.
- OOC needs your representation that you've read the contract and asked any questions.
- OOC also needs affirmation that you've collected all necessary documents and submitted them. This includes ALL documents that are included at web links referenced.

B. CONTRACT CHECKLIST

Please initial each box to signify your agreement with each statement. If you have questions, please contact OOC to discuss your concerns at: 256-824-6633 or by email at nloehr@uasystem.edu.

1	I have read the contract, including any attachments, and understand all provisions. If I do not understand a provision, I have noted that provision and any questions on the contract submitted.	
2	All documents incorporated by reference in the contract (e.g., exhibits, appendices, or web link information) have been collected and are provided for review.	



The UAH OOC Contract Intake Form

- Many vendors have preexisting relationships with UA and/or UAB. Having copies of those contracts is helpful.
- Copies of any prior contract with the vendor is also helpful. It allows OOC to see what changes were previously acceptable.

3	I have asked the counterparty if they have an existing similar contract with UA and/or UAB. If the counterparty has an existing relationship, I have either asked for a copy of that contract from the counterparty, or contacted my counterpart at UA or UAB to inquire if they can share their final version of the contract with UAH. If the document can be shared, I have obtained it. If the counterparty indicated no similar contract exists, initial here: _____	
4	If UAH has entered into a similar contract with this counterparty before, I have included it. If the counterparty indicated no similar contract exists, initial here: _____	



The UAH OOC Contract Intake Form

- If your submission is a renewal or amendment, please submit the original and all prior renewals.
- Item 6 is another representation that you have reviewed the business terms of the contract and agree that they are accurate.

5	If this is a renewal or an amendment, I have included the original agreement and/or all prior renewals or amendments to the contract.	
6	The written contract matches the verbal understanding of the parties and accurately reflects the transaction with the vendor/contractor (e.g., what is to be received or what work is to be performed).	



The UAH OOC Contract Intake Form

- The final requirement is that the form be signed by the individual who is responsible for the contract.
- This signature constitutes a representation to both the OOC and the UAH signatory, usually a VP, that the person requesting the contract has thoroughly and completely reviewed the document and its accuracy.
- Signatures by administrative personnel should be avoided.

Signature

Date



The UAH OOC Contract Intake Form

- Once the form is completed and signed, you submit it to the appropriate office – either OOC or Business and Procurement Services – based upon the analysis that we began with (Step 4).
- The form is required for all submissions to OOC, even if you are submitting directly to OOC.



The UAH OOC Contract Intake Form

- Once BPS has determined that the package is complete and is ready for legal review, they will transmit the package to Nancy (OOC) and copy you on the email transmission.
- You will know when OOC has received the contract for review. If additional information is requested by OOC, you will be copied on those communications as well.
- Once the package is confirmed as complete, BPS will not be involved during the legal review process. OOC will work with you to provide you with the appropriate information to communicate to the counter-party.



The UAH OOC Contract Intake Form

- After OOC has completed its review of the contract, OOC will notify you that review is complete and that you may present the contract to the appropriate UAH signatory for completion.
- OOC will copy BPS on this communication as well.
- It will be your responsibility to comply with the signatory's procedures to get a document signed. For example, Dr. Lindquist requires a cover memo when documents are presented for signature.
- The completed document is then sent to procurement.



Additional Issues

- If you are engaging an individual to perform a service, you are going to need to utilize the UAH Professional Services Contract. Always seek to utilize this first before allowing a vendor to require UAH to utilized the vendor's contract.
- A Vendor Disclosure Statement is usually required from the vendor. (BR 406)



Additional Issues

- Certain contracts are going to require Board approval, usually those that are unique or that involve significant \$\$ amounts. BR 406:

V Contracts Requiring Board Approval

- A. Except as otherwise exempted below, the following contracts must be approved by the Board before the same are binding and effective:
 - i. All contracts for goods or services, or both, involving an expenditure of \$1,000,000 or more for the term of the contract (including all option, renewal or extension periods) that were not procured through a competitive process; and
 - ii. All consulting or professional services contracts involving an expenditure of \$250,000 or more for the term of the contract (including all option, renewal or extension periods), regardless of whether the contracts were procured through a competitive process.



Additional Issues

- BR 406 exceptions:

B. The following contracts are exempt from this requirement:

i. Contracts that are otherwise required to be approved by the Board, such as construction and information technology contracts;

v. Sponsored research grants and contracts, including associated subcontracts;



Questions?

