

**Business Services**  
**Customer Service Fair**  
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**Contract Issues**

*Office of Counsel*

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**1. Who has the authority to sign contracts on behalf of the University?**

- a. The University contracts in the name of its Board of Trustees which has delegated its authority to individuals by name through a board resolution.
- b. Generally, this authority has not been delegated to anyone below Vice Presidents.
- c. If you do not have authority and sign a contract in the name of the University, you are personally liable for the contract.

**2. How do I know if I am dealing with a contract?**

- a. Contract, Agreement, License, Some Reservation Forms, Some Room Use Forms, Leases, Rental Forms
- b. If the word “agree” is in the document, you can assume it is a contract.

**3. What is the Competitive Bid Law and when does it apply?**

- a. General Rule: All contracts of whatever nature for labor, services, work, or purchase or lease of materials, equipment, supplies, or other personal property involving \$7,500 or more must be competitively bid.
- b. Exceptions:
  - i. Services involving a high degree of professional skill where the personality of the individual plays a decisive part
  - ii. Contractual services and purchases of commodities for which there is only one vendor or supplier (SOLE SOURCE)
- c. Contracts entered into in violation of the Competitive Bid Law are void.

- d. Frustrated contractors can sue to stop or set aside award of contract entered into in violation of Competitive Bid Law.
- e. Even when the Competitive Bid Law does not require award on the basis of advertised bids, it may be best to go out for bids.

**4. When can I use “sole source” and is it faster than going through the bid process?**

- a. Purchasing can assist in identifying potential suppliers.
- b. The Thomas Register is available in the Campus Library and via the Internet.
- c. Often a competitive bid could have been completed by the time a sole source has been processed and approved.

**5. What can I do to avoid having some administrative deficiency stop my contract from proceeding smoothly and rapidly to completion?**

- a. The University’s policy is to have the other party sign first.
- b. The University’s policy is to pay for goods/services only after they have been delivered/performed.
- c. If the contract refers to some other document (such as rules governing use of a facility or standard software terms and conditions), be sure the document is attached.
- d. If the contract requires entering information (such as the make and serial number of the computer on which software is to be installed), be sure the information has been entered.
- e. If pages are missing or illegible, obtain the replacement pages needed. Be particularly aware of this potential when dealing with faxed contracts.

**6. What’s the story on these Professional Services Contracts?**

- a. Using a Professional Services Contract is only appropriate if the individual being hired is an independent contractor, not an employee. Independent contractors pay their own Social Security, make their own quarterly estimated income tax payments, and provide their own insurance and retirement benefits, if any.
- b. If the University mis-classifies an employee as an independent contractor, it is subject to fines and must pay the withholding which was not collected from the employee’s salary.

- c. Employees work under the control and continuing supervision of the University while independent contractors are given a task and perform on their own.

**7. Why do I have to use a pre-printed Professional Services Contract form and how do I complete it?**

- a. The pre-printed forms are required to make it possible to restrict legal and technical review to determining if the use of the form is appropriate and whether the blanks have been filled in appropriately.
- b. In recent years, several offices have submitted their own locally typed versions of the form. In virtually every instance, provisions were left out or changed.
- c. The Office of Counsel is working to locate the necessary software to provide users with a “locked” word processor version of the pre-printed form. This will permit use of word processors while preserving the integrity of the basic form.
- d. For the near term, please keep in mind that extensive scope of work descriptions and complicated compensation arraignments can be typed using a word processor on separate sheets of paper which are attached and referred to in the basic pre-printed form.
- e. Please see Check List for additional problem areas.

**8. What do I do with this software license that has a blank space for the user to sign?**

- a. As mentioned above, software licenses are contractual in nature and must be signed by a VP. Mr. Quick normally signs these.
- b. Other problems areas: educational use limitations, number of user limitations, choice of law provisions, venue provisions, use of the University’s name in advertising, indemnification provisions.