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Contract Review Policy – Contractual Agreements Other Than Purchasing Goods and Services

Policy Statement

Manhattanville College seeks to provide contract management guidance and requirements for reviewing Contracts. Because all Contracts create legally binding obligations, entering into a Contract exposes the College and its Contract Originator to certain statutory and legal risks. To protect against this exposure, it is essential that before entering into a Contract, a Contract Originator ensures inclusion of essential elements into the Contract and follows established procedures with regard to the Contract creation, acceptance, review, and execution process.

Entities Affected by the Policy

Faculty and Staff

Policy Background

This policy supersedes the March 1, 2012 Manhattanville College Vendor Contract Management Procedure.

Policy Procedures

Contract Review Process – General:

1. Contracts entered into on behalf of the College must be reviewed and approved by designated College personnel to ensure compliance with established College policy regarding Contract language and stipulations.
2. Contracts can only be signed by an Employee with Signatory Authority to sign the Contract.
3. The performance of work, ordering of goods, or contracting of services encompassed by a contract between the College and a Vendor must **never** commence prior to the review and approval of a formal Contract as set forth in this policy.

Examples of Contracts that must be reviewed by various departments/units (not by Purchasing):

- Contracts for the purchase or sale by the College of real property
 - Reviewed by President, Board
- Contracts to establish annuity arrangements with donors
 - Reviewed by Institutional Advancement
- Contracts between a governmental agency or private funding source and the College for external funding of research projects or other activities
 - Reviewed by Provost
- Contracts or subcontracts with another educational institution to participate in funding for research (or to subcontract funded research)
 - Reviewed by Provost
- Contracts for the purchase or use (or sale by the College) of patents or intellectual property
 - Reviewed by Provost
- Contracts for the use/lease of College resources or facilities such as athletic venues, dining facilities, or other owned College properties; and
 - Reviewed by VP Facilities and CFO
- Contracts for employment matters
 - Reviewed by HR

Examples of Contracts that do not have to be reviewed by Purchasing:

- Typically, Contracts that are under \$2,000 in total amount do not require review by Purchasing.
- Contracts under \$2,000 that MUST be reviewed are:
 - Paid service contracts with the work to be performed on College campus
 - Purchases of hazardous or dangerous materials or substances

- Any other Contract that, in the reasonable professional judgement of the Contract Originator, creates the potential for liability for the College. If a Contract Originator is not sure as to whether a Contract should or should not be reviewed by Purchasing Department prior to entering into the Contract, contact the Purchasing Department or General Counsel.

Steps for Contract Review:

1. **NOTE:** For purposes of this Policy, “Contractor” is used to identify any possible entity entering into an agreement with the College; e.g., donor, company, government agency, etc.
2. The Contract Originator is responsible to ensure accuracy, set the scope of work, review by relevant departments, resolve inconsistencies between contract versions and within the contract itself, strike out any automatic renewal clauses, and manage the execution of the contract.
3. The Contract Originator is strongly encouraged to involve Purchasing at the early stage of all Contracts to ensure the best overall pricing for the products and services.
 - See Purchasing Procedures
4. The Contract Originator must ensure that the standard contractual terms are included in the first draft of the Contract.
 - Use a standard contract agreement OR:
 - ensure that all of the standard required contract terms are included
 - use Contract 101 Manual for specific contract terms to be included
 - see Appendix A—Contract Originator Checklist
5. The Contract Originator must circulate the proposed Contract, with the Contract Review Checklist, to relevant departments to ensure that the College can comply with all the provisions of the Contract. (See Appendix B, Contract Review Checklist)
6. If Contractor does not agree to the required standard language, the Contract Originator should contact General Counsel for assistance.
7. To provide sufficient time for review, the Contract Originator must submit the Contract to the appropriate Contract Reviewer at least fourteen (14) calendar days prior to the projected submission of the Contract to the Contractor.
8. Contract Originator and/or General Counsel will complete a final review of the Contract to ensure that the Contract Originator has included appropriate clauses, terms and conditions.
9. Contracts can only be signed by the Employee to whom Signatory Authority has been delegated by the President.
10. The Contract Originator is responsible for monitoring the contract expiration date to avoid continuing with an expired contract.
11. The original of all signed Contracts must be maintained by the department of the Contract Originator in accordance with the College Record Retention Policy. See [Employee Handbook](#), p. 41.

12. Copies of signed Contracts that result in payments to the College should also be sent by the Contract Originator to the Controller.

Definitions

Contract

- A legally enforceable agreement, contract, lease, or license between two or more parties. For the purpose of this policy, letters of intent and purchase orders, whether or not legally enforceable, should be treated as contracts.
- The above procedures apply to the following Contracts. This list is illustrative and not exhaustive.
 - Contracts for the purchase (or sale by the College) of real property;
 - Contracts to borrow funds (debt) or establish lines of credit;
 - Contracts to establish annuity arrangements with donors;
 - Contracts for the purchase (or sale by the College) of professional services;
 - Contracts for the purchase or use (or sale by the College) of patents or intellectual property;
 - Contracts between a governmental agency or private funding source and the College for external funding of research projects or other activities;
 - Contracts/agreements for student workers with outside agencies to participate in volunteer activities or “service learning”;
 - Contracts or subcontracts with another educational institution to participate in funding for research (or to subcontract funded research).

Contract Originator

- Employee who originates and reviews the proposed Contract

Signatory Authority

- The authority given by the President to a specifically designated position to sign on behalf of the College according to the following tiers of financial limits.
- Financial limit is determined based upon the total amount of the Contract; i.e., if a Contract is for \$22,000 per year but this is a five year Contract, the \$110,000 Contract would need to be approved by the President and Vice President of Finance.
 - All Contracts in excess of \$100,000 require the approval and signature of the President and the Vice President of Finance.
 - All Contracts from \$75,000 to \$99,999 require the approval and signature of area Vice President and the Vice President of Finance.
 - All Contracts from \$25,000 to \$74,999 require the approval and signature of the area Vice President and either the Controller or Assistant VP of Finance.

- All Contracts from \$5,000 to \$24,999 require the approval and signature of area Vice President.
- All Contracts below \$5,000 require the approval and signature of Salaried/Exempt Employees (Deans, Directors, Managers, etc.) as designated by their area Vice President or the President.

Of note:

- Individuals cannot approve payments to themselves
- Direct expenditures of the President are reviewed by the Chair of the Board and authorized for payment by the Vice President of Finance.
- All Information Technology invoices/purchase orders/contracts over \$1,000 are signed by the Chief Information Officer from Ellucian and the Vice President of Finance. All Information Technology invoices/purchase orders/contracts under \$1,000 are signed by the Chief Information Officer from Ellucian.

Even if an Employee is given Signatory Authority to sign a Contract, the Contract still needs to be reviewed by Purchasing and/or General Counsel or other designated Contract Reviewer, prior to the Employee signing the Contract on behalf of the College.

- **If the College suffers damages in connection with performance on the Contract, the Employee who failed to comply with Signatory Authority requirement for approval levels and signature could be held personally liable for the Contract and any resulting damages.**

Template Agreements

- The following is a listing of present standard template agreements.
 - Facility Rental Agreement
 - Standard Agreement

Responsibilities

Contract Originator

- Ensure the accuracy of all terms in the Contract.
- Set the scope of work.
- Resolve inconsistencies between contract versions and within the contract itself; and manage the execution of the contract.
- Circulate the proposed Contract to relevant departments using the Contract Review Checklist to ensure that the College can comply with all the provisions of the Contract.
- Submit all Contracts to be reviewed by Purchasing or other designated Contract Reviewer before the Contract is signed.

- Use the Manhattanville College Standard Agreement Template or must ensure all the required standard contract language is included.
- Review the Contract agreement after submission to the Vendor to ensure that no changes were made by the Vendor; ensure that the College is the last party to sign a Contract.
- Contact Vendor to have Certificates of Insurance issued; ensure Certificates of Insurance are submitted to Purchasing upon the awarding of the Contract.
- Collect W-9 and submit it to Accounts Payable upon awarding of the Contract.
- Ensure that all Contracts, from the effective date of this policy, do not have provisions that allow for automatic renewal.
- Calendar the renewal date for existing Contracts that have automatic renewal clauses to ensure that Contracts do not automatically renew.
 - As a courtesy, Purchasing or Contract Reviewer may alert Contract Originator and/or Department of Contracts coming up for automatic renewal, but, it is the Contract Originator and Department's responsibility to ensure that the Contract is not automatically renewed.

Employee with Signatory Authority

- Employee designated by the College as the final reviewer and decision maker on specific types of Contracts.
- Review Contract to ensure all standard language is included
- Sign off on the Contract Review Checklist

Violations of the Policy

Violations of this Policy will be handled in accordance with the procedures in the Employee Handbook. **If the College suffers damages in connection with performance on the Contract, the Employee who failed to comply with Signatory Authority requirement for approval levels and signature could be held personally liable for the Contract and any resulting damages.**

Interpreting and Implementing Authority

Vice President of Finance

Relevant Links

Contracts 101 Manual (On Blackboard site – Purchasing Office)

Appendix A -- Contract Originator Checklist (Attached to the policy)

Appendix B -- Contract Review Checklist (Attached to the policy)

[Record Retention Policy](#)

Procurement Procedures (On Blackboard site – Purchasing Office)

Standard Agreement - Entertainment Agreement (On Blackboard site – Purchasing Office)

Standard Agreement – Standard Agreement – General Use (On Blackboard site – Purchasing Office)

Standard Agreement – Use of Reid Castle (On Blackboard site – Purchasing Office)

Standard Agreement – Use of Athletic Facilities (On Blackboard site – Purchasing Office)

Policy Adoption Review and Approval

Recommended approval by President’s Cabinet on August 10, 2016

Approved by President on August 10, 2016

Editorial Change – signatory authority – approved by President’s Cabinet and President-
12/16/16

Appendix A - CONTRACT ORIGINATOR CHECKLIST

1. Use this checklist to determine clauses to add or avoid. If not in, add in.
2. Use the Contracts 101 Manual (see specific page numbers listed on form) for the actual language to be inserted/deleted.
3. After making the changes to the Contract, use the process designated in the applicable policy to finish the Contract review.
4. Please initial each line – indicate if clause has been added or is not applicable (n/a). If n/a please explain below why not.

CONTRACT CLAUSES REQUIRED:

- | | | |
|------|---|-------|
| I. | <u>PROPER NAME</u>
Manhattanville College (may specify “for the specific college/department/
Unit” involved) (p. 7) | _____ |
| II. | <u>ACCESSIBILITY AND DISABILITY COMPLIANCE</u>
Must comply with New York and federal disabilities laws and regulations (p. 7) | _____ |
| III. | <u>ATTORNEYS’ FEES</u>
Must not agree to pay another party’s legal fees (p. 7) | _____ |
| IV. | <u>CHOICE OF LAW</u>
Agreement shall be governed by the laws of the State of New York (p. 8) | _____ |
| V. | <u>INDEMNITY</u> <ul style="list-style-type: none">• Manhattanville College should not agree to defend, indemnify, or hold harmless any entity or person• Vendors SHOULD indemnify Manhattanville College (p. 8) | _____ |
| VI. | <u>INDEMNIFICATION – CAP OF POTENTIAL LIABILITY</u>
The College should not agree to any limit on total dollar amount of damages that Vendor will agree to pay for (p. 9) | _____ |

- VII. INDEMNIFICATION – SPECIAL OR PUNITIVE DAMAGES _____
Must not agree to this without review by College General Counsel (p. 9)

- VIII. INSURANCE _____
 - Ensure that Manhattanville College is not assuming risk or liability that Vendor(s) should retain for product or service provided. Obtain appropriate Certificate(s) of Insurance
 - If Vendor employs contractors/subcontractors, these parties must either be covered under the Vendor’s policy or they must provide a Certificate of Liability Insurance as well (p. 10)

- IX. TERM – END OF TERM _____
All contracts should have a specified term when the contract is in effect, generally guideline is no longer than 2 years (p. 11)

- X. TERM – AUTOMATIC RENEWAL _____
Should not enter into any agreement that has an automatic renewal or “evergreen” clause (p. 11)

- XI. TERM – TERMINATION _____
 - Agreement should have a clearly defined start and end date
 - Agreement should have a termination clause which allows the College to terminate the agreement upon reasonable notice (p. 11)

SELECT CONTRACT CLAUSES THAT MUST NOT BE INCLUDED:

- I. RIGHT OF FIRST REFUSAL _____
College must not agree to grant any party a right of first refusal (p. 13)

- II. PRICE MATCHING _____
College must not agree to allow vendors to meet or match another vendor’s price (p. 13)

- III. EXCLUSIVITY _____
Vendors cannot be granted exclusive rights to provide a service/product unless language was included in the bid, quote or RFP (p. 13)

SELECT CONTRACT CLAUSES THAT SHOULD BE AVOIDED/MODIFIED:

- I. NON-DISCLOSURE OF VENDOR’S CONFIDENTIAL INFORMATION _____
Confidentiality clauses applicable to vendor’s information are permitted ONLY if we provide for exceptions required by applicable laws (p. 14)

- II. NON-SOLICITATION _____
It is generally acceptable to agree not to solicit a vendor’s employees for a defined period of time during and after completion of a contract, but individuals must be free to respond to advertised positions (p. 14)

- III. PREPAY THE VENDOR BEFORE CONTRACT IS COMPLETE _____
Generally a poor business decision and not in keeping with College best practices to pay all or almost all of the total amount of the agreement before the vendor has completed service or delivered the goods. On-line purchases are an exception to this rule. (p. 14)

SELECT CONTRACT CLAUSES THAT ARE GOOD TO INCLUDE:

- I. ARBITRATION _____
Manhattanville College may agree to arbitrate disputes in accordance with the Arbitration Rules of the American Arbitration Association (p. 16)
- II. COPYRIGHT CLAUSES _____
In agreements for customized software, reports, forms, or other written or tangible products of this nature, the Contract should clearly specify whether the College obtains ownership rights, reproduction rights, or is going to be limited to use only of copies the vendor provides (p. 16)
- III. INTEREST RATES ON PAST DUE AMOUNTS _____
The College should seek to limit interest on late payments (sixty working days past due) to no more than 1% per annum, or the maximum amount permitted under state law (p. 17)
- IV. TIME IS OF THE ESSENCE _____
Where the deadline for delivery of services, production of the item or performance of a certain element of the contract is critical, inserting a "time is of the essence" provision in the contract alerts the vendor to the critical timing involved (p. 17)

EXPLAIN ANY N/A:

CONTRACT ORIGINATOR SIGNATURE _____ DATE: _____

Appendix B – CONTRACT REVIEW CHECKLIST

Instructions to Contract Originator:

1. Use this form to ensure relevant departments review the contract.
2. Delete any department that does not need to review the contract.
3. Specify sections for each department to review.

Instructions to Reviewer:

The attached document is in the review process and needs your input.

Please review the document to ensure the following:

- Compliance with Contracts 101 Manual
- Compliance with federal, state, or local laws and Manhattanville College policies
- Financial resources available at Manhattanville College

Comments, suggested language changes (insertions or deletions), concerns as to whether or not Manhattanville College should enter into this Agreement, and any general comments should be submitted to the Contract Originator by no later than _____. If you do not respond by this date, it is presumed that you have no changes or deletions.

The Contract Originator will review all comments and make changes to the Agreement as necessary. The final signed version of the Agreement (if the decision to move forward with signing this Agreement is reached) will be distributed to the appropriate offices.

Specific sections that need your departmental review have been identified below. This does NOT mean that you should not review the entire agreement; it simply means that certain sections of the Agreement are more applicable to a specific area.

President –

Director, Communications –

Provost --

Registrar –

Center for Career Development --

Dean, School of Arts and Sciences –

Dean, School of Education --

Dean, School of Business –

VP for Enrollment Management --

Director of Financial Aid –

VP of Finance –

Purchasing –

Controller --

VP for Student Affairs –

Dean of Students --

Director, Athletics --

VP for Institutional Advancement –

VP for Operations –

Director, Campus Safety --

Director, Human Resources –

Events Coordinator –

Chief Information Officer, Information Technology --