

## **07:08:01:00 Contracts and Agreements**

### **Purpose:**

The purpose of the policy is to outline requirements and procedures for processing contractual documents other than employment contracts. Services to be performed under any agreement or contract shall not be commenced and payment for such services shall not be made until an agreement/contract is executed in accordance with this policy and all requirements are met. The same policies and procedures also apply to contract/agreement amendments and addendums. This policy is based on Tennessee Board of Regents (TBR) policies and guidelines concerning approval of agreements and/or contracts and is the standard wording for those agreements and contracts (specifically TBR Policy 1:03:02:10 and Guideline G-030).

### **Scope:**

This policy makes reference to the Tennessee Board of Regents Guideline No. G-030. This guideline contains recommended procedures as well as specific examples of agreements and contracts and shall be carefully reviewed prior to submitting any agreement/contract for approval.

### **Policy:**

#### **General**

Only the President and those individuals who are specifically authorized in writing by the President through published policies/procedures or other authorizing documents have the authority to enter into agreement/contracts as agents of the College. No other employees except for those expressly identified in policy shall sign contracts without prior written approval.

#### **Approvals**

All agreements/contracts involving or related to the purchase or lease of real property or data processing, the purchase of insurance or agreements providing insurance or other benefits for employees, the purchase of professional, personal, or consultative services, and purchases related to capital outlay projects, shall be expressly subject to the approval of the Chancellor, President, or Vice President for Finance and Administrative Services in accordance with TBR policies and guidelines.

The President or his/her designee is the final approving authority for any agreement/contract which is prepared

consistent with Guideline G-030; except that the approval of the Chancellor or designee shall be required for agreements/contracts with foundations or similar campus-related not-for-profit organizations, campus-sanctioned performances exceeding \$249,999.99, hardware and software contracts as specified herein requiring the Chancellor's approval under other policies and guidelines.

Inter-agency agreements or contracts, except dual service agreements, with state agencies other than U.T. or TBR institutions, must be approved by the Commissioner of the Department of Finance and Administration, in addition to the Tennessee Board of Regents.

Dual service agreements which are for the services of a particular employee and which are for amounts in excess of \$1,500 (between state agencies other than those between TBR institutions or a TBR institution and U.T.) must be approved by the Department of Finance and Administration, in addition to the Tennessee Board of Regents.

Refer to TBR Guideline B-026 for lease procedures & guidelines.

All agreements/contracts require the approval of the applicable Budget Manager of the initiating department before being received by the Administrative Services Office. Contracts will be returned when received without the signature of the Budget Manager. Once the contract has been received and reviewed for compliance by the Director of Administrative Services, it will be routed for the Vice President for Finance and Administrative Services and President's approval; then forwarded to the vendor for approval if not signed initially.

**No agreement/contract will be accepted with signatures by the vendor and/or procuring party dated after the requested start date of the agreement/contract.**

### **Preparation of Agreements and Contracts**

Before entering into an agreement/contract, funds must be available in the current year's budget. If funds are not available, a budget revision must be processed prior to payment of the agreement/contract.

The initiating department requiring or providing personal, professional, or consultant services is responsible for the preparation of the agreement/contract, utilizing examples in Tennessee Board of Regents Guideline G-030 and through MyDSCC Employee Quick Clicks – Administrative Services.

All necessary signature approval lines shall be prepared by the initiating department, including lines for the corporation or individual and the President of DSCC. Signature approval lines for the Tennessee Board of Regents should be prepared when necessary.

(a) If the other party or contractor is a corporation, its name must be stated in the agreement/contract exactly as it appears in its charter. The person signing on behalf of the corporation must have legal authority to do so, and his/her title/position shall be shown on the signature page. If the other party is a state agency, signature approval lines are necessary for the Department Commissioner or official of equivalent rank.

(b) The applicable budget manager's signature must be affixed to all contract routing sheets.

(c) The President may delegate his/her authority to sign agreements/contracts only if such delegation is specifically permitted in TBR policy or if the delegation is specifically approved in writing by the Chancellor.

The department requiring an agreement/contract must initiate the process sufficiently in advance to allow final approval before services are rendered. Agreements/Contracts not meeting the provisions of TBR Guideline G-030 (such as vendor generated contracts, etc...) must be submitted to the Purchasing & Contracts Office a minimum of four (4) weeks prior to the desired service. Those agreements/contracts meeting TBR Guideline G-030 should be submitted two (2) weeks prior to the desired service. **Faxed, scanned or emailed copies of agreements/contracts are not acceptable.** Agreements/Contracts with other state agencies, which must go to the Tennessee Department of Finance and Administration, may require additional weeks. Sufficient time must be allowed so that an executed contract is in place prior to any services being performed under the contract. **Extreme caution should be used in preparation of agreements/contracts to ensure all provisions meet TBR Guideline G-030. TBR Legal Counsel has stated possible personal liability in not adhering to state law.**

Legal questions relating to an agreement/contract will be referred to the Tennessee Board of Regents, Office of General Counsel, by the Administrative Services Office.

Add the following language to any contract in which contractor is serving as a service provider handling “covered accounts”, that is, any consumer account involving multiple transactions or multiple payments in arrears: ” Service provider/Contractor shall have and maintain throughout the term of this agreement an identity theft prevention program for new and existing accounts which complies with the FTC regulations known as Red Flags Rule.”

### **Routing Agreements and Contracts for Approval**

After preparation of an agreement/contract, the department shall forward two original copies of the agreement/contract and one copy of the contract routing sheet to the Administrative Services Office. (Blank copies of these agreements are available, upon request, by the Administrative Services Office or by accessing the Employee Quick Links\Administrative Services on MyDSCC).

Agreements/Contracts presented to the Administrative Services Office will be reviewed for the following:

- The contract routing sheet must be attached with two original contracts and all information completed on the sheet. If any information is missing, the contract will be returned.
- If the agreement/contract does not meet TBR Guideline G-030, the agreement/contract will be returned to the department for corrective action, unless it is a vendor generated contract, which will be forwarded to TBR for review.
- Once it has been determined that the agreement/contract is complete, it will be approved by Administrative Services and forwarded to the Vice President for Finance and Administrative Services for processing and remaining internal signatures and then forwarded to the vendor for signature if not already obtained.
- The Vice President for Finance and Administrative Services Office will distribute copies of the fully executed contract to the vendor.
- One (1) original copy of all executed contracts shall be maintained in the Vice President for Finance and Administrative Services Office. An electronic copy is located in Banner via BDMS system.

### **Standard Guidelines**

No agreement/contract of any nature which requires the expenditure of funds by an institution shall extend beyond the end of the fiscal year in which it is entered into unless expressly subject to the condition that the

institution shall have the right to terminate the agreement/contract at the end of any fiscal year in the event that sufficient funds are not appropriated by the General Assembly and/or budgeted for continuation of the agreement/contract. Contracts may be renewed up to a total period of five (5) years.

No agreement/contract of any nature shall be entered into which contains one or more of the following:

- Provisions requiring the College to pay for taxes, late penalties, liquidated damages, incidental or consequential damages, etc.
- Payment of travel/per diem expenses in excess of maximum limitations set forth in TBR policy.
- Provisions designating the governing law of a state other than Tennessee.
- Provisions requiring the College to make advance deposits or payments, except those expressly allowed in TBR G-030, Sections II C and III D.
- Provisions requiring the College to purchase or obtain liability insurance, performance bond, or property insurance.
- Provisions requiring the College to insure, indemnify, or hold harmless any party from claims which may arise out of the agreement or be brought by third parties.
- Provisions requiring the College to obtain or pay for outside labor of persons not employed by the College is prohibited unless such cost is included as part of the total contract price.
- Provisions requiring the College to consent to the arbitration by a third party of claims arising out of or relating to the agreement.
- Disclaimer of vendor's liability for incidental, liquidated, exemplary, or consequential damages.
- Disclaimer by vendor of express or implied warranties of merchantability and fitness for a particular purpose.
- Limitation on dollar amount of damages recoverable by state from vendor.
- Unless vendor provides shipment insurance protecting the College's interest, passing of risk of loss or title to College before delivery and/or installation of products.
- Right of vendor to enter College's premises without notice, to remove equipment or product upon alleged default by the College.
- Award of attorney's fees to vendor in the event of legal action against College.
- Consent to jurisdiction in courts outside Tennessee.
- Provisions requiring the College to pay late charges, finance charges, collection costs, or interest in excess of that provided under Tennessee Prompt Pay Act (T.C.A. Section 12-4-701 et seq.).
- Term of the agreement/contract longer than five (5) calendar years (up to 10 year maximum for Bookstore contracts).
- Provisions requiring the College to keep vendor's information confidential (Tennessee Open Records Act, T.C.A. Sections 10-7-503-10-7-506).
- Provisions requiring the College to carry or maintain commercial or general liability insurance.
- Provisions requiring the survival of paragraphs upon termination of the agreement/contract when those paragraphs are not in accordance with TBR Policies and Guidelines.

Only the President can approve applications for all grants from agencies or organizations, acceptance of the award of the grant, and enter into agreements confirming grants, provided that where matching funds or services in lieu of funds are required by the College. No applications shall be made unless the operating budget provides the funds and/or resources necessary for the project. The President is further authorized to accept the award of a grant, and enter into agreements confirming grants; further provided that the acceptance of grants and agreements

confirming the award of grants shall be subject to the standard guidelines listed above.

Any agreement/contract between the College and any other institution, agency, organization, or entity which involves programs relating to matters of system-wide interest, or any agreement/contract which provides for the coordinated and cooperative offering of any credit or non-credit programs or activities or in which certificate or degree requirements are not met or credit is given for coursework or activities offered by another institution or school, shall be expressly subject to the approval of the Chancellor. Examples of such agreements/contracts include provisions for either credit or non-credit academic programs or public service activities to private or state agencies and institutions in the fulfillment of that agency's responsibility for state-wide services or governmental training, and agreements/contracts which require consortia or cooperative arrangements with other institutions, agencies, or associations. This section does not apply to agreements/contracts concerning informal, locally arranged activities generally considered to be in the purview of the College on the fulfillment of its role in community services or in providing student teaching experiences at local public school systems.

In any agreement/contract which requires participation by an applicant, student, or employee of the College in an education program or activity conducted in whole or in part by any other person or organization, or which facilitates, permits or considers participation by such persons as part of or equivalent to an education program or activity of the College, the College shall require the person or organization to agree that no person shall, on the basis of their race, color, creed, ethnic or national origin, sex, sexual orientation, gender identity/expression, disability, age (as applicable) status as a veteran, genetic information, or any other category protected by federal or state civil right law, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under the education program or activity. Breach of this provision shall be cause for termination of the agreement.

All agreements, contracts, and subcontracts shall contain all necessary non-discrimination requirements provided by federal or state laws and regulations.

All agreements/contracts not expressly requiring the approval of the Chancellor may become effective upon the approval of the President of the College or his/her designee, subject to the general requirements of this policy. In the event there is any question as to whether an agreement or contract shall be submitted for the approval of the Chancellor or the General Counsel, the agreement or contract should be routed to the Administrative Services Office. The General Counsel shall provide assistance to the College in drafting agreements and contracts, and shall recommend to the Chancellor any standard form agreements or contracts for use by the College which are deemed necessary or feasible. The General Counsel has provided standard-form agreements and contracts as part of TBR Guideline No.G-030 which are available in the Administrative Services Office.

The Chancellor may direct that copies of any and all agreements/contracts entered into by the College be submitted for informational and record-keeping purpose, or to ensure compliance with this policy, and may direct that certain or all agreements/contracts of the College be submitted for prior review and approval when deemed necessary to ensure such compliance. In addition, the Chancellor may require annual reports on the type and number of agreements/contracts entered into by the College, with additional information when necessary.

The President of the College is the only authorized person to sign agreements on behalf of the College. When the President of the College is absent from campus, his or her designated signature authority may sign an agreement.

## **Requests for Payment**

After the service has been performed and an invoice has been received by the Business Office, the department must approve the invoice. The contract number must be referenced on the invoice. At no time will the contractor receive payment before the service has been completed and an invoice has been received by the Business Office. For payments to individuals, information required for the preparation of Form 1099 must be included with the contract.

Payment made to non-employees for personal services are not subject to any deductions. Neither is it required that these payments be included on Form W-2. Internal Revenue Service regulations do require, however, that consultant fees, etc., be reported on Form 1099. The Social Security number and the home (not business or educational institution) mailing address of each individual must be provided on the check in order that they may be reported on Form 1099. Form 1099 will be prepared and submitted at year-end by the College and will indicate the total payments that have been made to an individual or group during the preceding year.

## **Compliance:**

Extreme caution should be used in preparation of agreements/contracts to ensure all provisions meet TBR Guideline G-030. TBR Legal Counsel has stated possible personal liability if State law is not adhered to.

## **Definitions:**

**Catering Contract:** a contract issued for any catered event or meeting, for any dollar amount.

**Clinical Contract:** a zero dollar contract that is issued in order for DSCC students to receive clinical experience at any healthcare related facility for Nursing and Allied Health programs.

**Dual Services Contract:** a contract issued for services paid to an employee of any State entity.

**Service Contract:** a contract that is issued for any service (and/or good) provided to DSCC at a negotiated cost equal to or greater than \$600.00. This includes personal, professional and consulting services.

**Contract Routing Sheet:** a description of services required and budget information.

## **Revision History:**

Policy written January 2006. Policy revised January, 2013. Policy approved by Administrative Council 02/22/13. Revised December 11, 2017 and Approved by Administrative Council on December 13, 2017.

