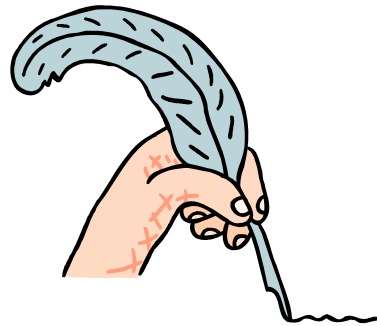


CONTRACTS:

Before You Sign a University
Contract ...



Goods, Services & Revenue Producing Contracts

- > Purchasing Office – State law and the N.C. Dept. of Administration rules require these types of contracts to go through the Purchasing Office. (N.C.G.S. 143-49 & Admin. Code, Ch. 5, .0101), plus 05.151
- > Business Affairs signature
- > UNCW Terms & Conditions (handout)

Purchasing Contracts

- If the “bargained for” consideration is a good or service, then Purchasing should be involved: includes vendor generated contracts and contracts for independent contractors.
- What **doesn't** go to Purchasing?
 - Sponsored Program Agreements
 - Major Construction and Design Services
 - Real Estate Transactions
 - Employment Contracts

Goods, Services & Revenue Producing Contracts

Failure to follow Purchasing Rules makes the
contract void

AND

“the executive officer of such department,
institution, agency or instrumentality *shall
be personally liable* for the costs thereof.”
N.C.G.S. 143-58 (*emphasis added*)

Methods of Procurement

- Personal Funds – Out of Pocket
Petty Cash or Check Request
- Purchasing Card
- Purchase Order
- Traditional ‘Contract’

Contracting for Goods/Services

- The Competitive Process
 - Must be subject to competition if total purchase exceeds \$5000
 - Formal if \$25,000 or above
- There are always exceptions - Waiver of Competition
 - Sole Source Justifications & Other waivers
- State Term Contracts
 - DOA negotiates

Delegated Signature Authority

- Formal, written delegation from the Chancellor (February 26, 2004)
- There can then generally be sub-delegations
- Sub-delegation must be in writing (use format designed by General Counsel's Office)
- Protects the delegate and sub-delegate as an **authorized** signer
- The authorization is limited to **specific types** of contracts; in most instances, can **only** sign UNCW produced form contracts without consultation.

UNCW 'Form' Contracts

For many repetitive situations, the General Counsel's Office has developed form contracts:

Internships; Real Estate Leases; Facility Rental; and Various Procurement of Goods & Services.



Prohibited Contract Clauses



- Limitations to contractor's liability

Ex. “In no event shall Contractor be liable for any damages arising from any breach of contract or liability in tort.”



Prohibited Contract Clauses



- Waiver of the limits of the University's liability under the Tort Claims Act

Ex. A state agency cannot waive the State's sovereign immunity and assume liability for actions not covered by the Tort Claims Act.



Prohibited Contract Clauses



- Hold Harmless or Indemnification clauses in favor of the Contractor

Ex. “University shall defend, indemnify and hold harmless the Contractor against any and all loss, injury or other damage.”



Prohibited Contract Clauses



- Acceleration clauses

Ex. “If the University breaches the agreement, Contractor may accelerate and declare all obligations of the University immediately due and payable by the University.”



Prohibited Contract Clauses



- Clauses that would make the contract subject to the laws or legal forums of another state

Ex. “The agreement shall be governed in accordance with the laws of the Planet of Mars. Any legal action shall be brought in the proper court of Mars.”



Prohibited Contract Clauses



- Clauses that alter N.C. general contract law

Ex. “Any legal action brought pursuant to the agreement shall be initiated within a period of one (1) year following the discovery by the party bringing the action of the event giving rise to the cause of action.”



Prohibited Contract Clauses



- Binding dispute resolution clauses (i.e. arbitration); VC and Legal approval required

Ex. “All disputes arising out of the agreement shall be settled by arbitration. The decision of the arbitrator shall be final and binding upon both parties.”



Prohibited Contract Clauses



- Clauses authorizing the contractor to assign the right to receive payment from the University under the contract without subjecting the other party to the claims and defenses the University had against the contractor

Ex. “Contractor may assign the performance of the agreement to a qualified third party.”



Prohibited Contract Clauses



Others that are disfavored:

Late payments; payment due less than NET 30 days from receipt; pay all taxes; use of UNCW's name (not marketing related); required to carry types of insurance; confidentiality provisions; unlimited access to UNCW's premises; no solicitation of employees; no pro-rata refund to UNCW.

If term is allowed, want **mutuality**.

UNCW 'Form' Clauses

Outside of the requirements of state law, in the interests of **Best Legal Practices** the General Counsel's Office has developed form clauses that should be in most contracts:

Contract constitutes entire understanding; severable if part is void; indemnify and hold UNCW harmless; UNCW liable to the extent of the NC Tort Claims Act; no assignment etc; neither party's employee is agent of the other; force majeure; and commencement, amendment, length, termination, and renewal.

Insurance

- UNCW is self-insured
- ONLY the Dept. of Insurance may purchase additional insurance for state agencies
- Insurance is available for
 - > Student Internships
 - > Study Abroad
 - > Professional Liability & Medical Malpractice

N.C.G.S. 14-234

“(a)(1) No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract.”



N.C.G.S. 14-234

“(a)(4) A public officer or employee derives a direct benefit from a contract if the person or his or her spouse:

(i) has more than a ten percent (10%) ownership or other interest in an entity that is party to the contract;

(ii) derives any income or commission directly from the contract; or

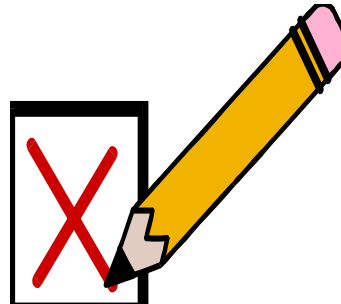
(iii) acquires property under the contract.”

N.C.G.S. 14-234

“(e) Anyone violating this section shall be guilty of a Class 1 misdemeanor.”



“(f) A contract entered into in violation of this section is void.”



Final Words

Read the contract

(even the small print)

When in doubt, seek advice from the Office of the General Counsel



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or

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