

Howard University Contracting Process Standard Operating Procedure (SOP)

Related Policy: 300-007 Contracting Policy

Effective Date: June 28, 2021

Next Review Date: June 28, 2023

Purpose	<p>In a dynamic and litigious society, the contracting process must address a host of issues to protect the best interests of the University. The best interests of the University include but are not limited to compliance with regulations and policies, a clear statement of the scope of work and deliverables, acceptable business terms, submitted in a customary format that allows both parties to seamlessly input changes so that terms can be negotiated in the most effective and expedited manner, acceptable litigation and/or arbitration recourse, and protected information considerations. These issues require expert review and are best resolved by formalizing agreements in writing.</p> <p>The Office of Procurement and Contracting (OPC) has the expertise and central position to review agreements for conflicts of interest and business considerations and, as further set forth below, to solicit additional input from University Office of the General Counsel (OGC), Risk Management, the Budget Office and other University departments as needed to help ensure that the University's and Hospital's interests are protected.</p>
Exclusions	<p>This process applies to the purchase of all goods and services. This process does not apply to grant awards or related agreements outlined in the contracting policy.</p>
Contract Management System	<p>The University will use the Scout Contract Management tracking software integrated into its ERP system. The software allows authorized users to have comprehensive visibility into contract and renewal information, workflow approvals, including views of all contracts (and their interrelationships) with each supplier. The Scout CMS helps users make proactive decisions and operationalize obligations to realize the full benefit of all contracts and serves as the contract repository for all University contracts.</p>
Roles and Responsibilities	<p>Within the context of procuring goods and services, the following roles and responsibilities have been established by the OPC and OGC to ensure the proper segregation of duties is built into the Contracting process.</p> <ul style="list-style-type: none">• Requester<ul style="list-style-type: none">– Accountable Unit designee who is trained and granted access to initiate requisitions in the ERP System– Prepares and submits Purchase Requisition with all required supporting documentation

- **Department Approvers**

- Accountable Unit Manager who is trained and granted access to approve requisitions in the ERP System
- Ensures that the Purchase Requisition is in line with the Unit’s business needs, is budget appropriate and procurement ready

- **Budget Approvers**

- Budget Office designee who is trained and granted access to verify funding in the ERP System

- **Office of Procurement and Contracts (OPC)**

Authority

- Duly authorized University agent with the expertise to provide strategic sourcing guidance in the acquisition of all goods and services for the University and Hospital with a goal of obtaining the highest quality products and services at the best value.
- Duly implements Howard University policy that OGC-approved contract templates are used whenever such a template would be appropriate (regardless of contract size) and seeks vendor approval of an OGC-approved template without edits or modifications beyond accurately filling requested information in blanks provided in the template. Any contract with a value of \$100,000 or greater (total of initial term plus any additional terms), must go to OGC for a compliance review before the contract is sent to the signatory.
- Duly implements Howard University policy, based on agreement type and content, that a proper OGC-approved contract template must be used in contracts below \$60,000, so that the legal terms protect the University. Such use of an OGC-approved template will not require OGC legal sufficiency review, if the template is not modified, other than filling in blanks appropriately.
- Communicates to University vendors that all contracts up to a value of \$60,000 where there is a University template, (the “Template Eligible Contracts”) will be put on the University Standard Contract Templates that have been created and approved by OGC. University Standard Contract Templates, include but are not limited to Independent Contractor Agreements, Master Purchase Agreements where an ongoing relationship is contemplated and Software licensing, SAAS and cloud computing contracts and are found on the OGC website.
- Conducts due diligence on Purchase request, including ensuring that competitive process, protocol, and considerations are addressed
- When a request is made for sole sourcing, works with the requesting unit to ensure that sole sourcing is required, and by having the appropriate unit officer signs the OGC-approved sole source documents

	<ul style="list-style-type: none"> - Reviews and approves amendments to previously fully executed contracts when there are only changes to business terms that constitute: (i) increases in the scope of work resulting in increases in cost not exceeding \$100,000, provided that the original contract had a spend of \$100,000 or more; (ii) increases in the scope of work resulting in the total spend on the amended contract not exceeding \$99,999, if the original contract did <i>not</i> have a spend of \$100,000 or more; (iii) decreases in scope of work or the quality of products and services that are paired with proportionate decreases in contract cost such that the University would not be materially disadvantaged; or (iv) change in the contract term that does not cause the total contract spend to reach \$100,000 or more. OPC is authorized to process for execution, without OGC review, amendments that meet the criteria above. - If the Requester has not obtained Board approval, OPC will assist the Requester in documenting the business case for the contract and will notify OGC and the Office of the Secretary of (i) real property contracts and (ii) all other contracts having an anticipated value of more than \$5,000,000 which require Board Executive Committee approval prior to execution on behalf of the University pursuant to the University Bylaws and HU Policy 300-005, whereupon the Office of the Secretary will plan and schedule a meeting of the Executive Committee of the Board to review the contract. - Creates contract tracking number - Reviews and approves business terms <p><i>OGC-approved Templates</i></p> <ul style="list-style-type: none"> - Ensures that all Template Eligible Contracts are on a University Standard Contract Template, and that the most recent version has been downloaded directly from the OGC website. - Provides vendors with a fillable version of the applicable OGC-approved template for Template Eligible Contracts in advance so that vendors are aware of the University contracting requirements for Template Eligible Contracts. <p>For Template Eligible Contracts negotiates and processes for execution, utilizing trained contract specialists, OGC-approved templates and ensures that no legal terms are altered in the University Standard Contract Template.</p> <ul style="list-style-type: none"> - Whenever an OGC-approved template must be modified, or a vendor refuses to use an OGC-approved template, the OPC representative must forward the template to OGC accompanied by a memo explaining why compliance with the template mandate herein could not reasonably be achieved. <p><i>All Contracts that Are Not Eligible to Skip OGC Review</i></p> <ul style="list-style-type: none"> - Ensures that contracts that are forwarded to OGC by OPC for review are submitted with the following items: (1) an editable word format of any documents that need to be executed or otherwise govern the
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agreement, such as Terms and Conditions (2) a Term Sheet filled out by the requester (3) a Checklist filled out by the requester (4) All exhibits, Statements of Work and other documents that are attached and made part of the Agreement, also in an editable word format (5) where there are insurance provisions, the contract has been reviewed by Risk Management prior to submitting to OGC. Collectively the above are referred to as the "OGC Submission Requirements." [hyperlink to the August 7, 2019 Memorandum for more details regarding the OGC process]

- A contract may not be signed by an authorized signatory unless presented by a representative of OPC with a cover sheet confirming completion of the review process, and a legal sufficiency memorandum if required.
- Administer contracts repository of all executed contracts and amendments thereto.

- **Office of the General Counsel (OGC)**

- The University legal team with the expertise to review and negotiate contracts for legal sufficiency will endeavor to ensure the University's interests are protected.
- All contracts for goods and services must be submitted to OPC for compliance before sending to OGC. Any exceptions to this process due to urgent circumstances must be approved in writing by the CPO or CFO to ensure that the transaction is tracked appropriately.
- All contracts that are to be reviewed by OGC must meet the OGC Submission Requirements (*i.e.*, as set forth above an editable word version of the Agreement and all exhibits and SOWs, a Term Sheet, Checklist, documentation on why an OGC-approved template could not be used).

The OGC paralegal will do a submission review of the submitted documentation to ensure that the contract submission meets the OGC Submission Requirements.

Contracts that are not properly submitted will not be reviewed until a proper submission has been made. The OGC contracts paralegal will inform a requester and/or OPC when a contract has not been properly submitted and will document the missing items.

The time-period for the legal review process begins once the contract has met the OGC Submission Requirements.

- Once a contract meets the OGC Submission Requirements, OGC completes legal review and, once the reviewing attorney and General Counsel approve, issues a Legal Sufficiency Memorandum, authorizing signature by the University authorized signer.
- Where OGC will be reviewing a contract and there are insurance provisions in the Agreement, it is the responsibility of the contract

	<p>requester and/or OPC to submit the Agreement to Risk Management for a review of the insurance provisions prior to submitting the Agreement to OGC for review.</p> <ul style="list-style-type: none"> - For all contracts valued at \$100,000 or more, as required in the Legal Sufficiency Memorandum, OGC must conduct a second review of the contract after the contract is signed by the prospective vendor to verify that only the changes recommended in the Legal Sufficiency Memorandum have been incorporated into the final executable contracts and that no subsequent unauthorized changes have been made. A contract that requires OGC review may not be signed by an authorized signatory without the appropriate review by OGC as confirmed by the Legal Sufficiency Memorandum. It is the responsibility of OPC on behalf of the Accountable Unit and the authorized signatory to ensure that the contract is compliant with the Legal Sufficiency Memorandum before the authorized signatory signs the contract on behalf of the University. The contract may not be signed by an authorized signatory unless presented by a representative of OPC with a cover sheet confirming completion of the Compliance Review process. - Once a contract has been fully executed, OPC will ensure that the contract is filed in the Contract Repository in the University's ERP system, where it can be accessed by authorized OPC and OGC representatives. - OGC does not maintain signed copies of the agreements.
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<p>Business Process and Flow Diagram</p>	<p>Contracting Process Flow (hyperlink to flow process)</p> <ol style="list-style-type: none"> 1. Ensure that there is a valid purchase requisition in the ERP system. OPC will not review a contract or engage OGC for legal review without: (1) an approved and valid Requisition in the ERP System unless the Chief Procurement Officer (CPO) provides a waiver, and (2) Board Executive Committee approval for real property contracts requiring such approval and all other contracts having an anticipated value of more than \$5 million pursuant to the University Bylaws and HU Policy 300-005 2. Submit the contract in accordance with the OGC Submission Requirements with all required supporting documentation including the Term Sheet and Checklist [hyperlink] in the Contract Management System (CMS). Note: OPC will inform vendors that all Template Eligible Contracts must be put on an applicable University Standard Form Template.
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3. OPC will inform vendors of this requirement in advance prior to selecting a vendor and acceptance of this mandate will be one of the required items in selecting a vendor.
4. OPC assigns a contract number and reviews the submitted documentation for conflicts and business considerations, with input from Accountable Unit, Vendor, OGC and Finance (Controller, Risk Management, Budget, Compliance, etc.) to help ensure that the deliverables are clearly stated, and the interests of the University and the Hospital are protected.
5. If the contract is not covered by a University Standard Contract Template, OPC will document why a contract cannot be covered by a University Standard Template and send the contract with supporting documentation to OGC for legal review, along with all required supporting documentation, including the Term Sheet and Checklist, within the CMS. **It should be noted that a vendor's refusal to use a University Standard Template, where one is applicable, is not without further justification grounds for forwarding a contract to OGC. It is the responsibility of OPC to ensure that all Template Eligible contracts are placed on a University Standard Form Contract.**
6. When a contract does not require OGC review, under this Contracting Process, only an OPC representative can recommend and seek the execution of a contract from an authorized contract signer unless authorized by the CFO, President, or the CPO. When a contract requires OGC review, OGC will send the agreement, with its legal sufficiency memo, to OPC via the CMS. OPC will attach its cover sheet to the document compliance and forward to the signatory for execution.
7. OPC will encumber funds with the issuance of a Purchase order for each eligible contract which obligates the University.
8. OPC will forward all executed agreements valued at \$100,000 or more to the Controller's Office (controllercontracts@howard.edu).
9. All executed contracts with the supporting documents are tracked and stored in the Scout Contract Management System and OPC's Contracts Repository.

Any transaction which requires the execution of a Contract but does not adhere to this Policy is considered unauthorized.

Entry Criteria and Inputs

Entry Criteria	<ul style="list-style-type: none">• An approved and valid Purchase Requisition
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Inputs	<ul style="list-style-type: none">• Contracts, Statements of Work, proposals, OGC Checklist and Term sheet, and other pertinent or required materials in an editable word format
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Exit Criteria	<ul style="list-style-type: none">• Approved contract negotiated and reviewed by OGC and/or OPC
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Outputs	<ul style="list-style-type: none">• Compliance and Business Terms approval• Legal Sufficiency Memo as required• Final contract, executed by authorized signers, and the associated Purchase Order encumbrance
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Support Areas

Tools and Templates	<ul style="list-style-type: none">• ERP System• Contract Management System• OPC Policies and Procedures• OGC Contracting Process• OGC Contract Forms and Templates
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Related Policies and Procedures

	<ul style="list-style-type: none">• 200-003 Procurement General• 300-005 Contract Signing Authority Levels and Administrative Requirements• Navigating <i>Procure to Pay</i> Guidelines
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