

TITLE:	Supplier Contracting Guidelines	Process: FIN_PS_PSG_050
Replaces:	Manual Sections 6.4, 7.1, 7.5, 7.6, 7.11	Effective Date: 6/1/2012

Contents

1	About university supplier contracting	3
2	When is a contract required?	3
3	Who may sign a contract?	4
4	What is a contract?.....	4
	Purchase Order (PO).....	4
	Master Services Agreements.....	5
	Preferred Supplier Agreements.....	5
	Statement of Work.....	5
	Software Licenses.....	5
5	Contracting Roles and Responsibilities:.....	6
	5.1 Purchaser/Department Responsibilities:	6
	5.2 University Contracts Office Responsibilities:.....	7
	5.3 Procurement Services Responsibilities:.....	8
6	The Contract Creation and Review Process:.....	8
	Step 1: Purchaser/department submits initial request to University Contracts Office.	8
	Step 2: University Contracts Office creates/reviews contract.	9
	Step 3: UCO forwards contract to department for review.....	9
	Step 4: The department forwards the contract to the supplier for review.....	10
	Step 5 Negotiation (if necessary).....	10
	Step 6 Signature.....	10
	Step 7 Filing the Contract and Notification of Accounts Payable.....	10
7	Some Related University Policies and Procedures	11

Definition of Terms

Carnegie Mellon University referenced as **CMU, Carnegie Mellon, or the university**

Department represents the department or the department's personnel (including buyer, purchaser, etc.) involved in acquisition/contract.

OSP is the Office of Sponsored Projects (part of the VP of Research organization)

Procurement is Procurement Services (part of the Controller's Office in the Finance Division).

Supplier represents the vendor or supplier that would be providing goods or services to the university.

UCO is University Contracts Office [part of the Office of the General Counsel (OGC)]

Types of Agreements:

MSA – Master Services Agreement

PO – Purchase Order

PSA – Preferred Supplier Agreement

SOW – Statement of Work

1 About university supplier contracting

A contract defines the business arrangements and legal obligations between Carnegie Mellon University (hereinafter Carnegie Mellon or the university) and the selected supplier of goods or services. When purchasing goods or services from a supplier, it is essential for Carnegie Mellon to obtain protections in the contract with the supplier from the material risks that are associated with the purchase of the goods or services from that supplier, regardless of the purchase method utilized.

The University Contracts Office (UCO) and Procurement Services have developed these guidelines to document the supplier contracting process and describe situations when a contract is required before any University purchase can be made from a supplier. To facilitate compliance with this procedure, the University Contracts Office administers the review and assists in the negotiation of most supplier contracts for the university.

2 When is a contract required?

Carnegie Mellon requires a contract in cases where the university may be exposed to material financial or legal risks from the purchase of goods or services. As a result, in most cases, a contract is required whenever the university is purchasing a service from a supplier. As well, in many instances, a supplier will also require a contract to be executed before it will provide goods or services to the university.

Common situations where a contract is required:

- Services that involve the performance of labor by individuals while physically present on the university's premises
- The purchase of services where deliverables (such as software or a report or a website) are created and needed
- The purchase of professional services, including temporary employment and consulting services
- Agreements for Leased space or facilities
- Space rentals for off-campus events including expos, exhibitions, etc.
- Catering services
- Software licenses and software maintenance agreements
- Equipment leases

When creating a contract, the focus is generally on:

- Ensuring that the contract reflects all of the material agreed upon business terms, including pricing and payment terms
- Obtaining the appropriate commitments, representations and warranties from the supplier
- Obtaining the appropriate indemnifications from the supplier when warranted
- Eliminating any inappropriate limitations on the supplier's liability to the university
- Protecting confidential information

- Obtaining ownership of or the appropriate right to use intellectual property (when applicable)
- The potential for disputes or claims arising out of the services or products purchased, including infringement claims
- Compliance with applicable laws and University policies
- The responsibility for applicable taxes

There is no minimum financial threshold required for a contract. Purchases for small dollar amounts or at no cost to the university may present legal or financial risks to the university that are many times greater than large dollar purchases. In addition, contracts are required regardless of the purchase method including, but not limited to, Purchase Orders, Purchasing Cards and Expense Reimbursements.

3 Who may sign a contract?

The authority to sign contracts is governed by the university's policy for [Authorized Signatures for Agreement, Contracts and Licenses](#). Individuals may not sign contracts on behalf of the university unless they have the authority to do so in accordance with this policy. For the purposes of this document, signatures include both physical signatures in ink and electronic signatures commonly identified as "click-through" agreements that acknowledge the acceptance of, or agreement to terms and conditions.

In accordance with this policy, the Director of the University Contracts Office is authorized to execute supplier contracts for purchases up to \$100,000. Contracts for purchases in excess of \$100,000 will be routed by the Director to the appropriate University signatory.

4 What is a contract?

A contract or agreement is a legal document between two or more parties that specifies the financial, business and legal terms between them. At Carnegie Mellon, a contract may take the following forms:

Purchase Order (PO).

A Purchase Order is one of the simplest forms of a contract at Carnegie Mellon. A PO is an order issued by the university to a supplier that includes commercial information and the terms and conditions that govern the purchase. POs are generated in the Oracle financial system and include the appropriate university standard terms and conditions governing the purchase.

A purchase order does not require a signature; rather, it requires the approval of designated individuals in Oracle financial based on the identity of the purchaser/department, the source of funding and the transaction size. The electronic approvals are captured within the system for the purchase in lieu of signature.

The Director of the University Contracts Office can determine if a Purchase Order is acceptable to meet Carnegie Mellon's purchase requirements in lieu of a separate signed contract for a specific

purchase. Buyers should request and maintain a copy of correspondence between themselves and the University Contracts Office indicating University Contracts Office approval.

Master Services Agreements.

A Master Services Agreement (MSA) is a contract between Carnegie Mellon University and a supplier that specifies many of the material legal and business terms of the university's purchases of goods or services with that supplier. The MSA is designed to be used repeatedly by the university to procure goods or services from that supplier over a period of time using the same agreed to terms. Typically, an MSA does not include negotiated pricing.

In most cases, the department will need to negotiate some pricing or other specific business terms of the specific good or service that will be purchased (for example, quantity or timing of delivery), but will not need to negotiate the legal or business terms already agreed to in the MSA. Use of an MSA to purchase a good or service generally requires the university to enter into an additional contract document with the supplier to document the specific business terms of the purchase that have not been agreed to in the MSA, which may take the form of a PO or Statement of Work that covers these business terms.

Preferred Supplier Agreements.

A Preferred Supplier Agreement (PSA) is a contract between the university and a supplier that specifies all of the material legal and business terms of the university's purchases of goods or services with that supplier, and can be used by the university to make repeated purchases of goods or services from that supplier over time. Unlike an MSA where some terms need to be negotiated and documented by way of a PO or Statement of Work with each purchase, with a PSA, since all business and legal terms (including pricing) have been negotiated, no further negotiation is required to make a purchase (subject to the procurement limitations of Carnegie Mellon's Procurement Policy).

Statement of Work.

A statement of work (SOW) is a document that details the work activities, deliverables, timelines and other requirements of a supplier in performing specified work. Detailed requirements and pricing are also usually included in the statement of work. In most cases, a statement of work must be combined with a services agreement to comprise a contract, since statements of work generally do not contain all of the terms and conditions of the purchase.

Software Licenses.

A software (computer program) license is a contract with a software supplier/licensor governing the use of supplier/licensor's software. A license is required to use most software owned by others. A typical software license grants the user/licensee permission to use one or more copies of the software (which may be provided by the software supplier/licensor, for example, through DVDs, downloads through the internet or subscription services) in ways where such use would otherwise constitute infringement of the software supplier's/licensor's rights under law. Software licenses are either in written form or in a form that can be accepted by an authorized University signatory over the internet (e.g., through click-through licenses, downloads or subscription internet services which may be purchased with a Purchasing Card). Both forms require the review and approval of University Contracts Office before they can be executed or accepted/purchased over the internet.

5 Contracting Roles and Responsibilities:

Ensuring that a contract contains the agreed to business terms and that the university is protected against unnecessary risk and is complying with its legal and financial obligations associated with that contract (including audit requirements) requires a collaborative process with roles and responsibilities shared by many members of the campus community.

5.1 Purchaser/Department Responsibilities:

- Understand and comply with Carnegie Mellon's purchasing policies and procedures.
- Negotiate the business terms of the purchase, including pricing and delivery, with the supplier.
- For purchases being made with sponsored project funds: understand the source of funding for the purchase and the purchasing requirements and restrictions of the organization/entity (e.g., a corporate or federal sponsor) that funds the purchase. Note that purchases funded by sponsored project agreements should typically be forwarded for review to the Office of Sponsored Programs (OSP) rather than the University Contracts Office. The Office of Sponsored Programs will need to ensure that the purchase and related contract for the purchase meets the requirements of the sponsored project agreement for reimbursement. As a result, purchases funded by sponsored project agreements should, as a general rule, be sent to the Office of Sponsored Programs and not the University Contracts Office.
- For non-sponsored purchases, communicate details required for the contract to the University Contracts Office in a timely manner, including:
 - The complete legal name and address of the supplier;
 - A description of the goods or services to be purchased;
 - When the services will be performed or goods will be purchased/delivered;
 - Where the services will be performed or goods will be delivered;
 - All requirements and specifications for the goods or services to be purchased; (including any RFPs or other documents relating to the purchase); and
 - The contact person within the department who will respond to questions about the business terms of the purchase.
 - The source of funds for the purchase (Oracle account string).
- For the purchase of services utilizing agency funds, contact the University Contracts Office prior to purchase to determine whether a contract is required. Agency funds consist of funds held by the university which belong to organizations external to the university. An example of agency funds would be funds held on behalf of student activity groups/clubs. In the Oracle financial system, agency accounts are included in general ledger strings ending in 95 or 96. An executed contract or a written approval from the University Contracts Office must be obtained prior to the purchase of services utilizing agency funds and this must be attached to the applicable PRC or the purchasing checklist. If the purchase does not require completion of the Purchasing Checklist/Bid Summary, executed contracts or copies of the

-
- communication between the buyer and the UCO should be forwarded to Procurement Services at procurement-inbox@andrew.cmu.edu.
- Provide timely review of the contract drafts for consistency with agreed business terms and advise the UCO of any inconsistencies.
 - Provide timely response to questions from the University Contracts Office about the business terms of the purchase.
 - Act as the liaison between the supplier and the university and other university departments which may have an interest in the commitment (e.g., Risk Management, Facilities Management, Environmental Health and Safety) to facilitate contract negotiation.
 - Work with Office of Risk Management to obtain from or provide to the supplier the required insurances and/or the certificates of insurance evidencing the required insurance. Once the contract has been executed, (i) adhere to the provisions of the contract, and (ii) monitor performance of the supplier under the contract and promptly advise the University Contracts Office or the Office of General Counsel or the Procurement Services department of any subsequent issues or problems involving the supplier or the contract and assist them in resolving those issues or problems.
 - Responsible for retention of signed contracts for department purchases.

5.2 University Contracts Office Responsibilities:

- Review contract requests in a timely manner.
- Prior to affixing a University-Authorized signature, review the contract for accuracy, risk reduction and terms favorable to the university.
- Assure that:
 - A legal review of the contract (or the terms of the contract has occurred), as appropriate
 - All University requirements have been met, and
 - Any other University department which may have an interest in any of the commitments under the contract (e.g., Risk Management, Facilities Management, Environmental Health and Safety, etc.) is notified or consulted in advance, as appropriate.
- Work with the department to draft or review contract language that will protect the interests of the department and the university.
- Manage the escalation of issues that require input from the Office of General Counsel to resolve.
- Draft contract provisions consistent with the department's and university's requirements and university policies.
- Review contracts for compliance with Carnegie Mellon legal and policy requirements.
- Assist purchaser/department in negotiating resolution to issues that are acceptable to Carnegie Mellon and the supplier when possible.

- Discuss the risks of various contract provisions with the purchaser/department where appropriate and respond to questions about various contract provisions from the purchaser/department where appropriate.
- Sign approved contracts for purchases having a value up to \$100,000, and assist in the management of the signature process for other contracts in accordance with University policy.
- Maintain a database of contracts executed by the University Contracts Office.

5.3 Procurement Services Responsibilities:

- Assist purchasers/departments with understanding Carnegie Mellon purchasing policies and procedures.
- Assist purchasers/departments in identifying existing contracts that may be used for purchases.
- Provide appropriate assistance in negotiation of commercial relationships when requested.
- Negotiate legal terms in accordance with the university's accepted terms.
- Assist purchaser/department in issue/conflict resolution with suppliers engaged by CMU (Note: it is the purchaser/department's responsibility to timely advise Procurement Services, University Contracts Office and/or the Office of General Counsel of any issues with any supplier or contract and to provide such assistance to them as may be required to resolve the issue/conflict).

6 The Contract Creation and Review Process:

The contract creation and review process is best facilitated with clear, timely and active communication between all participants in the process. The objective of this process is a contract that meets the needs of the department while ensuring that necessary contractual protections for the department and the university are in place.

The process to request a contract is as follows:

Step 1: Purchaser/department submits initial request to University Contracts Office.

The department should submit its contract request to the University Contracts Office by emailing university-contracts@andrew.cmu.edu. (Note: Contract requests for purchases funded by sponsored project agreements should generally be submitted to the Office of Sponsored Programs and not the University Contracts Office.)

Along with the request, the department should include an appropriate description of the requirements, including the supplier's complete name and address, a description of the goods or services to be purchased, when the services will be performed or goods will be purchased/delivered, where the services will be performed or goods will be delivered, all other requirements and specifications for the goods or services to be purchased, source of funds for the purchase and the contact person within the purchaser's department who will respond to questions about the business terms of the purchase.

If the supplier has already provided a draft contract for review, that contract should also be attached to the email.

In addition, if the purchaser/department has issued a request for proposal (or similar document) and/or the supplier has responded with a proposal, these items should also be attached to the email.

IMPORTANT: *The purchaser/department should always read the supplier's proposed draft contract prior to sending it to the University Contracts Office and advise the University Contracts Office in the email of the provisions of the contract with which it does not agree or understand, do not reflect the agreed upon business points with the supplier, etc.*

If the contract request is time sensitive, that fact should be indicated in the subject line or prominently in the body of the email (e.g., THIS CONTRACT IS NEEDED FOR AN EVENT TO BE HELD _____ [insert actual date]).

The contract request will be assigned to a UCO representative who will create and/or review the contract and assist the purchaser/department in the negotiation and resolution of issues with the supplier.

Step 2: University Contracts Office creates/reviews contract.

The UCO representative will perform an initial review of the request to determine how next to best proceed.

The UCO may also determine if a Master Service Agreement with the supplier exists or whether a recent contract has been negotiated with the same or similar supplier or service. If a Master Service Agreement exists, the UCO will determine if the service to be provided may be covered by the Master Service Agreement. If it is covered, the UCO will advise the purchaser/department of any additional requirements, such as documentation of the project scope and signature requirements before the service can begin.

If a contract needs to be drafted, the UCO will draft a contract with the intent of accurately documenting the business terms of the purchase, including the pricing and payment terms. In addition, the UCO will include language in the contract that adequately protects the university from a financial and legal perspective.

When reviewing a draft contract provided by a supplier, the UCO applies the same standards to ensure that the business terms are described accurately and that the university's interests are protected from a financial and legal perspective.

When drafting or reviewing a draft contract, the UCO may need the buyer's timely response to specific questions on various business or legal issues identified in order to provide a draft contract or finalize the review. The department and the UCO must work together to understand the business terms, and the risks associated with the specific purchase under the contract and the consequences should the product or service fail, in order to draft an appropriate contract.

Step 3: UCO forwards contract to department for review.

Once drafted or reviewed, the UCO will forward the reviewed/drafted contract to the department and highlight any remaining questions or issues, or any particular areas of risk.

It is the department's responsibility to review the draft contract to ensure that it reflects the desired business terms. If the department is not in agreement with the draft contract (e.g., it does not reflect the desired business terms) or has questions about the draft contract, the department should contact the UCO for further revisions or discussion.

Step 4: The department forwards the contract to the supplier for review.

After the draft contract is received from the UCO and reviewed and agreed to by the department, the department will forward the draft contract to the supplier for review. The supplier may agree to sign the draft contract provided or, after reviewing the contract, the supplier may have questions or comments on the draft contract.

Step 5 Negotiation (if necessary)

If the supplier has questions or comments on the draft contract provided, the supplier will typically raise these concerns and a series of negotiations and further drafting will take place to resolve issues until the contract is agreeable to both Carnegie Mellon and the supplier.

The UCO will most often participate jointly with the department in these negotiations with the supplier (or will assist the supplier in drafting language after the department's further discussions with the supplier, etc.). These negotiations are most often conducted by telephone or email but on occasion may be in person.

Step 6 Signature

Once the contract is in its final negotiated form, it is ready for signature. Carnegie Mellon prefers that the supplier be the first to sign negotiated contracts.

The university will, in most cases, accept signatures by email or fax (i.e., generally, an original pen and ink signature is not required to have a legally enforceable contract).

The Director of the University Contracts Office is authorized to execute supplier contracts for purchases of up to \$100,000. If the contract is for greater than \$100,000, the UCO will coordinate signature with an authorized University signatory.

Step 7 Filing the Contract and Notification of Accounts Payable

Once the contract has been signed by both the supplier and the university, the UCO will forward an electronic copy of the signed contract to the department. It is the department's responsibility to send the signed agreement to the supplier and to others within the department or the university who may need a signed copy (e.g. Office of Risk Management in the case of certificates of insurance are required to be produced by the university of supplier in the contract), and to keep the signed copy in a place where it can be obtained for reference in the future if needed.

The UCO will also retain an electronic copy of the contract (but no printed files of contract documents are maintained). The University Contracts Office will notify Accounts Payable that a contract has been finalized and is available for reference in the purchasing process.

7 Some Related University Policies and Procedures

- Purchasing Policy (<http://www.cmu.edu/policies/documents/Purchasing.html>)
- Procurement Card Procedures (<http://www.cmu.edu/finance/procurementservices/policies-procedures/procurement-manual.html>)
- Policy for Authority to Commit the University (<http://www.cmu.edu/policies/documents/Commit.html>)
- Authorized Signatures for Agreements, Contracts, and Licenses (<http://www.cmu.edu/policies/documents/AuthSig.html>)
- Appointment and Tenure Policy (<http://www.cmu.edu/policies/documents/Tenure.html>)
- Property Management Policies and Procedures (<http://www.cmu.edu/policies/documents/Property.html>)
- Carnegie Mellon University Business and Travel Expense Policy (http://www.cmu.edu/finance/controller/bte/files/bte_policy.pdf)