

**CLAYTON STATE UNIVERSITY
CONTRACTS REVIEW CHECKLIST**

(ALSO APPLICABLE TO AGREEMENTS AND MEMORANDA OF UNDERSTANDING)

*****As of July 1, 2013, prior to entering contracts for labor or services using a bidding process or when the contract amount exceeds \$2,499.99, contractors and subcontractors must submit signed and notarized affidavits on standard forms attesting to their compliance with the terms of the federal work authorization program, or stating a specific exemption from this requirement.**

- 1. Does contract include payment for labor or services? If so, contract owner must obtain from contractor a signed and notarized affidavit of compliance with the federal work authorization program requirements (also known as E-Verify), <http://www.uscis.gov> or in the alternative, a signed and notarized affidavit of exemption from the requirements. *If not, do not proceed with the contract. NOTE: Federal Work Authorization Numbers and Federal Tax Identification Numbers are not the same.***
2. Have you read the entire contract and does it meet your needs?
All contracts should be in the best business interest of the University and meet your departmental needs. The University has a fundamental responsibility to be effective stewards of taxpayer dollars.
3. **Is this contract part of a system wide procurement or a Board of Regents Master Agreement? If so, ensure that the Master Agreement is attached to the document(s) submitted for review.**
4. Are there any potential conflicts of interest, either through personal, family, or business relationships between the parties to the contract, or between the university department being represented and the outside party?
If so, Procurement Services should be notified immediately.
5. Does the contract identify all parties?
Note: University should be identified by its full legal name, The Board of Regents of the University System of Georgia, by and on behalf of Clayton State University.
6. Is the other party an independent contractor?
If so, the following language should be included:
“Clayton State University and contracted vendor shall be deemed to be and shall be independent contractors. Neither party is authorized to act as agent for the other for any purpose and shall not enter into any contract, warranty or representation for the other party as to any matter. Neither party shall be bound by the acts or conduct of the other party.”
7. Does the contract provide for payment by the University at least thirty days after receipt of a proper invoice?
If not, explain in detail any exception.

8. Does the contract seek to limit the vendor's liability and the University's scope of recovery?
If so, the following language must also be included ---“However, the provisions of this paragraph shall not apply to claims for bodily injury (including but not limited to death), personal injury, property damage, or any other claim which may be subject to the Georgia Tort Claims Act O.C.G.A., section 50-21-20, et seq. Further, the provisions of this paragraph shall not operate or be construed to expose the University to any liability in excess of any other liability limit applicable to the State of Georgia pursuant to any federal, state, or local law, rule or regulation, nor shall the provisions of this paragraph be deemed to obligate the customer of the state to indemnify the vendor for any cause of action asserted by a third party. Moreover, the customer is not stopped or prohibited from challenging the validity of this Limitation of Liability provision.”
9. Does the contract subject the University to tort liability or otherwise waive the state's sovereign immunity?
If so, the language must be deleted. (Example of prohibited language—“The University assumes all risk of loss for any damages that arise under this contract.”)
10. Does the contract contain “hold harmless” or indemnification clauses in favor of the vendor?
If so, the language must be deleted. (Example of prohibited language---“The University shall defend, indemnify, and hold the vendor harmless against any expense, judgment or loss which results from the University's actions under the contract.”)
11. Does the contract provide for personal liability of the University's signatories or any other parties?
If so, delete the language.
12. Does the contract provide for the University to pay attorney fees, court costs, or any litigation expenses of other parties if there is a dispute?
If so, delete this language.
13. Does the contract provide for a limitation of damages to be paid by the University? If so, include the following:
In no event shall the University be liable for any indirect, consequential, special or incidental damages whatsoever, for losses that may arise out of the performance of this contract/agreement. Any damages arising under this contract/agreement for which the University may be liable shall be limited to the monies actually paid by the other contracting party to the University.
14. Does the contract require the University to obtain general liability insurance or a bond?
If so, delete the language and replace with ”The University is self-insured and will be responsible for its own negligence in accordance with the Georgia Tort Claims Act to the limits set by law.”
15. Does the contract allow the vendor to unilaterally terminate the contract for cause or convenience?
If so, language should be modified to reflect that either party may terminate for cause or convenience. However, if termination for convenience will cause hardship to the University, a minimum of ninety (90) days advance notice is required.
16. In the event of premature termination of the contract by the vendor, does the contract allow the vendor to receive full payment?

If so, delete, or language should be changed to read that the University will reimburse the vendor for reasonable costs incurred prior to the date of termination.

17. Does the contract contain a survival clause? Example: Termination of this contract by either party shall not affect the rights and obligations of the parties accrued prior to the effective date of the termination.
If so, ensure that the language is acceptable to the University.
18. Does the contract require binding arbitration or mediation?
If so, delete the language.
19. Does the contract provide for a specified time period within which the University must file a legal claim or sue for breach of contract?
If so, delete the language because any legal action must be taken within the period authorized under the laws of the State of Georgia following the discovery by the party bringing the action of the event giving rise to the action.
20. Does the contract contain language that would make it subject to the courts of another state?
If so, delete and revise to reflect that the contract must be governed in accordance with the laws of the State of Georgia, and any legal action must be filed in state court in Georgia (not in federal court).
21. Does the contract allow modifications to be made by any means other than by mutual written agreement of authorized signatories of either party?
If so, language should be revised to reflect that any terms of the contract may only be modified upon written agreement of both parties.
22. Does the contract state that any statements made by any University employee in connection with the contract are binding on the University?
If so, the contract should be revised to read that the University shall not be bound by any representations or statements on the part of its employees or agents, whether oral or in writing. The contract may only be modified by written mutual agreement of both parties.
23. Does the contract allow the vendor to use the University's name in any advertising, endorsement or promotion?
The vendor may not use the name or any logos or trademarks of the University or any other entity in the University System of Georgia in any campaign or advertising, or in any commercial or promotional manner, without the express written consent of the University. Contact the Vice Presidents for Business and Operations and External Affairs to discuss obtaining written consent.
24. Does the contract specify that the contract is confidential?
If so, delete the language or revise to state that the vendor acknowledges that the Georgia Open Records Act governs the disclosure of any terms of the contract.
25. Does the contract permit the vendor to assign the contract to a third party without the University's consent?

If so, revise to read that the contract shall not be assigned by either party without the prior written consent of the other party.

26. Does the contract contain language stating that the University is responsible for payment of any taxes?

If so, delete as the University being a state entity is exempt from the payment of taxes.

27. Does the contract contain language for assessment of late penalty payments or finance charges against the University?

If so, delete.

28. Does the contract incorporate other documents or information by reference or refer to information that is not specifically detailed in the contract?

If so, request a copy of the document or information, review it against this checklist, modify as needed, and designate as an attachment to the contract.

29. Does the contract reference multi-year terms or automatic renewals?

If so, delete language and insert “The University shall have the option in its sole discretion to renew this contract annually upon the same terms and conditions for additional periods of up to one fiscal year.”

30. **In personal service contracts, when there is intent of the state agency to reimburse the contractor for travel expenses as part of the compensation for services, Georgia statewide accounting policies require there to be a provision in the contract that establishes the rates for reimbursement.**

31. Does the contract require vendor employees to work on campus on a regular basis?

If so, the following language should be included:

Should a vendor’s employees require regular interaction with students, employees, monies sensitive/confidential data, or facilities, or if the institution determines that the scope of work being performed by a vendor’s employee is such that a background check should be required, the vendor must conduct, and retain the results of, appropriate background checks for all such vendor employees. Vendor agrees to indemnify the Institution against the actions of vendor’s employees as a result of this requirement. [Background Checks of Supplier Employees (BPM 3.1.3)]

Examples of services could include outsourced bookstore operations, food services, maintenance, custodial workers, summer camp services and call centers that involve access to confidential data.

32. Does the contract involve personal data, international students, foreign travel/interaction, software, PCI language? *[Most contracts will require this as of May 2018.]*

If so, the following language should be included:

Vendor/Consultant agrees that it shall ensure that all personal data is properly collected, stored, processed, secured, archived or destroyed in compliance with Federal, State and the European Union General Data Protection Regulation 2016/679 (GDPR).