

LUTHER COLLEGE

POLICIES AND PROCEDURES

Department: Financial Services
Subject: Contracts Policy
Date Issued:
Date Revised: April 30, 2015, January 27, 2016, October 10, 2017
Approved By: Reviewed by Cabinet, Approved by President

I. Policy/Procedure

This policy outlines the guidelines for authorization of contracts on behalf of Luther College.

II. Purpose

The purpose of this policy is to ensure that all contracts undergo authorized review and approval prior to execution.

III. Scope

This policy applies to all faculty and staff and includes all types of contracts, establishing who has the authority to sign a contract based on the dollar value and nature of the agreement.

IV. Terms and Definitions

Contract – Under this policy, a contract is an agreement between Luther College and another party that is intended to have a binding obligation and be legally enforceable.

- Although contracts can be oral or written, the College's policy is to only accept written contracts
- Contracts may or may not involve money and are obligations of the College's resources such as money, finances, goods, services, space, intellectual property, trade name, academic exchange agreements, research agreement equipment sharing, etc.
- Contracts must have clearly documented terms that are mutually agreed upon
- Contracts must be entered into by competent parties

Memorandum of Understanding (MOU) - A formal agreement between two or more parties and is not a legally binding contract, but follows the same guidelines as a contract. An MOU does not contain legally binding elements in the text of the document, but must follow the same review process as a legally binding contract.

Authorized Signatory –For the purpose of this policy, an authorized signatory is an individual who has legal power to sign a contract on behalf of the College (see section V. B).

Contract Originator – The employee who initiates the contract approval process and will have responsibility for managing the terms of the contract.

V. Procedures and Guidelines

- A. Only authorized employees may sign a document that creates an obligation or undertaking on behalf of the College.
- B. According to the By-Laws of Luther College, Section 1.07, deeds of conveyance, mortgages, satisfactions of mortgages, real estate contracts and other such documents shall be executed according to guidelines established by the Board of Regents.
- All deeds of conveyance, mortgages, satisfactions of mortgages, real estate contracts and other such documents shall be executed by any two of the following officers to-wit: President, Vice-Presidents and Treasurer of the Corporation, and any two of the above officers are hereby fully authorized and empowered to make, execute and deliver any and all written instruments necessary or proper effectuate that authority hereby conferred.
 - Contracts for the purchase of goods and services or a combination thereof will require approval from the following authorized signatory(s):
 - o \$0 - \$2,500 – Budget center director or Budget center designee
 - o \$2,501 - \$10,000 - Budget center director or a Cabinet member
 - o \$10,001 - \$25,000 – Budget center director and a Cabinet member
 - o \$25,001 or greater - Two Cabinet members
 - Approval by the Board of Regents is required for:
 - o debt financing
 - o lease financing for which the value of lease payments is \$100,000 or greater
 - o real estate acquisitions for which the value is \$250,000 or greater
 - o off-campus non-contiguous property sales for which the value is \$250,000 or greater
 - o all sales of property contiguous to the Luther campus
 - o capital projects for which the value is \$250,000 or greater
 - o operating contracts for which the value is \$250,000 or greater
- C. It is the responsibility of the department generating the contract to ensure that the commitment of all resources (funding, personnel, facilities and space) is met. If resources are not available, the person responsible for generating the contract must receive authorization through his or her appropriate Cabinet member.
- D. There are certain insurance related terms that should normally be included in contracts. The terms include:
- A requirement that the contractor provide a certificate of insurance and maintain adequate commercial general liability limits of insurance and provide certification with minimums of:
 - o \$1 million Each Occurrence (Bodily Injury and Property Damage)
 - o \$2 million General Aggregate that applies on a per project basis
 - o \$2 million Products/Completed Operations Aggregate – construction contract only
 - o \$1 million Per Person or Organization (Personal and Advertising Injury)
 - A requirement that the appropriate College representative be given 30 days written notice if the contractor's or vendor's insurance policy will be canceled
 - The College should be named as an additional insured with the following requirements:
 - o That such additional insured status be on a *primary* basis
 - o That the additional insured coverage include both work in process (ongoing operations) and completed work (completed operations)
 - o That the additional insured coverage be maintained for a specified length of time
 - o Concerns relating to circumstantially restrictive insurance requirements should be addressed to the Vice President for Finance and Administration or the Director of Budgeting and Internal control

- E. There are certain terms in many contracts that must be modified or removed from the contract. These terms include:
- Choice of law provision – the contract should be subject to the laws of Iowa, not to those of other states
 - Binding arbitration references must be stricken
 - Extreme or unusual requests by the performers or vendors must be stricken
 - Single indemnification clauses indicating that the College or its agents are the only parties responsible if something occurs must be modified to provide dual indemnification
 - Ownership of the documents – if the vendor is indicated as the owner of the contract, the College should also be the owner
- F. If questions arise regarding contract language or terms, seek guidance from the appropriate Cabinet member as to whether legal counsel should be consulted.

VI. Confidentiality and Record

The Office for Financial Services is the designated custodian of all contracts and MOU's with external parties. All original signed contracts must be submitted to the Office for Financial Services. Copies of original documents should also be retained by the originating department.