Section 3. Preparation and Approval of Contracts (formerly CM 02-04)

The Nevada System of Higher Education annually enters into many contractual agreements. The efficient execution (signature) of contracts is often of critical importance. However, the processing and execution of a contract is sometimes delayed because of errors or omissions in its form.

The requirements and procedures stated in this policy have been established for the preparation and processing of proposed NSHE contracts. These requirements and procedures will result in the efficient processing of contracts and in documents that are consistently sound, correct in format, and that limit the potential liability to the System.

NSHE CONTRACT POLICY
FREQUENTLY ASKED CONTRACT QUESTIONS

The Board of Regents has given the chancellor of the Nevada System of Higher Education the authority to enter into contracts on behalf of the Nevada System of Higher Education subject to limited exceptions that are reserved for approval of the Board of Regents, such as certain real estate matters, and employment contracts of longer than one year.

The purpose of this question and answer format is to state in plain terms the NSHE policy on contracting, including any delegation of authority from the chancellor to the NSHE institutions. Where authority has been delegated from the chancellor to an institution that authority resides in the president of the institution. While the president may delegate that authority in writing to other administrative officers at the institution, the president ultimately remains responsible for all contracts entered into by the institution. Therefore the institution should have policies in place that provide for appropriate levels of internal review, including legal and financial review, pertaining to the economic and liability risks associated with the transaction. With respect to System Office contracts, the chancellor may establish additional policies and delegation authority within the System Office and its units.

Q 12 Which contracts MUST ALWAYS be sent to the chancellor for signature?

A Contracts that must always be sent to the chancellor for signature are:

1. All contracts that must be approved by the Board of Regents by law. These include, but are not necessarily limited to:

   (a) the sale or purchase of real property or the long-term lease of real property owned by NSHE, including most easements over real property (See NRS 396.430 and Board Handbook, Title 4, Chapter 10, Section 1(9)). “Long-term” is defined as in excess of four years.

   NOTE A: The lease of NSHE property for specific, one-time events need not be approved by the Board of Regents and is excluded from the requirements of this paragraph, but may otherwise be subject to the requirements set forth hereinafter.
NOTICE B: Contracts as described in (a) above must be placed on a Board of Regents Investment and Facilities Committee agenda for approval with final approval by the Board of Regents.

2. All contracts with an open-ended or indefinite term. Except as provided in Q 13 A.8 below, contracts with an open-ended or indefinite term are construed as contracts longer than five years. Likewise, contracts with “evergreen” clauses, i.e. clauses that automatically renew the agreement if no action is taken, or options that unilaterally allow one party to extend the term of the agreement beyond a five year term, are also construed as contracts with a term in excess of five years. In contrast, a contract that requires both parties to mutually agree upon or assent, in writing, to continue the relationship is essentially a new contract, and such a clause is not an open-ended or indefinite term.\(^1\) Irrespective of this interpretation, institution’s should still be mindful of any applicable purchasing rules or bid requirements before exercising such an extension.

3. Contracts that provide for the hiring of outside attorneys for legal services do not require chancellor approval, but do require written approval of the Chief Counsel’s Office. Chief Counsel’s Office approval is not required for the retention of outside attorneys as hearing officers or administrative code officers under Title 2, Chapter 6.

4. Except for standard form federal grants and contracts (including private and state contracts that are funded with federal funds and therefore require compliance with federal grant requirements) and for NSHE purchase orders, all contracts:
   
   (a) which require consideration (cash, property, or services) valued in excess of one million ($1,000,000) dollars, calculated by adding the total cumulative payments, delivery, or performance over the entire term of the contract,\(^2\) OR
   
   (b) which are for terms in excess of five years or which provide the automatic right to renew for terms that exceed five years in the aggregate.

   **NOTE:** The presence of either condition is enough to require that the contract be signed by the chancellor.

5. All contracts which, in the judgment of the president of an NSHE institution, have such a serious political, social, or financial impact on NSHE or the public that the Board of Regents’ or the chancellor’s review is necessary.

6. All other contracts for which signature authority has not been delegated by the chancellor as provided herein.

**Q 13 What contracts can be signed by the president?**

**A** As noted previously in Question 7, the Board of Regents Bylaws authorize the chancellor to delegate certain contract-related responsibilities.

Except for those contracts identified in Question 12 which must always be sent to the chancellor for signature, and except as may be otherwise provided herein, the chancellor hereby delegates signature authority for the following contracts to the presidents of NSHE institutions or to the presidents’ designee, subject to the institution’s reasonable judgment, at the time of entering into the contract, that the threshold limits set forth below will not be exceeded.

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1. An example of this type of contract clause is as follows: “The parties may mutually agree, in writing, to extend the contract for an additional term of two years on the same or different terms.”

2. For example: a contract for $20,000 per month for a five-year term would cumulatively exceed $1,000,000 and, therefore, would require the chancellor’s signature.
1. Consideration of One Million Dollars ($1,000,000) or Less and Terms of Five Years or Less

Except as otherwise provided in Q 13 A.4 below (sponsored project contracts), all [All] contracts (including interlocal cooperative agreements, interlocal contracts, and standard form contracts):

(a) which require consideration (cash, property or services) valued at one million dollars ($1,000,000) or less, calculated by adding the total cumulative payments, delivery or performance over the entire term of the contract,\(^3\) AND

(b) which are for terms of five years or less or which provide the automatic right of either party to renew for terms that do not exceed five years in the aggregate.

NOTE: Both conditions must be present before the contract can be signed at the institutional level.

2. Cost Overruns, De Minimus Changes and Change Orders

Cost overruns or change orders which in the aggregate do not exceed 10 percent of the base contract amount, or de minimus changes that do not materially increase the risks of the contract such as brief extensions for time of performance and the like. If there is any question about whether a change is de minimus, the institution should obtain the advice of the Chief Counsel’s Office.

3. Standard Form Federal Grants and Contracts (including private and state contracts funded with federal grant funds)

Except as otherwise provided in Q 13 A.4 below, all [All] standard form federal grant applications, grants, contracts, modifications, and release forms, including private and state contracts funded with federal grant funds that therefore require compliance with federal grant requirements.

NOTE: Sub-contracts under approved federal grants and contracts are sometimes entered into with third parties to perform portions of the work or to provide materials. Because subcontracts are executed at the institution level and are not subject to review and approval by the chancellor, it is the institution’s responsibility to maintain proper administrative oversight over the terms of any subcontract.

4. Sponsored Project and Sponsored Program Contracts – Consideration of Three Million Dollars ($3,000,000) or Less and Terms of Five Years or Less

All sponsored project and sponsored program contracts:

(a) Which require consideration (cash, property or services) valued at three million dollars ($3,000,000) or less, calculated by adding the total cumulative payments, delivery or performance over the entire term of the contract, AND

(b) Which are for terms of five years or less or which provide the automatic right of either party to renew for terms that do not exceed five years in the aggregate.

NOTE: Both conditions must be present before the contract can be signed at the institutional level.

\(^3\) For example, a contract for $15,000 per month for a five-year term would cumulatively total $900,000 and, in conjunction with the fact that the contract is for five years or less, would therefore be a contract that could be signed by the president or designee. Please remember, however, the real estate contracts and leases of NSHE property have different contracting requirements that may trigger Board approval. (See Question 12(A)(1)).
[4.5. Education Affiliation Agreements
All education affiliation agreements that do not exceed $1,000,000 and/or five years in duration. All education affiliation agreements must have insurance and indemnification clauses that have been approved by the institution Risk Manager and General Counsel’s Office. The insurance and indemnification clauses contained in NSHE standard form Education Affiliation Agreements are approved for use by all institutions and units.

[5.6. Purchase Orders Issued by NSHE
All purchase orders in which the purchase contract is awarded to the “lowest responsive and responsible bidder,” in accordance with the purchasing policy set forth in Title 4, Chapter 10, of the Board of Regents Handbook are delegated to the Vice president for Finance at the appropriate institution or his or her designee.

[6.7. Intra-Institutional Contracts or Agreements
Agreements between NSHE entities that do not exceed $1,000,000 and/or five years in duration. These agreements are, however, subject to any policies that have been adopted at the institutional level pertaining to the review and approval of contracts/agreements.

[7.8. Schedules For Master Agreements
For some contracts, the institution may enter into a master agreement that contemplates that schedules may subsequently be developed under the terms of the master agreement. Whether chancellor approval of an addendum or schedule is required is first determined by the process stated in the master agreement. For example, if the chancellor approves a master agreement that specifies that the institution will sign all schedules, the contract controls. If the master agreement is silent, then the same rule applies as that for modifications, meaning that chancellor approval is required if the schedule(s) individually or collectively exceed five years in duration or $1,000,000 in amount.

[8.9. Transfer Agreements for Biological Material Used in Research
Agreements to obtain the following biological materials used in research that exceed five years may be approved by the president or designee:

Material transfer agreements involving biological materials which are used in research, such as animals, reagents, cells, cell lines, antibodies, funguses, bacteria, viruses, antigens, cultures, nucleotides, proteins, pharmaceuticals, plasmids, vectors, embryos, tissues, fluids, and clinical specimens.

NOTE: The approval of such material transfers is subject to all other applicable contracting policies and procedures. At the end of each fiscal year, the institutions shall provide a report to the chancellor regarding the approval of any such transfer agreements.