

IV-1 Professional Services Contracting

NORTHWESTERN STATE UNIVERSITY

Professional Services Contracting

- I. Purpose and Scope:** This procedure outlines the method of Contracting for Professional Services provided by non-university personnel, in accordance with the State of Louisiana, Regulations for the Procurement of Professional, Personal, and Consulting Services.
- II. Reference:** State of Louisiana, Regulations for the Procurement of Professional, Personal and Consulting Services. Division of Administration Policy and Procedure Memorandum No. 71. Teachers' Retirement System of Louisiana Manual Chapter 15.0. Louisiana Revised Statute 11:701 through 11:791 and 39:1481 through 39:1526.

***NOTE:** All links for **supporting documents** are found at the end of this policy. See Supporting Documents used to process Professional Services Contracting.*

III. Procedure:

Contractual Authority

The University's policy, procedures and regulations operate under the aegis of express authority concepts only. Employees therefore do not have authority to enter into a contract on behalf of the university without specific delegated authority.

More specifically, but not limited to, you cannot:

1. offer employment to anyone
2. enter into any professional, personal, or consulting contract
3. procure goods and services, and/or
4. enter into any other contracts for any purpose, such as co-operative agreements with other entities, joint venture, etc.

Employees with specific delegated authority may enter into contract negotiations and extend offers subject to the approval by the University of Louisiana Board of Supervisors, President, Vice President, etc. In all cases, it is the responsibility of the employee to assure that he/she has specific authority to negotiate, extend offers and/or enter into a binding contract for the university.

Delegated Authority

The university has delegated authority from the Division of Administration, Office of Contractual Review, authorizing the Provost & Vice President for Academic Affairs, Vice President for University Affairs, Vice President for External Affairs, Vice President of Technology, Research, & Economic Development, and Vice President of Business Affairs to sign contracts on behalf of Northwestern State University for contracts under their budgetary authority for \$49,999 or less.

This special delegation pursuant to Act 418 will serve as your authorization from OCR to approve professional, personal, consulting, social services agreements in an amount not to exceed \$49,999 within a twelve-month-period. In accordance with R.S. 39:1488, this special delegation requires adherence to the following:

1. Compliance with all statutory and regulatory requirements.
2. Assignment of a contract monitor and development of a contract monitoring plan for all contracts established.
3. Contract approval by the agency head or approved designees.
4. Contracts approved under this special delegation must be reported quarterly by the 15th of each month.
5. This authority does not include amendments to existing contracts which have been approved by OCR or any amendments that would result in the total contract value to equal \$50,000 or greater.
6. You may not use this delegation of authority to seek additional staff or level of staff from the Department of Civil Service.

The President must approve the following types of contracts:

- Legal Contracts
- Architectural and Engineering Contracts
- Accountant and Auditor Contracts
- Contracts for more than \$49,999
- Contracts initiated by the President and charged to budget units under his budgetary authority.

Professional services contracts should be submitted and fully approved before contractors commence services. Contracts should be processed for approval in a timely manner and work under a professional services contract should not commence until the contract has been approved by the appropriate Vice President or the president when required.

Linking Contracts for Professional Services to Goals and Objectives, Performance Measures and Monitoring Plan

State law requires each professional services contract be "linked" to the university's Goals and Objectives (your unit goals and objectives), Performance Measures be identified, and a Monitoring Plan be in place. A sample document, *Goal and Objective*, is provided in this policy to demonstrate the application of this requirement. Attach this document to the *Contract for Professional, Personal or Consulting Services* when submitting a professional services contract to Business Affairs – Purchasing section. Include this document with every professional services contract you submit. Professional services contracts must be submitted with this document to be processed.

Fair and Reasonable Compensation

In accordance with the requirements of Louisiana Revised Statute 39:1499, the university must determine that the rate of compensation to be paid to professional services contractors is fair and reasonable to the state. In making this determination, the issues below must be taken into account, in the following order of importance:

- the professional or technical competence of offers',
- the technical merits of the offers or proposals, and
- the amount of compensation for which the services are to be rendered.

By signing the professional services contract, the Project Director/Budget Unit Head, Approving Agent, appropriate Vice President, and/or president are certifying that they have made a determination of "fair and reasonable compensation" to the state taking into account the above items.

Cost Benefit Analysis

For any proposed professional, personal, consulting, or social service contract that exceeds fifty thousand dollars and has a term of more than six months, a cost-benefit analysis shall be conducted which indicates that obtaining such services from the private sector is more cost-effective than providing such services by the using agency itself or by an agreement with another state agency, to include both a short-term and long-term analysis. The office of contractual review shall promulgate, as necessary, rules and regulations relative to the document and content of a cost-benefit analysis. (*CBA Document*)

Required External Approvals

As provided by R.S. 39:1498.2(B), each professional, personal, consulting, and social service agreement between a governmental body as defined in R.S. 39:1484(11) and a faculty member of any state college or university shall be subject to the written approval of the president of the college or university which employs the faculty member, and written notification of agreement and approval shall be given to the appropriate management board.

The university has delegated authority from the Division of Administration to approve professional, personal, consulting and social services contracts in an amount not to exceed \$39,999 within a twelve-month period.

The university must report quarterly to the Division of Administration, Office of Contractual Review, the contractor's name, services rendered, start and end date of contract, and total amount of each contract approved under delegated authority that exceed \$2,000.

All professional, personal, consulting, and social services contracts \$20,000 and greater require Civil Service approval except for the following review specifically exempted by Civil Service Circular #769:

1. Medical and radiological contracts for the care of student athletes.
2. Contracts or interagency agreements with other universities or colleges for research projects.
3. Contracts for professional design and/or engineering services for building/construction efforts (including parking lots, etc.) or to replace major equipment, such as chillers.
4. Contracts for individuals to serve as radio or television broadcasters for university sports.

All professional, personal, consulting, and social services contracts with a total dollar amount of \$40,000 or more must be submitted to the Joint Legislative Committee on the Budget (JLCB) for review prior to the effective date of the contract.

Louisiana Revised Statutes 39:1512(B) allows advance payments of up to 20% of the contract amount if properly justified. These advance payments are limited to nonprofit corporations. The Division of Administration, Office of Contractual Review, has taken the position that the intent of R.S. 39:1512 is for the provider to be a nonprofit corporation; therefore, the university cannot legally pay advances on contracts unless the provider is a nonprofit corporation. This prohibition on advance payments applies to contracts for entertainers, speakers, etc.

Office of Contractual Review contract requirements include:

1. Contracts must be written and interpreted in accordance with the laws of the State of Louisiana.
2. Contracts written and to be interpreted in accordance with the laws of other states will not be approved.
3. Contracts that hold other than the State of Louisiana "harmless" will not be approved.

In the event of either party's breach or default, the other party shall be entitled to exercise all rights and pursue all remedies available under Louisiana law.

Contracts will also be reviewed for compliance with R.S. 42:63 concerning prohibitions against "dual office holding and dual employment".

Facility Planning Major Repairs and Reroofing Projects

Facility Planning and Control and the University of Louisiana System have issued directives concerning professional services contracts for major repair projects:

1. Do not submit requests for approved capital outlay professional services contracts to the Office of Contractual Review (OCR) before you have submitted and received approval for the project from Facility Planning and Control.
2. When the university submits these professional service contracts to OCR, we must be sure that the BA22 form attached specifically reflects the capital outlay project number as the means of financing.

In order to satisfy requirement number 2, professional services contracts must be written for specific projects.

The University of Louisiana System staff must be copied on correspondence relative to these projects.

No payments will be made by Facility Planning and Control until vendor information is provided. See *W-9 Document* for memorandum to be submitted to Facility Planning and Control. Facility Planning and Control will utilize this information for preparation of IRS Document 1099.

Contractor's Travel

Whenever university employees travel with someone who is under a professional services or other contractual relationship with the university, the employee must travel under an approved "Travel Authorization" and must submit a "Travel Expense Account" for reimbursement of expenses.

"Professional Travel" is for travel expenses incurred by professional non-state personnel on a fee plus travel expenses agreement. When a contract includes travel, the contractor will be reimbursed in accordance with the terms of the contract and Division of Administration Policy and Procedure Memorandum No. 49. The contractor cannot bill for employee's travel expenses when employees travel with the contractor.

***NOTE:** Contact Business Affairs – Purchasing Section prior to initiating any Professional Services Contract where Travel is to be reimbursed as a separate cost to the Contractor.*

The "Professional Travel" expenditure account code should not be used to account for travel incurred through a professional service contract. The Office of Contractual Review has requested that travel for professional service contracts be accounted for and reported with and/or as part of the fee base.

Honorarium

From time to time, the university will have a guest provide "honorary" services to the university. The university normally reimburses the individual's "out-of-pocket" expenses and pay a "small" fee for the service. An "Honorarium" is a professional service in accordance with state law and requires a professional service contract, regardless of the amount of expense; therefore, this procedure must be applied when requesting the payment of "Honorariums".

Request to Contract

Budget Unit Head

1. Complete a Requisition for Professional Services Contracting, see [Creating a Requisition – FPAREON](#) in the Purchase Requisition Processing User's Guide of the Departmental Banner Finance User Guide.

PO Type: PS – Professional Services Contract
Purchase Order is issued to vendor.

2. Use Document History – FOIDoch to verify that all approvals are processed.
3. Prepare a **Contract for Professional, Personal, or Consulting Services**. Write the Banner Requisition No. on the contract before submitting to Business Affairs – Purchasing Section along with all required supporting documents.

***NOTE:** The above contract template cannot be used for legal services. Please contact Purchasing prior to contracting for legal services.*

Ensure that description of services to be rendered, fee rates, and other required information are properly completed. Agreements to pay travel plus the contracted fee are not authorized. The contracted fee should include all costs of performance. Agreements to pay travel plus the contracted fee should be limited.

***NOTES:** Departments should always retain a copy of all contracts submitted for their file. All contracts submitted to Business Affairs – Purchasing must be ORIGINAL documents signed in ink when contracts are \$40,000 and greater, and have a term greater than twelve (12) months.*

Contracts not exceeding \$39,999.99 may be submitted electronically by emailing the signed contract and all supporting documents to contracts@nsula.edu.

4. Cost Benefit Analysis must be submitted for any contract that exceeds \$50,000 and a term of more than six months. R.S. 39:1497 (**CBA Document**)
5. Complete the **Goals and Objectives**, Performance Measure and Monitoring Plan (**CBA Document**). This document is required to link the contract to the university's Goals and Objectives (your unit goals and objectives), to identify Performance Measures and to assure a Monitoring Plan is in place.
6. Contracts that exceed \$20,000 require Civil Service Approval. The Civil Service **SCS - Agency Request Form** must be completed and submitted to Business Affairs – Purchasing Section.
7. Complete the **Professional Service Contract Work Sheet**.
8. Request IRS W-9 from vendor, if vendor is not listed in FTIIDEN.

***NOTE:** For non-immigrant individuals working in the United States on an approved J-1 Visa issued by the US Department of State, an IRS W-8BEN form is required if the individual doesn't have a US Social Security Number. To contract for services with a foreign corporation, an IRS W-8BEN form is required.*

9. If contracting with a corporation, a formal, dated board resolution must be secured indicating that the signatory is a corporate representative and authorized to sign the contract (**Board Resolution Sample**). Also, a **Disclosure of Ownership Affidavit** which has been filed with the Secretary of State's Office (if contractor is a for profit corporation) must be submitted. (Contracts \$20,000 and greater)

NOTES: *If corporation's stock is publicly traded, a disclosure affidavit is not required.*

Must include "Certificate of Authority" to do business in Louisiana if contractor is an out-of-state corporation.

Submit resume for consultants on all consulting contracts.

10. For contracts \$5,000 or more, complete the checklist for "***Twenty Common Law Factors Used in Determining Employee Status.***"

11. Review the contract and assure that all required actions have been taken in accordance with this policy and state regulations. Complete the checklist provided in the state regulations (***Contract Checklist***).

NOTE: *Professional services contracts should be submitted and fully approved before contractors commence services. Contracts should be processed for approval in a timely manner and work under a professional services contract should not commence until the contract has been fully approved.*

12. Obtain signature of contractor and contractor's social security number or tax identification number, and Louisiana Retirement System status. If contractor indicates that they are an active member/retiree of retirement system, contact Human Resource immediately. Based on active member status, disregard the Professional Services Contract and complete contract for Non-Credit Presenter/ Instructor as outlined in Non-Credit Presenter/Instructor Policy and Procedure.

13. For contracts that are being submitted after services have begun, but prior to the end of a contract termination, a Justification for Late Contract form must be submitted.

NOTE: *For any contract executed after services have been completed and the ending term, please contact the Purchasing office immediately.*

14. Route the contract packet to the Approving Agent for approval.

Approving Agent

15. Review the contract and sign the contract if the services being contracted for are in accordance with this policy and state regulations.
16. If disapproved, route contract packet to Budget Unit Head and/or Project Director.
17. Route the approved contract packet to the appropriate Vice President or equivalent.

Appropriate Vice President

17. Review the contract and sign the contract and checklist if the services being contracted for are in accordance with this policy and state regulations.

NOTE: *By signing the professional services contract, the Budget Unit Head, Approving Agent and appropriate Vice President or equivalent are certifying that they are following the rules and regulations concerning professional services contracts. (OCR Certification Letter without CBA Requirement or OCR Certification Letter with CBA Requirement).*

18. Route the approved contract packet to Business Affairs – Purchasing Section.

NOTE: For contracts more than \$50,000 or greater, the following must be submitted to Business Affairs – Purchasing Section:

- Cost Benefit Analysis (\$50,000 and greater than 6 months),
- Approved Contract for Professional Services,
- Completed Goals and Objectives, Performance Measures and Monitoring Plan,
- Professional Service Contract Work Sheet,
- Dated Board Resolution if contracting with a corporation,
- Disclosure of Ownership Affidavit (if required),
- Certificate of Authority if Contractor is an out-of-state corporation,
- Resume for Consultants on all contracts required to be submitted to the Office of Contractual Review,
- Checklist for Review of Personal, Professional, Consulting and Social Services Contracts, and
- Twenty Common Law Factors Used in Determining Employee Status
- OCR Certification Letter

For contracts \$49,999 or less (excluding legal, architectural, accounting, auditing and engineering contracts), only the approved contract should be forwarded to Business Affairs – Purchasing Section. The other items should be maintained on file with the Project Director/Budget Unit Head. You are reminded that the aforementioned items are considered permanent agency records, and that these items must be available to the Legislative Auditor's Office and the Internal Auditor as an integral part of their audits.

NOTES: The University has delegated authority from the Division of Administration, Office of Contractual Review, authorizing the Vice Presidents to sign contracts on behalf of Northwestern State University for contracts under their budgetary authority in an amount not to exceed \$39,999 within a twelve-month-period.

The President must approve the following types of contracts:

- Legal Contracts
- Architectural and Engineering Contracts
- Accountant and Auditor Contracts
- Contracts for more than \$39,999
- Contracts initiated by the President and charged to Budget Units under his budgetary authority.

Request for Payment

Budget Unit Head and/or Project Director

19. When services are completed and payment is due, process an Accounts Payable Voucher in lieu of online receiving. Submit all invoices and supporting documents to Business Affairs – Accounts Payable Section including the Purchase Order number on all documents. Also, submit if applicable Supplemental Schedule of Effort, Work Log and Participant Sign-In Sheet Document.

Supplemental Schedule of Effort and Participant Sign in Sheet for Professional Services Contracts

When an agreement (Grant, Contract, Cooperative Endeavor, Self-Generated Activities, etc.) requires payment to be contingent upon the number of participants or number of sessions, the Supplemental Schedule of Effort, Project Director/Coordinator/Instructor's Work Log, and Trainee/Participant Sign-In Sheet document must be submitted to document services performed and attendance before payment for services can be approved.

These documents (*Supplemental Schedule of Effort, Work Log, and Participant Sign-In Sheet*) should be attached to a completed Accounts Payable Voucher when submitted to Business Affairs – Purchasing Section for request for payment.

By signing these Schedules, the Contractor, Project Director, Instructor, Coordinator, Supervisor and/or Budget Unit Head is certifying that the information continued on these documents, or any supporting documents, as it relates to services performed are in accordance with the contract.

If partial payments are being requested under a contract which requires this documentation, each request for payment is required to have this documentation to substantiate the partial payments amount being requested.

NOTE: *Payments made on professional services contracts before the performance of services are considered to be “advance payment” which is prohibited.*

In those instances where it is necessary because of restricted time frames for writing checks, etc., Business Affairs may write checks prior to the actual performance of services; however, the Budget Unit Head must sign a **Professional Services Payment Receipt Document** stating that they are personally responsible for making sure services under the contract are completed before the check is released to the contractor and the Budget Unit Head understands that the contractor file is not complete until this document and the Contractor Performance Evaluation are returned to Business Affairs. The contractor must also sign the document certifying that the services contracted for on the above referenced contract have been completed and that payment for services rendered was received on the date signed.

20. Route a completed **Accounts Payable Voucher** and if applicable **Supplemental Schedule of Effort, Work Log, and Participant Sign-In Sheet** to Business Affairs – Purchasing Section for payment.
21. As required by the provisions of R.S. 39:1500, complete and submit a Contract Performance Evaluation with the final Receiving Report for each Professional, Personal or Consulting Contract. This evaluation must be signed by the Project Director and approved by the appropriate Vice President. Payment will be withheld until the "Evaluation" is completed (**Performance Evaluation Form**).

NOTES: *Except for contracts with attorneys, engineers, architects, accountants and auditors, the university has been authorized by the Division of Administration, Office of Contractual Review, to use the completed Accounts Payable Voucher as documentation that services performed were satisfactory for contracts less than \$50,000. The Accounts Payable Voucher would be in lieu of the "formal" performance evaluation and helps reduce the effort required for small contracts.*

*Any contract where medical records are accessible by external sources require HIPAA Attachment. (**Business Associate-HIPA***