

## INTERIM GUIDELINES

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<b>Cancels:</b>	<a href="#">POL-U5348.05</a> <a href="#">POL-U5348.06</a> <a href="#">POL-U5348.07</a> <a href="#">POL-U5348.08</a>	Reviewing and Approving University Contracts Authorizing Contract Signature Authorities Managing Contracts Contracting for Personal Services
<b>See Also:</b>	<a href="#">STN-U5348.05A</a> <a href="#">FRM-U5348.05A</a> <a href="#">GDL-U5348.05B</a> <a href="#">POL-U5320.03</a> <a href="#">POL-U5348.01</a> <a href="#">STN-U5348.01A</a> <a href="#">POL-U5320.12</a>	Standards for Ratifying an Agreement as a Formal Contract Contract Owner Delegation Form Guidelines for Contract Management Authorizing and Defining Financial Responsibilities Purchasing Goods and Services Ethical Purchasing Standards Creating and Maintaining Vendor Account Records

### **GDL-U5348.05     AUTHORIZING AGREEMENTS AND CONTRACTS**

***These guidelines temporarily replace University policy (see “Cancels” above) while a policy revision process takes place to address a new contract administration system and practices.***

***The guidelines apply to all “contracts” (as defined below), regardless of funding source or the involvement of funds, with the exception of certain contracts such as public works contracts that are administered through other University processes. See exceptions in Section #2 below.***

#### **Definitions:**

**Contract:** A written or electronic agreement between the University and a non-Western party that creates mutual obligations enforceable by law. A non-Western party may include, but is not limited to municipal or governmental entities, non-profit or for-profit entities, education institutions, and individuals. The basic elements required for a legally enforceable contract are:

- Mutual assent expressed by a valid offer and acceptance,
- The existence of valid and sufficient legal consideration meaning that something of value is exchanged between the parties,
- Capacity (signature authority), and
- Legality, which could render a contract unenforceable by some other application of law.

A document need not be labeled a “contract” to be covered by these guidelines. For example, it may be labeled agreement or memorandum of understanding (MOU) or something similar.

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Contract Administration: A unit within the University's Business Services Department that facilitates the University's contract administration process.

Contract Owner: The sponsor of an existing contract or the proposed sponsor of a potential contract, who has the financial or organizational authority (i.e. Financial Manager), or the delegated authority, to initiate the development of a contract or manage such contracts once signature authority is received.

Financial Manager: As defined in the *Authorizing and Defining Financial Responsibilities* policy ([POL-U5320.03](#)), an employee in a position to which an organization code or fund is assigned; is granted financial authority over the monies allocated to the organization code and/or fund; and must ensure contracts and agreements that legally obligate the University for performance or monetary issues are approved in accordance with University policies and procedures.

Signature Authority: Written authorization by the President to a University employee granting the authority to provide a final approval on contracts on behalf of the University. See section #9 for authorization requirements. See also Purchasing and Contract Administration – [Contract Signature Authority List](#).

### 1. **Chief Procurement Officer (CPO) Ensures Formal Contract Approval Process**

Under the purview of the Associate Vice President of Business and Financial Affairs, the CPO oversees Contract Administration and ensures:

- a) University processes and employed systems are maintained by which contracts are legally and ethically created, and sufficiently reviewed and approved by management and leadership as applicable to the contract type and/or value, and
- b) University wide training to augment cost effective efficiencies, ethical standards, and compliance.

### 2. **No Employee May Authorize an Agreement without Official Capacity**

Any agreement or arrangement describing an obligation of the University or requiring the use of University resources, regardless if money is exchanged or not, is considered covered under these guidelines requiring compliance with specific standards and procedures.

Exceptions: Some agreements or arrangements may be covered under other University processes with which a department must comply. See "Agreement Types" in the *Standards for Ratifying an Agreement as a Formal Contract* ([STN-U5348.05A](#)) for a list of agreements that are not covered under these guidelines.

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No employee may bind the University to a contract (verbally, in writing, or electronically) without determining whether the contract must first be reviewed and approved by the authorized Signature Authority in accordance with these guidelines (see #9). No employee, including executive officers, should assume they have signature authority by means of their position title.

This restriction also applies to situations where WWU agrees to provide services to external parties, such as responding to bid proposals and providing research and testing services (see #3).

Employees who authorize a contract on behalf of the University without “signature authority” or appropriate delegation:

- a) May be subject to disciplinary or remedial action by their supervisors, and
- b) In some cases, may be liable for the obligations, debts and risks under the contract.

Supervisors should identify and implement appropriate internal controls to prevent and/or detect unauthorized signing of contracts by their employees.

**3. Providing Services to External Parties Using Western Resources Requires Approval**

Before an employee responds to bid requests or offers services to an external party that would require University resources including use of employee time, equipment, and/or facilities, the agreement must initially be reviewed and approved by Contract Administration to ensure:

- a) Review of all legal obligations,
- b) Compliance with cost recovery,
- c) Legitimate purposes for the provision of goods or services ([RCW 28B.63.010](#))

**4. Click-Through Agreements Restricted**

Click-through agreements are found on on-line sites requiring a user to “click through” an agreement indicating user’s acceptance of non-negotiable terms and conditions in order to participate in an activity or purchase a good or service.

When a department has a WWU business need to enter into a non-negotiable click-through agreement, the employee is permitted to click-through the agreement and accept the terms and conditions after:

- a) Ensuring the anticipated dollar value is under the competitive purchasing threshold, and
- b) Reading the terms and conditions.

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Exception: Employees are prohibited from agreeing to terms and conditions that require compliance of areas outside of the department's control such as agreeing that WWU, as a whole, is subject to the agreement, commit students to specific actions, agree that other departments or entities will take an action or have obligations under the agreement.

Dollar values exceeding the competitive purchasing threshold must be approved by Contract Administration.

**5. Contract Owner to Follow Standards for Initiating a Contract**

The Contract Owner must comply with the responsibilities listed in the *Standards for Ratifying an Agreement as a Formal Contract* ([STN-U5348.05A](#)) prior to allowing any part of an agreement to commence. No employee, regardless of their position, may bypass these standards.

Exceptions:

- a) Certain procedures may be waived or altered as directed by Contract Administration for required business, efficiency, or compliance purposes, or
- b) The Associate Vice President of Business and Financial Affairs may allow approval procedures to be temporarily amended when a contract for a service or good is deemed an emergency. In emergency situations, the University will comply with the state Emergency Procurement procedures ([DES-130-00](#)) as applicable.

**6. Contract Owner may Delegate Contract Owner Role and Responsibilities**

Financial managers may delegate:

- a) The responsibility of complying with policy, standards, procedures, and guidelines,
- b) Contract approval authority for all or specific contract types, and
- c) Budget authority for contracts up to the designee's budget authority limit.

The designee must be a permanent employee who holds a position that is consistent with the levels of contract authority outlined in the *Delegation of Contract Ownership Form* ([FRM-U5348.05A](#)) based on contract value and/or risk levels. The delegation may only be made using the form. Delegated authority is restricted to only contracts that directly impact or relate to the department of the financial manager.

Regardless of delegation, the financial manager remains accountable for compliance for each contract under their purview and reporting issues with contract performance to the appropriate Vice President, and therefore, should request regular status update from the delegate.

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Contract Administration will ensure each potential contract has the required signature authority and complies with applicable University policy and standards, and federal, state, and local agency contract administration requirements.

**8. Risk and Legal Review Required**

All potential contracts routed through Contract Administration are reviewed by Risk Management and Assistant Attorney General (AAG).

Risk Management reviews potential contracts with the goal of:

- a) Allocating risks equitably by assigning liability and related responsibilities, to the extent possible, to the appropriate parties,
- b) Revise risk-related agreement provisions accordingly and, to the extent possible, not assume liability beyond that which is allowed by the State of Washington or covered by the state self-insurance liability program, and
- c) Review certificates of insurance to confirm the non-Western party is adequately insured and in compliance with the agreement's insurance requirements.

AAG reviews contracts for "Approval as to form" which includes:

- a) Ensuring the potential contract will be legally binding and in legally sufficient form,
- b) Revising provisions containing obvious errors of law, and
- c) Making other recommendations at their discretion.

Exception: For some common usage contracts, the Chief Procurement Officer, Risk Management and the AAG may pre-approve contract templates, also known as "Approved to Form" contracts. Contract Administration will ensure approved template language is reviewed at a minimum every three years or when legislative, regulation, or policy changes warrant modifications.

**9. Official Signature Authority Required**

Signature authority, the signature of the last employee(s) required to execute a type of contract, is delegated by the President, except as limited by the Board Trustees. See procedures for *Delegating Contract Signature Authority* (PRO-U5348.05A). Such delegation must be:

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- a) Documented in the [University's Contract Signature Authority List](#) based on the contract type and value,
- b) Made to positions, not individuals, and formalized in a written Memorandum of Delegation from the President,
- c) Reviewed annually by the Assistant Attorney General and approved by the University President.

An employee delegated signature authority is prohibited from permanently delegating their signature authority unless the President approves the subsequent delegation in writing. Third party vendors nor the Assistant Attorney General have authority to sign contracts that bind the University. Signature authority may be provided electronically by a method compliant with the [Using Electronic Signatures](#) policy ([POL-U3000.06](#)).

**10. Contract Owner Responsible for Management of Approved Contracts**

After approval notification has been received from Contract Administration, the financial manager, or delegate, transitions from contract developer to Contract Owner. The Contract Owner is responsible for implementing and managing the contract in accordance with the [Interim Guidelines for Contract Management](#) ([GDL-U5348.05B](#)).

**11. Employees Must Comply with State Ethics Laws**

Employees engaged in the University contracting process are subject to the Washington State ethics laws.

- a) *Conflicts of Interest*: No employee may have an interest (financial or otherwise, direct or indirect) or engage in a business or transaction or professional activity or incur an obligation that is in conflict with the proper discharge of the employee's official duties ([RCW 42.52.020](#)). This includes having or acquiring a financial or other interest in a contract, sale, lease, purchase or grant that is under the employee's authority or supervision ([RCW 42.52.030](#)).

Western recognizes that not all relationships are a conflict of interest. However, it is incumbent on the employee to promptly report what may be potentially perceived as a conflict of interest to the University Ethics Officer (Director of Internal Audit) for review and documentation of good faith efforts to disclose and engage in ethical agreements.

- b) *Gifts*: Employees who seek to acquire goods or services or who participate in those contractual matters are subject to state requirements on accepting gifts ([RCW 42.52.150](#)). In addition, any entity or individual who seeks or may seek a contract with

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the University are also subject to the state requirements on accepting and giving gifts. Employees are encouraged to contact the University Ethics Officer (Internal Auditor) regarding any questions or concerns about gifts.

See also Western's *Ethical Purchasing Standards* ([STN-U5348.01A](#))

**12. Western will Ensure Compliance with Internal Revenue Service Rules**

Human Resources, Contract Administration, and Accounting Services will coordinate procedures for:

- a) Determining employee and independent contractor status, and
- b) Collecting and reporting required tax information.

**13. Training Participation Required**

Supervisors, including management and leadership, will ensure employees in their purview participate in contract related training(s) required the Chief Procurement Officer. Such training requirements will be communicated and facilitated by Western's Contract Administration.

The Chief Procurement Officer is responsible for ensuring the University's training is consistent with the requirements of the Washington State Department of Enterprise Services.

**14. Contract Administration Maintains Official Records of all Contracts**

Contract Administration will retain all approved contractual documents and any pertinent supporting documentation for the required retention period.

*Exception:* Agreements from the Research and Sponsored Programs (RSP) Office are maintained in the RSP Office.

**15. External and Internal Sharing of Contracts Limited**

Contract Administration will flag certain contracts, or parts of contracts, as confidential limiting internal access. All other contracts will be searchable and viewable to employees granted contract system permissions.

Regardless if contracts are accessible to employees in or outside the contract system, they are prohibited from sharing University contracts with third-parties, which includes entities and individuals not a party to the contract. Any employee receiving a request from a third-party party to review a University contract, either in draft or final form, must direct the request to the University's Public Records Officer.