

MEMORANDUM

TO: Members, Utah State Board of Education

FROM: Scott Jones
Deputy Superintendent of Operations

DATE: March 17-18, 2016

ACTION: Review and Approval of Contracts and Agreements Policy

Background:

As progress is made in improving our Internal Accounting and Purchasing Services operations it is essential to ensure that policies and procedures are documented, implemented, monitored, controlled, and tested properly. As we further develop our processes to support the operations of internal sections within USOE it is critical to ensure that the Board has fully vetted our internal policies so that we can proceed with the implementation of them.

Board Strategic Plan:

This item supports the following imperative(s) and strategies in the Board's Strategic Plan:

- System Values
- Funding

Anticipated Action:

The Board will consider approval of the contracts and agreement policy.

Contact: Scott Jones, Deputy Superintendent of Operations, 801-538-7514

Official Policies and Procedures
of the
Utah State Office of Education(USOE)
USOE Financial Operations Policy #002

Effective Date: March 19, 2016
Revision Date:

Page: 1 of 6

Subject: Policy on Contract Review Process and Signature Authority

Purpose: To provide clarity on the contract review process and signature authority of contracts within the Utah State Office of Education

1. Overview

This document describes the contract process review and signature authority requirements for the Utah State Board of Education contracts, the required reviews by the initiating sections, and outlines the signature authorities for contracts within the organization. Please read the document in its entirety, as it contains important information that you may need when processing a contract.

2. Legal Review of Utah State Board of Education Contracts ("USBE")

A contract is any legally enforceable agreement whether or not it is titled "contract." Contracts include, but are not limited to, letters of agreement, service or performance agreements, licenses, memoranda of understanding/agreement, and terms and conditions related to all types of transactions. All USBE contracts must be in writing. An agreement may be a binding contract even though one party provides something of value to the other party at no charge. Therefore, the USBE may have an interest even though there is no financial transaction. The correct legal name of USBE, which should appear on all of USBE's contracts, is "Utah State Board of Education."

2.1 Contracts Requiring Legal Review

Generally, contracts to which the USBE is a party must be reviewed and approved by either the Utah State Office of Education Office of Special Projects or the Utah State Attorney General prior to signing. Signing a contract on behalf of USBE may have legal implications for the organization. Therefore, contracts signed without obtaining legal approval may, if the USBE chooses not to honor the contract, result in personal liability for the person signing the contract. The Office of Special Projects and/or the State Attorney cannot review or provide legal advice regarding personal or non-USBE contracts. The next section lists the types of USBE contracts that are exempt from legal review.

2.2 Exemptions to the Legal Review Requirement

The exemption from legal review and approval does not exempt contracts from all other applicable and required USBE approvals, depending on the nature of the contract. The following types of contracts are currently exempt from legal review:

- I. Routine purchase orders, bills of sale, invoices, if they do not contain any terms and conditions, employee or student data, and are less than \$25,000.00; or
- II. Renewals of existing contracts approved by the USBE within the previous five years, unless the terms and conditions of the renewal are different than those previously approved and less than \$25,000.00; or
- III. Pre-approved and unmodified standard templates, such as the Service Agreements, unless modifications to the terms and conditions are needed. However, these contracts may not be inappropriately used. For example, a Service Agreement must not be used to contract with providers of services other than those previously entered into on the Service Agreements and for amounts that do not necessarily require and Request for Proposal process. For more information go to: <https://www.purchasing.utah.gov>

3. Contract Review Process

3.1 Initial Review by the Initiating Section

This review should focus on the business implications of the terms and conditions of the contract. The initiating section must determine what it can or cannot agree to, and what needs to be negotiated with the contractor. Examples for issues to consider during this review include:

- I. The contract terms and conditions, including duties of the parties, are clear, consistent, and acceptable to USBE and the USOE Administration
- II. The section has the necessary funds and resources for this contract.
- III. The contract is appropriate and serves the sections mission and responsibilities.
- IV. The services provided are the most feasible for the USBE in terms of quality and cost.

- V. The contract includes the entire understanding between the parties, without additional oral explanations or promises that are not included in the contract.

Following the review by the initiating department, a Contract Review Request Form must be completed (see attached). If the contract is between \$25,000.00 and \$100,000.00 the contract routes to the Office of Special Projects. If the contract is greater than \$100,000 the contract routes to the Attorney General Office (AAG) for review. The form contains a contract checklist and requests information that Office of Special Projects and/or State Attorney General (AAG) uses during the review of the contract. When completing this form, please include brief background information about the purpose of the contract to aide in the review process, in addition to any comments or concerns you have regarding the contract terms. Please send the completed form to the USOE Internal Accounting Purchasing Agent along with the all the contract documents for final review and submission for legal review to either the Office of Special Project or the State Attorney General (AAG).

3.2 Legal Review

Contract reviews normally take up to five business days. In those cases where the contract requires complex negotiations over terms and conditions, a new contract needs to be drafted, or if there is a signing deadline, you are encouraged to include Office of Special Projects/AAG in the process as early as possible through the USOE Purchasing Agent. All contracts must flow through the USOE Purchasing Agent including draft contracts and RFP drafts. Please submit a draft of the contract or RFP in advance to allow sufficient time for thorough legal review.

- a) The review by Office of Special Projects/AAG insures that:
- I. USBE abides by State and Federal laws.
 - II. USBE is operating in accordance with the policies and procedures of the State Attorney General, State Purchasing and the Division of Finance.
 - III. USBE does not agree to any prohibited clauses.
 - IV. Risk Management concerns have been addressed. The Office of Special Projects/AAG will forward the appropriate contracts to Risk Management for review of insurance requirements.
- b) After reviewing each contract, the proposed contract will be returned to the requesting section with a memo indicating that:
- I. The contract is approved as to legal form, in which case the signing authority may sign the contract; or

- II. The contract is approved as to legal form with modifications, in which case the changes must be communicated to the contractor by the initiating department, and the signing authority may sign the contract provided that the contractor has agreed to all the modifications; or
- III. The contract is returned without approval as to legal form.

It is important to know that the legal review determines the legal validity of a contract, as opposed to whether the contract is appropriate from a business and administrative perspective. The final decision to enter into a contract is the responsibility of the section initiating the contract, and should take place only after all applicable USBE approvals have been obtained.

4. Signature Authority

Only authorized individuals may sign contracts on behalf of the USBE. The appropriate signature authority is dependent on the type of contract and its value, as outlined below.

4.1 Contracts for the Purchase of Goods or Services:

The Superintendent, or the Deputy Superintendent of Operations, has the authority to sign any contract above \$100,000.00, except as limited by the USBE. The USBE requires legal review of all contracts greater than \$25,000.00 and submission of them for final review within the Consent Calendar prior to final signature by the Authorized Signatory. Purchasing Agents may also execute contracts, as their authority is delegated to them, at the entity level, from the State Purchasing Office. It is the USOE's responsibility to establish internal policy related to purchasing authority and purchasing limits, for all appropriate staff within the USOE.

The table below outlines the current signature authorities, for contracts, for the procurement of goods or services:

Annual Contract Value	Authorized Signatory
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Over \$100,000.00	<ul style="list-style-type: none">• Superintendent• Deputy Superintendent of Operations <p>Only one contract per vendor, within the same fiscal year, is allowed at this level of signing authority. Neither the Superintendent nor the Deputy Superintendent are allowed to sign any contract without the express permission of the USBE by way of approval of the Consent Calendar. <u>The USBE must review and approve any contract above this dollar threshold prior to approval by the designee.</u></p>
\$25,000.00 to \$100,000.00	<ul style="list-style-type: none">• Superintendent• Deputy Superintendent of Operations• Deputy Superintendent of Academics• Deputy Superintendent of Policies and Plans <p>Only one contract per vendor, within the same fiscal year, is allowed at this level of signing authority. No Authorized Signatory is allowed to sign any contract without the express permission of the USBE by way of approval of the Consent Calendar. <u>The USBE must review and approve any contract within this dollar range prior to final approval by the designee.</u></p>
\$0.00 to \$25,000.00 – (i.e. Service Agreements)	<ul style="list-style-type: none">• Chief Financial Officer• Finance Director, Internal Accounting• Finance Director, School Finance <p>Only one contract per vendor, within the same fiscal year, is allowed at this level of signing authority. <u>The USBE does not have to review and approve any contract within this dollar range.</u></p>

Non-monetary exchange contracts (i.e. MOAs/MOUs)	<ul style="list-style-type: none"> • Superintendent • Deputy Superintendent of Operations • Deputy Superintendent of Academic Operations <p><u>The USBE does need to review and approve these types of contracts/agreements.</u></p>
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* It is recognized that under certain circumstances, additional work by the same vendor may be required in the same fiscal year. For example, additional work may be required outside the scope of the first contract; the contractor may be the only party with the requisite expertise to do the work; different sections, acting independently, may seek the same contractor, etc. Such examples may require additional approval by the Deputy Superintendent of Operations.

This delegation may be rescinded at any time upon written notification or automatically upon cessation of a delegate's service in their specified capacity in which case, the delegate's signature authority automatically passes to their successor. The delegation conveyed may not be further delegated to any other person.

5. Questions and Additional Information

Questions regarding the contract review process, contract negotiations, new contracts, or contracts questions in general should be directed to the Deputy Superintendent of Operations, at scott.jones@schools.utah.gov

The section initiating the contract should complete this form and include it with the contract. All contracts greater than \$25,000.00 should be sent for legal review prior to signing and prior to the performance of the services. Contracts are reviewed in the order they are received. If a response is needed by a specific date place the date in the Additional Comments block. Legal approval does not constitute final approval. All applicable approvals must be obtained before signing a contract.

I. Contact Information:			
Originating Section:	█	Project Manager:	█
Extension:	x	E-mail:	█
II. Summary of Contract Terms:			
Contract with:	█	Termination Date:	█
Contract Dates:	Effective: █		
Description of the contract and services:	█		
Will the contractor be handling any personal or confidential data of USOE/LEA employees or students?	<input type="checkbox"/> Yes. If you select Yes, please explain: █		
Total Amount of Contract:	\$ █	Type of Funding Source:	█
Name of Section Approval Authority:	█		
Who will sign the contract (Superintendent):	█		
III. Checklist: (Please review each item and check/complete where applicable):			
<input type="checkbox"/>	All documents referenced in the contract are attached (exhibits, hyperlinked documents, renewed contract, etc.) (Please include a copy of any online terms and conditions as an attached document).		
<input type="checkbox"/>	The appropriate authority in the originating section has reviewed and approved the contract, any terms and conditions, and all referenced documents.		
<input type="checkbox"/>	There are no additional oral explanations or promises that are not included in the contract.		
IV. Additional Comments and Information:			
Please add any additional comments, information	█		

, or
concerns if
needed:

Routing:

1. Section Representative of Originating Section Prepares Documents and this form to accompany them
2. Section Representative Submits to Section Director of Originating Section for Review and Approval to Release to the Purchasing Agent
3. Purchasing Agent reviews submission, ensures correct documentation and adherence to applicable rules and policies
4. Purchasing Agent Submits documentation (contract) for legal review
5. Once legal review is completed Office of Special Projects or AAG returns documents (contract) to the Purchasing Agent
6. Purchasing Agent submits final packet to designated signature authority

Signatures:

Originating Section Representative

Print Name and Date

Originating Section Director

Print Name and Date

Purchasing Agent

Print Name and Date

Office of Special Projects or AAG

Print Name and Date

Approved by the Utah state Board of Education on: _____
DATE

Final Signature Authority

Print Name and Date