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Chapter: Fiscal and Administrative Affairs Modification No. 018

Subject: **Procurement, Contracts, and Consultant Services**

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- I. The Board of Trustees has authority to enter into contracts for goods and services to carry out the College's mission. The Board of Trustees expects that the College's procurement processes will be consistent with all applicable laws, regulations and ethical standards.
- II. The purposes of this policy creating a procurement system for the College include:
  - A. Providing for confidence in College procurements;
  - B. Ensuring fair and equitable treatment of all persons who deal with the College procurement system;
  - C. Providing safeguards for maintaining a College procurement system of quality and integrity, consistent with conflicts of interests requirements and other requirements of law, regulations and grants;
  - D. Fostering effective broad-based competition to the extent practicable;
  - E. Obtaining maximum benefit from the public funds available to the College to purchase necessary and beneficial College mission-related materials and services;
  - F. Providing increased efficiency and timeliness in College procurements;
  - G. Assuring compliance with changing requirements of law and regulations;
  - H. Supporting governmental priorities and responsibilities, including appropriate encouragement and support for minority contracting and use of environmentally conscientious materials and services; and
  - I. Ensuring that the College utilizes and leverages its purchasing power directly, and through other governmental entities, to meet educational and institutional needs in a timely, economical, effective and responsible way.
- III. The Board of Trustees must authorize by resolution all competitively bid contracts that exceed \$250,000 (full-term) and all sole source contracts that exceed \$100,000 (full-term). The Board delegates to the President, or designee, the authority to procure and enter into agreements for materials and services that do not exceed these stated thresholds.
- IV. All contracts shall be awarded by competitive sealed solicitation unless such contract is below the threshold required, the contract is a Special Procurement, the President, or designee, deems that an emergency procurement or sole source award is appropriate, or there is some other reason in the best interest of the College to use another authorized method.

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The College may enter into multi-year contracts for goods and services pursuant to any procedures that may specify or limit terms of such agreements that extend beyond the current fiscal year. The College shall not enter into a contract where any part of the compensation is based on a cost-plus-a-percentage-of-cost of the work performed or goods provided.

- V. Except as otherwise provided, a contract which is entered into in violation of this Policy is void, unless it is determined, upon review, that good faith has been shown by all parties, and that there has been substantial compliance with these policies and procedures. If a contract is void, any contractor who entered the agreement in good faith and without knowledge of any violation or contribution to any violation prior to award may be compensated for actual costs incurred.
- VI. The Board of Trustees authorizes the President to modify contracts previously approved by the Board of Trustees so long as the modification does not exceed 25 percent over the life of the initial contract award amount. The Board of Trustees delegates to the President or designee the authority to enter into contracts for goods and services up to \$250,000 using competitive procurement processes, and award sole source contracts up to \$100,000, consistent with procedures. In the event that College Policy 61001-Fiscal Control is contradictory to this policy, where applicable, this policy shall prevail.
- VII. The College encourages participation in the procurement process from Montgomery County-based firms, minority businesses, and contractors who can provide goods and services to the College in an environmentally sustainable manner. Consistent with applicable procedures, the President or designee must maintain a minority business program to facilitate the participation of responsible certified minority business enterprises.
- VIII. Nothing in this policy should be construed to authorize contract awards that are fiscally disadvantageous or that confer any special privilege or status upon any business or group or individual representing a business.
- IX. The President is authorized to establish procedures necessary to implement this policy.

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Board Approval: November 19, 1984; June 16, 1986; July 20, 1987; May 16, 1988; July 17, 1989, effective July 1, 1989; October 16, 1989; June 18, 1990; December 16, 1991; November 15, 1993; February 26, 1996; June 17, 1996; June 15, 1998; December 10, 2001; June 18, 2012; December 14, 2015; June 25, 2018; January 29, 2020

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I. Definitions

- A. Authorized employee: A College employee empowered by role or their supervisor to initiate the procurement process, make purchases, or sign a contract on behalf of the College.
- B. Bid Addendum: A document issued by the College to change a material aspect of an initial solicitation prior to the closing date.
- C. Bidder: A person or entity that submits a proposal in response to a Request for Bid issued by the College.
- D. Competitive Sealed Solicitation: The College's preferred procurement method requiring bidders/offerors to submit sealed bids which are opened in a public forum and the results read aloud at a specific date and time. There are two types of competitive sealed solicitations:
  - 1. Competitive Sealed Bid or Request for Bid: A type procurement method used when the College awards a contract to a bidder solely because the bidder provided the lowest price for the goods or services.
  - 2. Competitive Sealed Proposal or Request for Proposal: A procurement method used when the College issues a list of unique specifications for goods or services and evaluates proposals by offerors based on a range of pre-determined criteria. Notably, price is not typically the primary evaluation factor.
- E. Consultant: A person or company that possesses unique qualifications that allow them to perform specialized services for or on behalf of the College for a fee.
- F. Contract: A written agreement between parties exchanging goods or services for money or other consideration for a specified duration.
- G. Contract Amendment: A mutually agreed upon modification to an existing contract.
- H. Cooperative Procurement: A procurement method involving two or more public entities that combine their needs for goods or services to obtain cost savings and other benefits.
- I. Emergency Procurement: A procurement method which typically waives formal competitive bidding procedures based on a need to purchase goods or services for an unexpected or urgent reason such as risks of health and safety or the conservation of public resources.
- J. Interagency Procurement: The purchase of goods or services from a federal, state, or local government agency, or political sub-division of a state or school or school system, whereby the best interest of the College is served.

- K. Offeror: A person or company that submits an offer/proposal in response to a Request for Proposal issued by the College.
  - L. Open Market Purchase: A procurement method permitting an authorized college employee to obtain a single quote for the goods services when if the amount is less than threshold required for the competitive procurement process.
  - M. Procurement Through Other Agency (PTOA): A form of intergovernmental cooperative purchasing in which an entity will be extended the pricing and terms of a contract entered into by another entity. Generally, one entity will competitively award a contract that will include language allowing for other entities to utilize the contract, which may be to their advantage in terms of pricing, thereby gaining economies of scale that they normally would not receive, if they competed on their own.
  - N. Prohibited contract: Any contract where any part of the compensation is based on a cost-plus-a-percentage-of-cost of the work performed or goods provided.
  - O. Quote: A pricing document that a vendor submits in response to a request for goods or services.
  - P. Requisition Form: A form submitted by an authorized college employee to initiate the request to purchase goods or services.
  - Q. Request for Quote: A document issued by the College requesting prices from potential vendors for goods or services.
  - R. Responsible bidder/offeror: A business entity or individual who has the integrity and reliability as well as the financial and technical capacity to perform the requirements of the solicitation and subsequent contract.
  - S. Responsive bidder/offeror: A bid or proposal that fully conforms in all material respects to the Request for Bid or Request for Proposals, and all of its requirements, including all form and substance.
  - T. Small procurement (request for quote): A purchase valued at less than the competitive sealed bid or proposal threshold, but higher than the open market purchase threshold.
  - U. Sole Source: A non-competitive method of procurement used when only a single vendor meets the specifications listed in the solicitation, or because only one vendor is available to provide the goods or services or because of the need for an emergency procurement.
  - V. Special Purchasing Request Form: A form required by an authorized employee who requests a specific brand, sole source, or emergency procurement exceeding \$10,000.
  - W. Vendor: A person or company that provides goods or services.
- II. General

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- A. The President has delegated the responsibility for meeting the College’s needs for goods and services to the Director of Procurement. The Director of Procurement shall:
    - 1. Establish internal procedures consistent with best practices to promote an efficient procurement process in compliance with federal, state and local laws;
    - 2. Provide technical assistance and advice to authorized employees and provide guidance on which procurement processes to use;
    - 3. Publicly advertise competitive sealed bids or competitive sealed proposals in timeframes specified by procedure;
    - 4. Keep informed of current developments in the field of purchasing, prices, market conditions and new products;
    - 5. Maintain vendor catalogs and other current market information regarding goods and services to be made available to faculty and staff of the College;
    - 6. Ensure that all purchases, procurements and contracts are made in the best interest of the College and in an ethical manner.
  
  - B. College procurements are effectuated using one or more of the following methods:
    - 1. Open Market Procurement (contracts and purchases up to \$10,000)
    - 2. Small Procurement (contracts and purchases between \$10,001 and \$25,000)
    - 3. Competitive Sealed Solicitation (over \$25,000)
    - 4. Special Procurements
    - 5. Purchasing and Corporate Card
  
  - C. No college operating funds will be used for the purchase of gift cards, with very few exceptions as approved by the Senior Vice President of Administrative and Fiscal Affairs with the advice of the Director of Procurement.
- III. Methods of Procurement
- A. Open Market Procurement – PURCHASES UP TO \$10,000
    - 1. An authorized employee shall obtain a single, valid price quote from a vendor and forward the quote to the Office of Procurement, along with requisition, for review, approval and purchase.
    - 2. Requesting departments may not split requisition into separate requests to circumvent the procurement process.
  
  - B. Small Procurement (Request for Quote) – PURCHASES \$10,001 to \$25,000
    - 1. An authorized requesting department employee shall work with the Office of Procurement to obtain a minimum of three valid price quotes

from at least three different vendors, one of which must be local or minority to the extent possible.

2. Procurement staff shall award contract to vendor who provides the lowest responsive/responsible price for the requested goods or services.

C. Competitive Sealed Solicitation – Purchases Greater than \$25,000

1. When applicable, the competitive sealed solicitation process is the College's preferred method for procuring goods and services. It is comprised of the following two solicitation types:

- a. Request for Bid (RFB):

Used to solicit competitive sealed bid responses for goods or services, when price is the sole basis for award.

- b. Request for Proposal (RFP):

Used to solicit competitive sealed for goods and services when price is not sole basis for award.

2. Solicitation Process

- a. Requesting department shall work with the Office of Procurement to development solicitation specifications. The specifications must include the following:

- 1) A comprehensive description of all requested goods and/or service requirements.
- 2) The closing date, time, and location of solicitation.
- 3) If a specific brand or patented goods or services are required by the College, and which are obtainable in two or more equally competitive brands, acceptable "or equal" language must be included in solicitation.
- 4) Contract award criteria.

- b. Solicitation shall be made available to vendor community for a minimum of 14 days from issuance date.

- c. Announcement of solicitation shall be posted on the Maryland State e-procurement website, in addition to the College's procurement website.

- d. Associated solicitation addenda shall be issued, as needed.

- e. The College reserves the right to extend solicitation closing dates, as needed.

- f. After solicitation closing date, all received bidder proposals shall be evaluated by appropriate College staff in accordance with

evaluation criteria contained in solicitation.

- g. The College reserves the right to allow best and final offers, if it is in the best interest of the College.
- h. Contract award will be made to lowest priced, or highest ranked responsive/responsible participating bidder.
- i. In the case of tie solicitation responses, the tie shall be resolved by award to:
  - 1) The in-county bidder rather than in-state bidder.
  - 2) The in-state bidder rather than out-of-state bidder.
  - 3) The minority vendor rather than the majority vendor.
  - 4) All other tie bids shall be resolved by a toss of a coin.
- j. A record of all tie bids shall be made and forwarded to the General Counsel.
- k. If a College employee has a reasonable, good faith basis to believe that the procurement process has been compromised in any way or that a law, regulation or College policy or procedure has been violated, the College employee should report those concerns to the either the Office of Compliance, Risk and Ethics or to the General Counsel and include any documentation or evidence as part of the report..

3. Cancellation and Rejection of Competitive Sealed Solicitations

- a. Every solicitation issued shall state that the solicitation may be cancelled when it is in the best interest of the College to do so.
  - 1) Cancellation prior to opening. If the Director of Procurement determines that it is in the best interests of the College to cancel a solicitation prior to opening bids or proposals, all bids or proposals received shall be returned to the vendors and a notice of cancellation shall be included. Criteria for determination may include, but not be limited to:
    - a) Restriction of funding for project.
    - b) Imperfection in bid document.
    - c) Defective notice of advertisement.

- 2) Rejection of all bids or proposals. If after opening bids, but prior to award, the Director of Procurement determines that it is in the best interest of the College to reject all bids or proposals, all open bids or proposals shall be retained and a notice of rejection shall be sent to all vendors that submitted bids or proposals. Criteria for rejection may include but not be limited to:
    - a) All bids exceed budgeted funds.
    - b) Imperfection in bid document discovered after public opening.
    - c) Defective notice after opening which would prove injurious to bidders.
  - 3) Determinations of reasons for cancellation or rejection shall be made part of the procurement file.
  - 4) The Director of Procurement shall issue a report to the President of all bids or proposals canceled or rejected that exceed \$25,000, with justification for such action as it occurs.
  - 5) The Director of Procurement shall have the right to waive any minor technicality or deficiency when it would be an advantage to the College.
- b. Every solicitation issued by the College shall provide that any bid or proposal may be rejected in whole or in part when it is in the best interest of the College to do so.

4. Bid and Contract Security

The Director of Procurement is authorized to require a bid or performance bond if the circumstances warrant. This bond shall be provided by a surety company authorized to do business in the State of Maryland, or the equivalent in cash, or in a form satisfactory to the President. No bid, performance or payment bond may be required for contracts less than the minimum set by state law, unless otherwise required by law or a grant.

- a. Bid Security. For contracts that exceed \$25,000, the College may require submission of bid security in an amount equal to at least five percent of the total amount bid at the time the bid is submitted. If bid security fails to accompany the bid, it shall be deemed unresponsive, unless the Director of Procurement deems the failure to be non-substantial.
- b. Performance and Payment Bond. Performance and payment bonds are required in all construction contracts that exceed \$25,000, and may be required in all other contracts that exceed \$25,000. Performance and payment bonds shall be in the



amount equal to at least 100 percent of the contract price. Payment bond requirements may be reduced to 50 percent prior to solicitation, if it is determined to be in the best interest of the College to do so.

5. Irrevocability and Withdrawal of Offers

Bids, proposals and best and final offers are irrevocable for the period specified in the request for bids, request for proposals or request for best and final offers except the President or designee, upon recommendation from the Director of Procurement, may permit the withdrawal of a bid, proposal or best and final offer.

D. Special Procurements

1. Sole Source

Sole source procurement is authorized if, in the opinion of the Director of Procurement, the requirements of the College can be satisfied by only a single vendor.

- a. Any request that a procurement be restricted to a single vendor shall be accompanied by an acceptable explanation as to why no other shall be suitable or acceptable to meet the need.
- b. The Director of Procurement shall conduct negotiations as to price, terms and delivery, as appropriate.
- c. Contracts that are the result of a sole source procurement that do not qualify as a "Small Procurement" shall be approved by the Board of Trustees.

2. Emergency Procurements

- a. In the event of an emergency involving the expenditure of over \$25,000, the Director of Procurement, with the approval of the Senior Vice President for Administrative and Fiscal Services, may enter into non-competitive negotiation for the immediate procurement of goods or services necessitated by the emergency.
- b. In the event of an emergency, the Director of Procurement may award a contract through non-competitive negotiation, obtaining such competition as is practical.
- c. The Director of Procurement will submit an annual report to the President which summarizes the procurements of an emergency nature.

3. Cooperative Procurement

- a. When it is determined by the Director of Procurement that cooperative purchasing efforts may result in a fiscal advantage to

the College, the Director is authorized by the President to enter into a cooperative procurement process with other state and local agencies for the purpose of developing specifications, terms, and conditions.

- b. The Director of Procurement may bid the cooperative agreement for participating agencies and make available certain facilities necessary to form a contract, if an award results from the process.
- c. Under no circumstances shall the College assume any obligation for performance, payment or other duty implied nor shall it be construed that the College may be held accountable for any agency participating in the cooperative effort.
- d. All purchases under such contracts shall be in accordance with policies approved by the Board of Trustees.

4. Interagency Procurement

- a. The Director of Procurement may procure goods and services from state and local agencies whenever it is advantageous for the College to do, and such goods and services meet all requirements of the College. An example of such agencies are, but not limited to:
  - 1) Maryland State Agency for Surplus Property
  - 2) Montgomery County Public School Warehouse
- b. The Director of Procurement shall determine that price, quality, and availability are satisfactory and competitive and shall establish necessary controls for fiscal responsibility. Under no circumstance will budgetary constraints be waived when purchasing from another governmental agency.

5. Procurement Through Other Agency (PTOA)

- a. The Director of Procurement shall have the authority to contract for goods or services that are the subject of a current contract of a Federal, State, or local government or agency, political subdivision of a state school system where the contract was the subject of appropriate competition, and is in the best interest of the College. Best interest can be determined by price, timeliness, or associated realized efficiencies.
- b. The Office of Procurement shall seek out public agency minority awarded contracts for possible use, when available and applicable.
- c. Long term PTOAs shall be reviewed by the Director of Procurement on an annual basis to ensure it remains in the College's best interests to continue to utilize them.

- d. The Director of Procurement shall submit a report and review with the President details of all PTOAs on a semi-annual basis.

E. Purchasing and Corporate Card

The use of the purchasing and corporate card shall be done in accordance with card program guidelines. Refer to purchasing card user guide, and corporate card guidelines for more information.

IV. Procurement from Minority Businesses

- A. The Director of Procurement shall encourage by all reasonable and practical means the participation of minority and disadvantaged businesses in the procurement process of the College.
  - 1. The Office of Procurement shall maintain a list of certified minority businesses, via the Montgomery County Minority/Female/Disabled (MFD) business database. This list will be assembled by dedicated Montgomery County Government employees.
  - 2. The Montgomery County MFD database businesses will be solicited for quotes, bids and proposals. If no qualified minority businesses are identified, other entities will be canvassed in an effort to assure Minority, Female, and Disabled business participation.
  - 3. Vendors shall be encouraged to identify themselves to the College as minority or disadvantaged entities.
  - 4. The Director of Procurement shall create, seek out, and participate in activities which encourage, stimulate and assist minority businesses in the procurement process at the College. These efforts may be within the College or cooperative efforts with other state and local agencies.
- B. The Director of Procurement shall attempt to achieve the target of minority business participation of 15 percent of the total dollars awarded through the procurement process.
- C. The Director of Procurement shall report to the President annually the total number and value of the College's purchases from minority business enterprises, and the percentage which these purchases represent of the total dollars expended during the fiscal year.

V. Preference for Montgomery County Products

- A. The Director shall solicit bids or proposals from Montgomery County-based firms whenever it is reasonable and practical, and is deemed to be in the best interests of the College to do so.
- B. Vendors shall be asked to indicate location of principal place of business on the bidder's application form as a means of identifying such county-based firms.

VI. Procedures for Federal Grant-Funded Purchases

- A. For all federal government grant-related requests, Montgomery College will consider the use of federal excess or surplus property in lieu of the purchase of new equipment and property, when applicable.
  - B. For all federal government grant-related requests, Montgomery College will reach out to small and minority business organizations for possible participation, when applicable.
  - C. For all federal government grant-related requests, Montgomery College will procure items designated in EPA guidelines at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery, and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- VII. Procurement Exceptions

The following goods and services are exempt from the competitive procurement process:

- A. Purchases of print (hardcopy) and non-print (digital) library and learning resource material, defined as texts, videos, software, and other materials that teachers use to assist students with meeting learning expectations.
- B. Merchandise purchased for resale. The Office of Procurement may assist and advise limits to obtain the best fiscal advantage.
- C. Consistent with the provisions of Section 213 of the Montgomery County Charter and the provisions of the Montgomery County Code 11B-4(a), contracts for the services of special legal counsel or for the services of experts, consultants and investigators, deemed appropriate by the General Counsel, whether in anticipation of litigation or in preparation for a trial or a compliance issue.

VIII. Protests and Disputes

- A. The Director shall inform the President and General Counsel upon receipt of the protest.
- B. The Director shall comply with all applicable federal, state and local laws regarding requests for information and timely decision.
- C. The Director shall confer with the General Counsel and the President prior to issuance of a decision regarding disputes of contracts or awards in excess of \$25,000.
- D. Decisions shall be transmitted to interested parties within 30 days of filing of written protest by certified mail, return receipt requested, or by any method that provides evidence of receipt.

VIX. Resolution of Protests and Disputes

- A. Pursuant to the procedures, the Director of Procurement may, consistent with the budget and all applicable laws, regulations, and Board policies, negotiate and resolve protests and disputes relating to the formation of a procurement contract with the College. The Director shall inform the President of controversies involving the formation of contracts pursuant to the procedures. Protests may be addressed to the Board only through the President.
- B. An interested party (actual or prospective bidder, offeror, or contractor) may protest to the Director of Procurement an award or proposed award of a contract for supplies, services, maintenance, or construction.
  - 1. The protest shall be in writing and addressed to the Director of Procurement of the College.
  - 2. Protests must be filed with the Director within ten (10) days of the announcement of award or intent of award, whichever comes first.

X. Reporting

The Director of Procurement shall produce a report of all procurement activity on a semi annual basis, and deliver to the President. Procurement activity includes the following:

- A. All competitive contract awards
- B. All special procurements
- C. Purchasing and Corporate card usage/spend.
- D. Issued purchase orders
- E. Percentage contract minority business enterprise contracts awards
- F. Percentage of contract awards within County, within state of Maryland, and out of state.
- G. Cancelled solicitations that exceed \$25,000.

XI. Consultant Services

- A. When requesting consultant services, requestor shall:
  - 1. Complete and submit an online requisition to the Office of Procurement.
  - 2. Follow the general procurement process, including all dollar thresholds.
- C. Guidelines for Requesting Consultant Services
  - 1. If the advice they are to give or the service they are to provide cannot be furnished by faculty, staff, administrators, or students without interfering with the performance of their normal functions and without a conflict of interest, a consulting specialist may be used with the approval of the appropriate Senior Vice President.
  - 2. Prior to initiating a request for the services of a consultant, the initiator should consider contacting the professional staff of associations or societies with which the College has membership and whose activities impinge on the area for which consulting service is needed. The initiator should determine if the association provides advice or service of the type

needed by the College and if the association's resources can be used by the College.

3. Unless the material contained in a consultant's report is confidential, the contents of the report should be available to all College personnel who have responsibilities related to the report.

D. Process for Requesting Consultant Services

When the need for the services of a consultant has been determined, the requester will submit a completed online requisition, to include the following:

1. The need to be served by the use of a consultant.
2. A complete Statement of Work (SOW).
3. The cost estimated that would be incurred for obtaining consulting services. Costs for per diem, or travel, if any, should be shown separately.
4. A statement indicating other resources, if any, which have been explored before resorting to the use of a consultant.

XII. Contracts

A. Initiation

1. A contract may be initiated by an authorized College employee.
2. When possible, the standard college contract format should be utilized. Authorized employees should contact the Office of Procurement for a copy of the standard format.
3. For those contracts for which there is no standard college format, an authorized employee should contact the Office of Procurement or the General Counsel's Office for assistance.
4. Use of vendor prepared contracts must be reviewed by the department administrator, Office of Procurement, and General Counsel prior to execution.
5. The General Counsel shall review and approve proposed contracts for form and legality. In those instances where the General Counsel has approved a standard contract, this approval is not required as long as there are no substitutions for, additions to or deletions from the standard approved language.

B. Review and Execution

1. The President has delegated the general authority to execute contracts on behalf of the College to the Senior Vice President for Administrative and Fiscal Services, the Senior Vice President for Academic Affairs, the Senior Vice President for Student Affairs, and the Senior Vice President for

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Advancement and Community Engagement. All Senior Vice Presidents may sub-delegate contract execution within their perspective areas of responsibility. Sub-delegation authority must be submitted in writing to the Office of Procurement. Contract execution sub-delegation authority shall not exceed \$25,000.

2. It is the responsibility of the originating office, the appropriate supervisor and the appropriate administrator(s) to review and approve all contracts before they are transmitted for execution on behalf of the College. Administrator(s) will be held accountable for contracts.
2. Generally all signatures from all parties should be obtained before a contract is signed by the authorized individual on behalf of the College.
3. Two original copies of every contract should be submitted so that the College and the contractor may each have an original.
4. Unless otherwise specified, after an agreement is executed, the initiator is responsible to the appropriate major administrator for the administration of the agreement.

C. Distribution

Upon execution of the agreement by all parties, copies of the contract will be distributed by the originating/initiating office as follows:

1. General Counsel
2. SVP of Administrative and Fiscal Services or Designee
3. Originating Office
4. Contractor (if appropriate)
5. Implementing Office (if not one of the above)

D. Reporting

Each Senior Vice President shall submit to the General Counsel by September 1 of each year an annual report of all contracts signed pursuant to the delegated authority during the previous fiscal year.

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Administrative Approval: November 20, 1984; April 23, 1985; June 16, 1986; January 12, 1987; May 16, 1988; July 27, 1989; July 14, 1990; January 5, 1993; March 20, 1995; February 26, 1996; March 24, 1997; June 15, 1998; January 3, 2000; December 10, 2001; August 13, 2010; February 9, 2016; February 2, 2017 (administrative correction only); June 30, 2017; June 28, 2018; January 31, 2020