



# Contract Renewals & Two-Party Contracts

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# Agenda

- What is a contract?
- When is a two-party contract needed?
- Key clauses
- Other required contract components
- The contract process
- Renewals & Amendments
- Resources
- Q&A

# What is a Procurement Contract?

A contract is an agreement between the University and one or more other parties, creating obligations that are legally recognizable or enforceable.

[Source: OBFS Website]

## Two-party (iCS) Contract:

- Can originate from an other party document, or a University template.
- Must include State Certifications.
- Must be signed by both the other party and the University.



## A two-party contract is needed when:

- Key clauses vary from what is allowed under the Illinois Procurement Code and/or University Policy.
- The services provided include access to protected University assets.
- Restricted categories of services.
- Other situations as determined by Purchasing review, including level of risk.

# Illinois Admin. Code (44 ILAC 4)

- 44 ILAC 4.2020 Small Purchases
  - (b) (4) “Procurements of less than \$20,000 for professional and artistic services and that have a non-renewable term of one year or less may be made without the prior notice or level of competition otherwise required of competitive sealed solicitations. Notice of award of these small professional and artistic service contracts must be published in the Bulletin within 14 days after contract execution, and shall include the name of the SPO, reason for the exception, description of the procurement, name of the university decision maker, contract reference number and contract price.”
  - (c) (1) – “In determining whether a contract is under the small purchase limit, the stated value of the supplies or services, plus any optional supplies and services, and the value of any renewals, determined in good faith, shall be utilized. When the value is calculated month-to-month or in a similar fashion, the amount shall be calculated for a 12 month period.”
  - (d) – “If there is a repetitive need for small procurements of the same type (which may be evidenced by a pattern of small purchases, as determined by the university or the SPO), the university shall consult with the SPO to consider whether issuing a competitive sealed bid or proposal for procurement of those needs is in the best interests of the State.”

## Illinois Admin. Code (44 ILAC 4)

- 44 ILAC 4.2025 Sole Source and Economically Feasible Source Procurement
  - (c) (2) last sentence – “That a vendor has supplied samples, demonstrated its product, or engaged in a pilot project is not sufficient justification to support a sole source.”
- 44 ILAC 4.2060 Duration of Contracts - General
  - (e) (5) – “Renewals must be fully **executed on or before** the expiration of the current contract term. If the renewal is not exercised prior to expiration of the current contract term, the supplies or services must be procured anew using one of the methods of source selection authorized by the Code and this Part.”

# Clauses that frequently require revision:

- Indemnification
- Liability
- Governing Law
- Export Controls
- Confidentiality
- Intellectual Property



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# Indemnification Language

- “Indemnity” defined:
  - *Compensate (someone) for harm or loss*
  - *Secure (someone) against legal responsibility for their actions*

*(Source: Oxford Dictionaries, Oxford University Press)*
- Laws intended to limit the exposure and liability of State entities.
  - State Lawsuit Immunity Act [745 ILCS 5]
  - U.S. Const. amend. XI
  - Illinois Court of Claims Act [705 ILCS 505]



# Limitation of Liability

- Example:  
“CLIENT agrees that any monetary liability on the part of OTHER PARTY arising from breach of warranty, breach of contract, negligence, strict liability in tort, or under any other legal theory ***shall not exceed the amounts paid to OTHER PARTY for its services.***”





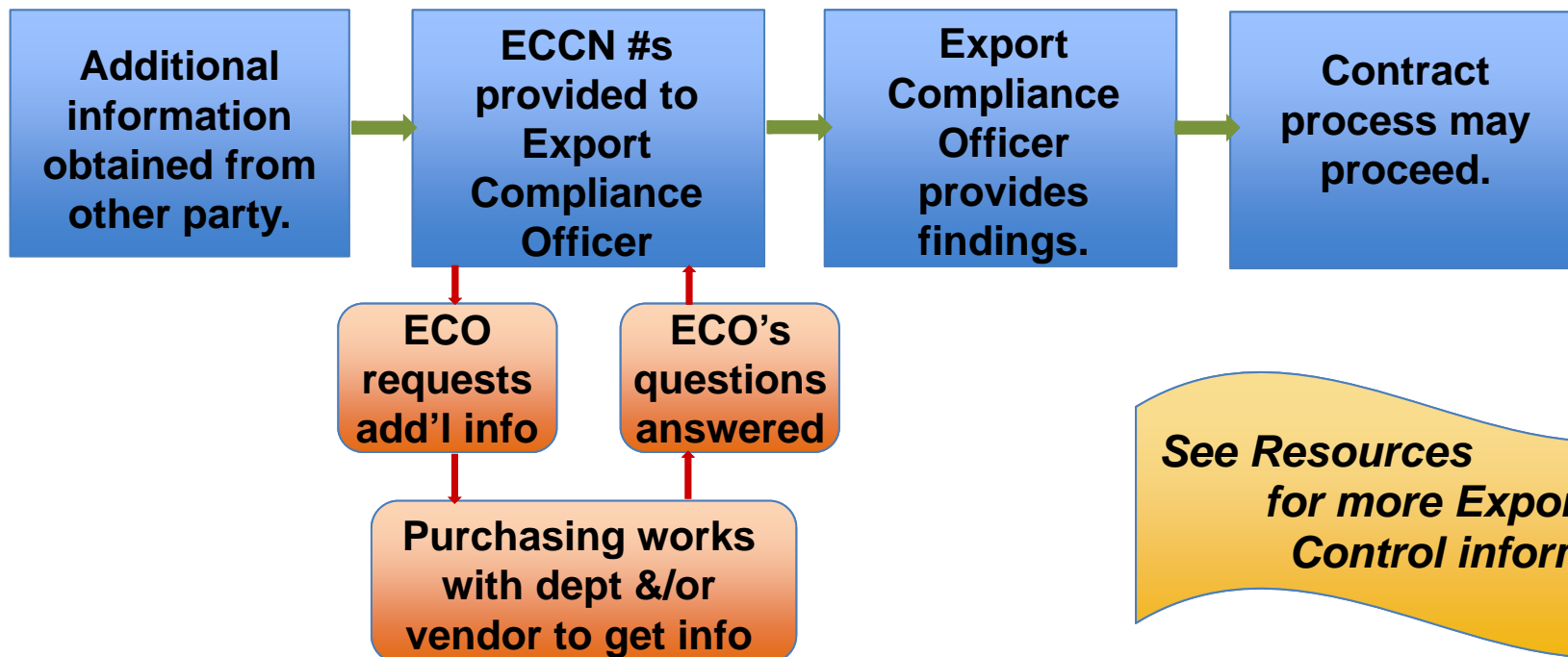
# Governing Law

- Any governing law other than Illinois must be approved by University Legal Counsel.
- Example of changes to other party wording:
  - “This Agreement shall be governed by and construed in accordance with the laws of the State of ~~New Jersey~~ Illinois, **without regard to its conflicts of law provisions.**”
- Other Options:
  - Remain Silent
  - “This Agreement will be construed under and pursuant to the laws of the forum in which any controversy hereunder is adjudicated. Any suit or proceeding in connection herewith will be brought and prosecuted only in the home state or province of the party against whom that suit or proceeding is instituted.”

# EXPORT CONTROL

All members of the campus community shall comply with applicable federal export control laws and regulations.

[Source: Campus Administrative Manual]



*See Resources  
for more Export  
Control information.*



# Confidentiality

- We may need to add or modify a confidentiality clause to the other party's contract.
  - [FERPA](#)
  - [HIPAA](#)
  - [PIPA](#)
  - Marked as confidential
- The below language is an example of what would be added to the contract:
  - *“Vendor must treat all information relating to this contract as confidential (“University Information”). Unless required by law, Vendor shall not disclose University Information to third parties or use University Information for any purpose other than in performing the Services except as authorized in advance in writing by University.”*



# Intellectual Property Rights

- Ownership of intellectual property is a common contract component.
- These clauses can:
  - Protect the other party's work product.
  - Stake a claim to the end product.
- ***Don't lose the rights to your own work!***

## Additional required contract components:

- State Certifications
- Financial Disclosures & Conflicts of Interest
- Federal Funds Addendum



# State Certifications

- State Certifications are required to be incorporated in every contract – there are very few exceptions.
- The certification document is passed down from the State of Illinois and we have very little ability to modify it. There are a few select clauses that the other party may strike. Otherwise, they are non-negotiable.
- Three of the certifications require other party response.
- **NO CERTIFICATIONS=NO CONTRACT**

**Exhibit A**

**Certifications**

Vendor acknowledges and agrees that compliance with this subsection in its entirety for the term of any resulting contract and any renewals is a material requirement and condition of the contract. By executing the contract Vendor certifies compliance with this subsection in its entirety, and is under a continuing obligation to remain in compliance and report any non-compliance.

This subsection, in its entirety, applies to subcontractors used on this contract. Vendor shall include these Standard Certifications in any subcontract used in the performance of the contract using the Standard Subcontractor Certification form provided by the State.

If the contract extends over multiple fiscal years, including the initial term and all renewals, Vendor and its subcontractors shall confirm compliance with this section in the manner and format determined by the State by the date specified by the State and in no event later than July 1 of each year that the contract remains in effect.

If the Parties determine that any certification in this section is not applicable to the contract it may be stricken without affecting the remaining subsections.

1. As part of each certification, Vendor acknowledges and agrees that should Vendor or its subcontractors provide false information, or fail to be or remain in compliance with the Standard Certification requirements, one or more of the following sanctions will apply:

- the contract may be void by operation of law,
- the State may void the contract, and
- the Vendor and its subcontractors may be subject to one or more of the following: suspension, debarment, denial of payment, civil fine, or criminal penalty.

Identifying a sanction or failing to identify a sanction in relation to any of the specific certifications does not waive imposition of other sanctions or preclude application of sanctions not specifically identified.



2. Vendor certifies it and its employees will comply with applicable provisions of the United States Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act, and applicable rules in performance of this contract.

3. **This applies to individuals, sole proprietorships, partnerships and LLCs, but is otherwise not applicable.** Vendor, if an individual, sole proprietor, partner or an individual as member of a LLC, certifies he/she is not in default on an educational loan. 5 ILCS 385/3

4. Vendor certifies that is has reviewed and will comply with the Department of Employment Security Law (20 ILCS 1005/1005-47) as applicable.

5. **This applies only to certain service contracts and does NOT include contracts for professional or artistic services.** To the extent there was a current Vendor providing the services covered by this contract and the employees of that Vendor who provided those services are covered by a collective bargaining agreement, Vendor certifies (i) that it will offer to assume the collective bargaining obligations of the prior employer, including any existing collective bargaining agreement with the bargaining representative of any existing collective bargaining unit or units performing substantially similar work to the services covered by the contract subject to its bid or offer; and (ii) that it shall offer employment to all employees currently employed in any existing bargaining unit who perform substantially similar work to the work that will be performed pursuant to this contract. This does not apply to heating, air conditioning, plumbing and electrical service contracts. 30 ILCS 500/25-80

6. Vendor certifies it has neither been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor made an admission of guilt of such conduct that is a matter of record. 30 ILCS 500/50-5

7. If Vendor has been convicted of a felony, Vendor certifies at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business. 30 ILCS 500/50-10

8. If Vendor or any officer, director, partner, or other managerial agent of Vendor has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, Vendor certifies at least five years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract. 30 ILCS 500/50-10.5

9. Vendor certifies it is not barred from having a contract with the State based upon violating the prohibitions related to either submitting/writing specifications or providing assistance to an employee of the State of Illinois by reviewing, drafting, directing, or preparing any invitation for bids, a request for proposal, or request of information, or similar assistance (except as part of a public request for such information). 30 ILCS 500/50-10.5(e)

10. Vendor certifies that it and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent have entered into a deferred payment plan to pay the debt. 30 ILCS 500/50-11, 50-60

11. Vendor certifies that it and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act. 30 ILCS 500/50-12

12. Vendor certifies that it has not been found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Environmental Protection Act within the last five years, and is therefore not barred from being awarded a contract. 30 ILCS 500/50-14

13. Vendor certifies it has neither paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract. 30 ILCS 500/50-25

14. Vendor certifies it has read, understands and is not knowingly in violation of the "Revolving Door" provisions of the Illinois Procurement Code. 30 ILCS 500/50-30

15. Vendor certifies that if it hires a person required to register under the Lobbyist Registration Act to assist in obtaining any State contract, that none of the lobbyist's costs, fees, compensation, reimbursements or other remuneration will be billed to the State. 30 ILCS 500/50-38

16. Vendor certifies that it will not retain a person or entity to attempt to influence the outcome of a procurement decision for compensation contingent in whole or in part upon the decision or procurement. 30 ILCS 500/50-38

17. Vendor certifies it will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, offerors, contractors, proposers, or employees of the State. 30 ILCS 500/50-40, 50-45, 50-50

18. Vendor certifies that if it is awarded a contract through the use of the preference required by the Procurement of Domestic Products Act, then it shall provide products pursuant to the contract or subcontract that are manufactured in the United States. 30 ILCS 517

19. Vendor certifies steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the executive head of the procuring Agency/University grants an exception. 30 ILCS 565

20. Drug Free Workplace

20.1 If Vendor employs 25 or more employees and this contract is worth more than \$5,000, Vendor certifies it will provide a drug free workplace pursuant to the Drug Free Workplace Act

20.2 If Vendor is an individual and this contract is worth more than \$5000, Vendor certifies it shall not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the performance of the contract. 30 ILCS 580

21. Vendor certifies that neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the United States Department of Commerce. 30 ILCS 582

22. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been or will be produced in whole or in part by forced labor or indentured labor under penal sanction. 30 ILCS 583

23. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been produced in whole or in part by the labor of any child under the age of 12. 30 ILCS 584

24. This applies to information technology contracts and is otherwise not applicable. Vendor certifies that information technology, including electronic information, software, systems and equipment, developed or provided under this contract comply with the applicable requirements of the

Illinois Information Technology Accessibility Act Standards as published at ([www.dhs.state.il.us/iitaa](http://www.dhs.state.il.us/iitaa)). 30 ILCS 587

25. **This only applies to vendors who own residential buildings but is otherwise not applicable.** Vendor certifies, if it owns residential buildings, that any violation of the Lead Poisoning Prevention Act has been mitigated. 410 ILCS 45
26. Vendor certifies it has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any state or of the United States. 720 ILCS 5/33 E-3, E-4
27. Vendor certifies it complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, which include providing equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies. 775 ILCS 5/2-105
28. Vendor certifies it does not pay dues to or reimburse or subsidize payments by its employees for any dues or fees to any “discriminatory club.” 775 ILCS 25/2
29. Vendor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits Vendors and subcontractors from hiring the then-serving Governor’s family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.
30. Vendor certifies that if an individual, sole proprietor, partner or an individual as a member of a LLC, he/she has not received an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code or an early retirement incentive on or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code. 30 ILCS 105/15a; 40 ILCS 5/14-108.3; 40 ILCS 5/16-133
31. Vendor certifies that it has read, understands, and is in compliance with the registration requirements of the Elections Code (10 ILCS 5/9-35) and the restrictions on making political contributions and related requirements of the Illinois Procurement Code. Vendor will not make a political contribution that will violate these requirements. 30 ILCS 500/20-160 and 50-37

In accordance with section 20-160 of the Illinois Procurement Code, Vendor certifies as applicable:

Vendor is not required to register as a business entity with the State Board of Elections.

or

Vendor has registered with the State Board of Elections. As a registered business entity, Vendor acknowledges a continuing duty to update the registration as required by the Act.

32. A person (other than an individual acting as a sole proprietor) must be a duly constituted legal entity and authorized to do business in Illinois prior to submitting a bid or offer. If you do not meet these criteria, then your bid or offer will be disqualified. 30 ILCS 500/20-43

Vendor must make one of the following four certifications by checking the appropriate box. If C or D is checked, then Vendor must attach to this form the requested documentation.

- A.  Vendor certifies it is an individual acting as a sole proprietor and is therefore not subject to the requirements of section 20-43 of the Procurement Code.
- B.  Vendor certifies that it is a legal entity, and was authorized to do business in Illinois as of the date for submitting this bid or offer. The State may require Vendor to provide evidence of compliance before award.
- C.  Vendor certifies it is a legal entity, and is a foreign corporation performing activities that do not constitute transacting business in Illinois as defined by Illinois Business Corporations Act (805 ILCS 5/13.75). A vendor claiming exemption under the Act must include a detailed explanation of the legal basis for the claim with its bid or offer and must provide additional detail upon request. If Vendor fails to provide the mandatory documentation with the bid or offer, or does not provide additional detail upon request within the timeframe specified in said request, then the State may deem the Vendor as being non-responsive or not responsible and may disqualify the Vendor.

Vendor certifies it is a legal entity, and is an entity otherwise recognized under Illinois law as eligible for a specific form of exemption similar to those found in the Illinois Business Corporation Act (805 ILCS 5/13.75). A vendor claiming exemption under a specific law must provide a detailed explanation of the legal basis for the claim with its bid or offer and must provide additional detail upon request. If Vendor fails to provide the mandatory documentation with the bid or offer, or does not provide additional detail upon request within the timeframe specified in said request, then the State may deem the Vendor as being non-responsive or not responsible and may disqualify the Vendor.

# Financial Disclosures

- Any time a single transaction, ***or the total annual transactions with a vendor***, reaches \$50,000, the vendor must complete Financial Disclosures and Conflicts of Interest.
- The Buyer will send this document to the other party for completion.
- *Any guidance on how to complete this form should come from the other party's legal counsel and not University staff.*

# Federal Funds Addendums

- Purchases in excess of \$5,000 which include **any amount of** federal grant funds must include this addendum.
  - Fund codes: 400000-497999  
600000-609999  
500000-599999 *Pass Through Funds*
- Purchases of \$25,000 or more require a Source Selection and Price Justification Form be completed.
- The Buyer will also review the System for Award Management to make sure the vendor is not excluded from conducting business with the University.
- Please note: This process is separate from and unrelated to any review done by Grants & Contracts in association with the use of grant funds, which must be completed BEFORE the requisition is forwarded to Purchasing.

# From Initiation to Execution, and Beyond...



- Requesting/initiating a contract.
- Reviewing specific contract terms.
- Executing the contract.
- Amendments & renewals.



# Contract Request Vs. Contract

- A **Contract Request (CR)** should be submitted when the other party has not provided an acceptable contract.
  - Purchasing will use a template pre-approved by University Legal Counsel to create the contract.
  - All information sections need to be filled out in iCS.
- A **Contract (CN)** is uploaded into iCS when the other party has provided an acceptable contract.
- Route to “*1\_purchasing\_reviewer*”

Apply Template: Contract Request Non-Healthcare

- 1. Select Clauses
- 2. Enter Info
- 3. Set Properties
- 4. Finish Document

Title:

What type of entity is the other party?:

Contracting Party Country:

Please provide a detailed description of the services to be performed:

Where will services be performed?:

What are the expected deliverables?:  [\[?\]](#)

Are there any joint responsibilities?:

Are these services related to any other activity / project?:  [\[?\]](#)

Provide definitions for terms / acronyms used in relation to this contract.:

Renewal Options:

How often will payment be made?:  [\[?\]](#)

On what date(s) will payment be made?:

If a deposit is required, what is the amount?:

How were your fees determined?:

If travel is involved, is the cost included in the fees or will there be reimbursable expenses?:

## Non-iCS users

- Contract Approval/Routing Form (CARF)
  - Found on OBFS website
  - Fillable PDF
- Proper use/completion of CARF
  - Fill out information in Sections 1-3 ONLY
  - MUST include Contracting Party email
  - DO NOT have it signed at the time the requisition is submitted
  - Purchasing will add needed information
  - Signed CARF must be attached to contract

# Departmental Review



- Department is the affected party
  - Performance aspects
  - Logistical parameters
  - Use restrictions
- Contract negotiation is a cooperative effort
- It's okay to not understand what it means.

# Authorized Signatory



- Only the Comptroller, or his designees, may sign contracts to which the University is party.  
[Article II, General Rules]

- ***It is important that all department members are not only aware of this rule, but also comply with it at all times.***

# Contract Amendment/ Renewal

## Amendment

- Used to make changes to ***current*** contract.
- Initiated by email to Buyer, change order, or Contract Request.
- Provide appropriate information & documentation.
- Be sure to include current contract number.

## Renewal

- Typically used when the same services are contracted for consecutive years.
- May be accomplished by amendment.
- Must reference previous contract number



# Resources

- [OBFS Website on Contracts & Leases](#)
- [FERPA](#)
- [HIPAA](#)
- [PIPA](#)
- [Export Controls](#)
- [CARF](#)
- [iCS](#)

# Questions?

