

**Business Administrator Services**

**Forum Minutes**

**February 8, 2017 9:00 a.m. to 11:00 a.m.**

**Kent Student Center**

**Governance Chambers**

**Mike Pfahl, Associate University Counsel**

**Contracting 101, What to Expect When You’re Contracting**

**Kent State Contracting Basics**

Mike’s presentation was intended to serve as an informative and educational session to raise awareness of the various legal issues associated with contracting. While several legal issues were addressed, the presentation in part or in whole was/is not intended to be legal advice. For legal advice regarding a specific issue contact the Office of the General Counsel directly.

Contracting for the university is governed by policies 3342-5-04, 3342-5-04.1 and 3342-5-04.2. The general assembly expects Kent State to follow these policies. Senate bill 3 forces policies to be the same as the Ohio Administrative Code.

The only people that can obligate the university to an agreement are those that have the authority by policy or if the authority has been granted using a letter of delegation. Signing a contract without authority can be deemed as outside the scope of employment and the person signing the contract could be held personally liable for any damages.

Kent State entered into over 1400 contracts in calendar year 2016. The signing of any contract is not obligating your department; it is obligating the State of Ohio.

What is a Contract?

* Per policy 3342-5-04.0 (C)(1) all written agreements intending to have legal effect between two or more parties where Kent State University, or any department within the university, constitutes one of the contracting parties.
* Basically, two parties agree to do or not to do something constituting mutual consent.
	+ Does not have to involve money
	+ Does not have to involve university resources
	+ Click-through-agreements are contracts

Invoices for payments are not contracts unless negotiations are included on the invoice. If negotiations are contained on the invoice, which have not been agreed to in the contract, you can strike out the verbiage. If you have questions regarding specific verbiage contact legal counsel for advice.

Examples of contracts (not inclusive)

 Speaker/Performer agreements Carrier/Bus Agreements

 Affiliation agreements Website agreements

 Articulation agreements Student placement agreements

 Letters of intent Hold harmless

 Software agreements Releases/Waivers

 Game rental agreements Promissory notes

 Purchase agreements Leases

 Any rental agreements

Formally named structures of a contract include the introduction/summary, definitions, term, scope, duties, warranties/representations, termination/renewal, liabilities and governing law/dispute resolution.

Links to the terms and conditions of a contract must be attached or viewable. The links and/or documents are reviewed by legal counsel as part of the approval process.

Structure of a contract

* Who are the parties
	+ Include Kent State University before the department name Ex.) KSU Geography
* What do the parties want to do?
* When do the parties want to do it?
* How much have the parties agreed to pay for it?
* What are the terms?
* Who is responsible if something happens?
* Where can the parties be sued?
* How much can the parties be sued for?
* How can the parties terminate/renew the agreement?

Legal counsel does not know all of the terms of a contract and can only review for substantive content. Review of a contract means reading the entire agreement word by word. Every word in a contract or agreement is an obligation. Any links contained in a contract/agreement must also be read word for word. If documents are referenced and not suppled then ask for them. If there is reference to a document not yet created, ensure that both parties agree to it before it is included as an obligation of the agreement. Be sure to ask questions if any part of the contract/agreement is unclear.

Since Kent State University is a state entity it cannot agree to some “standard” verbiage in a contract; if it appears it must be stricken. Prohibited terms include but are not limited to the items in the examples below:

* Indemnification (“The University agrees to indemnify, release, and hold XXX harmless against any claims, attorney’s fees, liabilities, etc.”)
* Choice of Law (“This Agreement shall be governed by the laws of the state of California, without regard to its conflict of law principles.”)
	+ KSU can only agree to Ohio law
	+ KSU counsel is only licensed to practice law in Ohio. If sued from someone outside of Ohio, legal counsel must be obtained by someone licensed to practice in that state.
* Arbitration (“The parties agree that any disputes will be subject to the rules of Arbitration as established by the Arbitrators Association of America.”) Ohio arbitration is handled through the Ohio Court of Claims laws.
* Attorneys’ Fees/Collections (“The parties agree that the prevailing party in any action shall be entitled to its attorneys’ fees.”)
* Taxes (“University will pay all taxes related to this agreement, even if such taxes are the responsibility of the vendor.”)
* Personal liability (“The signatory of this agreement agrees to be personally liable for any damages.”)
* Liability for actions of students (“The University agrees to be responsible for damage caused by students.”)
	+ The university does not have a legal relationship with students
* Confidentiality (“The terms of the Agreement shall remain confidential and may not be disclosed to any third parties.”)
	+ Kent State must comply with Ohio public records laws

If the following terms are included in a contract/agreement, they should be negotiated:

* Terms longer than two years.
	+ By nature of the biennium, agreement should not exceed two years
	+ RFP’s are exceptions
* Autorenewals
	+ Not recommended but if included must have the following language “Any obligations of the University under this Agreement are subject to Ohio Revised Code 126.07, with respect to the relevant provisions regarding availability of funds.”
	+ Subscriptions can be auto renewed
* Representations/Warranties
	+ Beware if it basically says, “We don’t represent that this product/software actually works, nor do we warranty it for any purpose.”
* Travel expenses – must adhere to University administrative policy 3342-7-02.8
* Not-to-Exceed.
	+ Usually included when the terms are based on an hourly fee agreement (or maximum number of hours)
* Discount/late-fee penalty – this is useful for ensuring that deliverables are delivered on-time.
* Deposit – avoid if possible, especially if it is a service
* Non-refundable deposit – Always avoid
* Payment Terms – can you meet the payment schedule?
* Work for Hire
	+ Make sure the University owns the Intellectual Property when we pay for someone to do work for us.
	+ The University needs to own the final product.
* Joint Intellectual Property – The University cannot contract away faculty IP without express, written permission in accordance with university policy/CBA.
* Removal of Consultants – Reserve the right to request removal of consultants for reason of ineffectiveness/violation of university rules and policies.
* Data Protection – If the agreement involves institutional data/student data, make sure to include protections.

**What is Bad Contracting**?

* Not knowing what you are agreeing to
* Not knowing how long the term of the contract is
* Not ensuring that the service is actually provided
* Paying contractors/vendors for work not performed if such terms are not provided for in the agreement
* Paying contractors/vendors for expenses not provided in the agreement
* Not obtaining a fully-executed copy of the contract
* NOT CANCELLING WHEN IT ISN’T WORKING OUT

Don’t continue in a bad contract relationship. Contact legal counsel to see if you can legally get out of the contract.

Kent State can also enter into an agreement/contract where the University is the provider of a service or support to third parties outside of the university.

Consulting agreements are the most common (actions outside of providing education). If entering into an agreement where the university is the provider, the agreement/contract should include the following: “To the maximum extent permitted by law, each party hereby specifically disclaims any and all representations and warranties whatsoever, whether express, implied or statutory, in connection with the performance of this Agreement, including any and all representations and warranties regarding merchantability, fitness for a particular purpose, except as provided for specifically in the Agreement. Both parties further understand that these services are being provided in accordance with the University’s educational mission to its students and staff, and is not a professional service provider.”

If the University is providing the service, when possible the work should not be reliant on individual named employees.

The work and/or services provided for in the agreement should be consistent with the University’s mission and UBIT exposure.

If students are to be involved in the work, will they be getting course credit or compensation? Is the work required by a class?

If employees are involved, is the work within or outside of the normal job requirements?

What type of transportation will be used, personal or university?

**Contracting Process**

* Receive agreement (or create it if KSU is vendor).
* Read agreement (bidding threshold?)
* Negotiate substantive terms (price, deliverables).
* Send to legal counsel for review (legal sufficiency).
* Respond to vendor if issues.
* Finalize terms.
* Gather signatures.
* Keep a signed copy on file.
* ***Send a signed copy to*** ***contracts@kent.edu***

After the contract has been signed be sure to follow the agreement and ensure that all others follow the agreement.

**Post-contracting**

* Amend agreement if necessary
* If the agreement is not being followed, notify the other party
* If the other party is in breach, notify the other party as soon as possible
* If there is an issue, engage the office of general counsel for guidance

**How to End an Agreement**

* The term naturally expires
* The deliverables are early, and the agreement automatically terminates
* A precondition is never met (usually when the work is dependent upon a third party), and the agreement automatically terminates.
* One party terminates for “convenience”.
* One party is in material breach of the terms.
* One party ceases to exist (successor in interest!).

The University is testing a new centralized contracting system “Total Contract Manager”. It is a centralized database within SciQuest that would allow for indexing by agreement type, originating department, vendor name, index, college, division, etc. It will also send alerts for expiring agreements. The system allows the ability to attach amendments, renewals and termination notices, etc. to the original agreements.

A copy of Mike’s presentation can be found on the BAS website under the February 8, 2017 minutes. The presentation includes Quick Tour slides of the Contract Manager database.

**Tim Konczal, Director Procurement**

**Introduction of Melissa Ricchiuti**

Tim introduced Melissa Ricchiuti as the new Procurement Analyst/Buyer. Melissa came to Kent State University from private industry where she had 6 years accounting experience and 4 years procurement experience.

Melissa will be concentrating on university spending and increasing efficiencies. She will be reviewing the databases to determine deficiencies in processes. Proper department use of commodity codes and account codes will help in analyzing university spending.

**Jeannie Reifsnyder, Sr. Associate Vice President Finance and Administration**

**Introduction of Kevin Savage**

Jeannie introduced Kevin as the new Associate Vice President of University Budget and Financial Analysis.  Kevin came to Kent State University from SummaCare where he served for 10 years. Kevin has over 8 years of experience preparing budgets and financial analyses. He started at SummaCare as a staff Accountant, but took on more responsibility over time and eventually took a director role where he oversaw 30+ employees in the Budget, Financial Analysis, Payroll, Third Party Administrator, Accounts Receivable, and Eligibility departments. Kevin has a Bachelorette in Accounting and an MBA in Finance, both from Kent State University.  When Kevin read the job description for the AVP of University Budget and Financial Analysis, he felt that it was the perfect fit, both culturally and professionally. Kevin is excited to be here and is highly impressed with the talent in the university’s finance department as well as the talent across the university. He looks forward to the opportunity to help improve on the already great work done in the University Budget Office and is inspired by the opportunity to help enhance the student experience at Kent State University.

**Jeannie Reifsnyder, Sr. Associate Vice President Finance and Administration**

**Cell Phone Stipend Changes**

The information contained in the cell phone stipend changes and the two new policies below may not have been fully discussed at the forum, but the information was included in emails that were sent out to the BAS Listserv.

In its response to the report of the Governor’s Affordability and Efficiency Taskforce, Kent State University’s Board of Trustees has recommended reducing the university’s expenditures related to cellphone stipends.

The change applies to employees with personally-owned cellphones who receive a stipend. It does not impact employees who have a university-owned cellular device.

Members of the President’s Cabinet and Deans agreed to waive their cellphone stipends effective Jan. 1, 2017.

The next steps associated with meeting the Board’s objective include:

* Feb. 15, 2017 – Revision of policy 3342-7-02.15 regarding provision of cellular devices to university employees.  View the revised policy [here](http://www.kent.edu/policyreg/administrative-policy-regarding-provision-cellular-devices-university-employees).
* Mar. 1, 2017 – University employees who currently receive a cellular device stipend will see a 50 percent reduction in the amount. The new monthly amounts will be $25 for voice-only plans and $45 for voice and data plans.
* Jun. 30, 2017 – Department heads and their respective vice presidents will take a more critical review of which employees should receive the stipend when considering approval of cellular device authorization workflows for fiscal year 2018.  The review will follow the business purpose guidelines in the revised policy.

Questions regarding these changes should be directed to **Anne Brown** at abrow116@kent.edu or 330-672-6364.

**Two Additional Policy Changes Awaiting Approvals**

Administrative policy regarding acquisition, inventory control, and sales or other disposal of capital assets (3342-5-12.3):

        All requirements related to purchasing of goods and/or services previously included in this policy have been transferred to a new administrative purchasing policy (see below) and this policy has been expanded to more thoroughly address requirements regarding capital assets.

        Some specific changes to this policy for handling of capital assets are:

o   Increased capitalization threshold from $2,500 to $5,000 to reflect current practices.

o   Provided clarification of departments’ responsibilities regarding acquisition, inventory control, and sale or other disposal of capital assets.

o   Specified requirements for capital assets acquired with funds from sponsored programs.

Administrative policy regarding purchasing of goods and/or services (3342-7-12.1):

* This policy documents practices that have been in place, but not formally documented as well as new requirements not previously in place:

o   Practices that have been in place, but not fully documented include:

  Specification of the responsibilities of the Procurement Department.

  Clarification of requirements for competitive bidding.

* + New requirements not previously in place include:
		- All purchases of good and/or services for which there is an existing university contract with one or more preferred vendor(s) must be made from those vendors when university funds are being spent regardless of payment method
* The Procurement Department will provide guidance and information about university contracts and monitor compliance with mandatory contract adherence
* The Procurement Department is developing training (in-person and online) and other resources to facilitate your compliance with changes introduced with this policy.  In the meantime, please contact them as needed for clarification.

Questions regarding capital assets should be directed to **Mike Farina** at farinami@kent.edu or 330-672-8614.

Questions regarding purchasing of goods and/or services should be directed to **Tim Konczal** at tkonczal@kent.edu or 330-672-9192.

General questions regarding either policy may be directed to **Anne Brown** at abrow116@kent.edu or 330-672-6364.

**Tammy Slusser, Controller**

**Vendor Payments / Fraud**

With increased electronic payments it becomes more important to know who you are talking to whether it is on the phone or via email. Email accounts can become compromised unbeknownst to the owner of the email account. Emails can be sent by a fraudulent person posing as the true owner posing a problem for those responding.

There have been 2 separate incidents of fraud in FY17 involving compromised emails where banking information was changed resulting in payments being made to a fraudulent account.

If you receive information from a vendor requesting that banking information be updated, we must have the means to verify the authenticity of the request. Updates to banking information are not permitted via an email alone; follow-up must be made and verified using the vendor information that is currently on file in the university’s master vendor database.

One of the instances occurred in Accounts Payable and the other resulted in a check request being altered in a department after the approving parties had already signed off. An email was received and the information was changed based on the email request that appeared to be legitimate. After it was determined that the payment was fraudulent and the documents were pulled and reviewed, it was found that not only did the banking information change, but the country that the funds were being sent to was changed. If the approving authority would have been notified of the change, it is believed that the information would have been questioned and verified before the changes were made and sent for payment. In this case, it was a travel reimbursement and there were several red flags that should have warranted additional discretion.

If a vendor is requesting a change in address, a new W9 will be required to confirm the change of address.

It is required that if any portion of a check request is changed that the signing authority reapprove the payment request authorizing the changes. It is best to complete a new payment request anytime there is a change in banking information or payment amounts.

Err on the side of caution and be skeptical when receiving changes. Watch emails with spelling errors, grammatically incorrect sentences and emails that have a sense of urgency. Follow-up via a phone call to a number that is currently on file; do not verify information using a phone number contained in an email that is different than the one on file.

PNC has provided cyber security resource information that will help in identifying fraudulent and compromised emails. A copy of the cyber security information will be forwarded to the BAS listserv.

**Emily Hermon, Manager Accounts Payable**

**Pcard Queries and Reports**

Emily introduced Joey Bennett as the new Pcard administrator. Joey can be reached at ext. 28631.

A new email address has been set up that will go to both Joey and Emily. Use this email, pcard@kent.edu for questions regarding pcard problems, adding indexes or pcard questions.

Departments are encouraged to use the department pcards whenever possible to pay invoices under $2,500. Pcards are NOT permitted to be used to pay independent contractors.

Emily demonstrated features in payment net that are new as well as reporting that is available to reconcilers and approvers.

Accounts Payable is setting up a default index for all pcards. The default will be the main department index and the account code will be office supplies. The default code will be used at year end for any transactions that were not allocated prior to the established deadlines. If you wish to change the default index contact Joey or Emily.

Reconcilers can add an index and/or account code as a favorite so that it will be more easily accessible when allocating transactions.

If you receive an email regarding a transaction that has not been allocated you may need to run a report using the view period of 90 days. The report is set to default at 30 days but it can be changed to 90 days as the default setting. By changing the default you will be assured that you are picking up all transactions that have not been allocated.

If a transaction is denied due to the MCC code, it is due to the type of vendor that is associated with that merchant code. Department pcards are limited to the types of vendors that can be used; if you have a question regarding a denial, contact Joey or Emily.

In response to discussion concerning the delay in posting pcard transactions to Banner, a weekly schedule has been implemented. Any transactions approved in PaymentNet by Monday at 12 a.m. will be posted to Banner on the following Friday.

**Tom Euclide, Associate Vice President Facilities Planning and Operations**

**Summit Street Project Update**

Phase II of the Summit Street project will be starting in March. There will be one-way traffic on Summit Street going eastbound from Willow Street to Morris Street; traffic will continue in both directions in front of the student center.

Videos are available showing how to navigate a round-a-bout. The round-a-bout in front of the rec center is open for traffic, pedestrians and bicycles. The University and the City of Kent will be investigating lighting options around the round-a-bout to better highlight pedestrians.

The round-a-bout that will be constructed in front of the student center will have special signals that will help those with vision impairments cross the street. The signals will have the ability to stop traffic so that vision impaired individuals can safely cross the street.

Videos, road closures, frequently asked questions and information regarding the Summit Street project can be found at [www.kent.edu/summitstreet](http://www.kent.edu/summitstreet). This website is best viewed using Chrome.

NEXT BAS FORUM

Wednesday

June 14, 2017

Room to be determined