

Office of
Contract Administration

Contract Management Handbook

Note: This Contract Management Handbook incorporates by reference the Texas State Comptroller's Texas Procurement and Contract Management Guide. OCA strongly suggests that all business administrators or other personnel involved with contracting review that Texas Procurement and Contract Management Guide for additional details on best practices and Texas state law regarding contracts. A copy of the Comptroller's Texas Procurement and Contract Management Guide can be found at https://comptroller.texas.gov/purchasing/docs/96-1809.pdf.

UNIVERSITY of HOUSTON

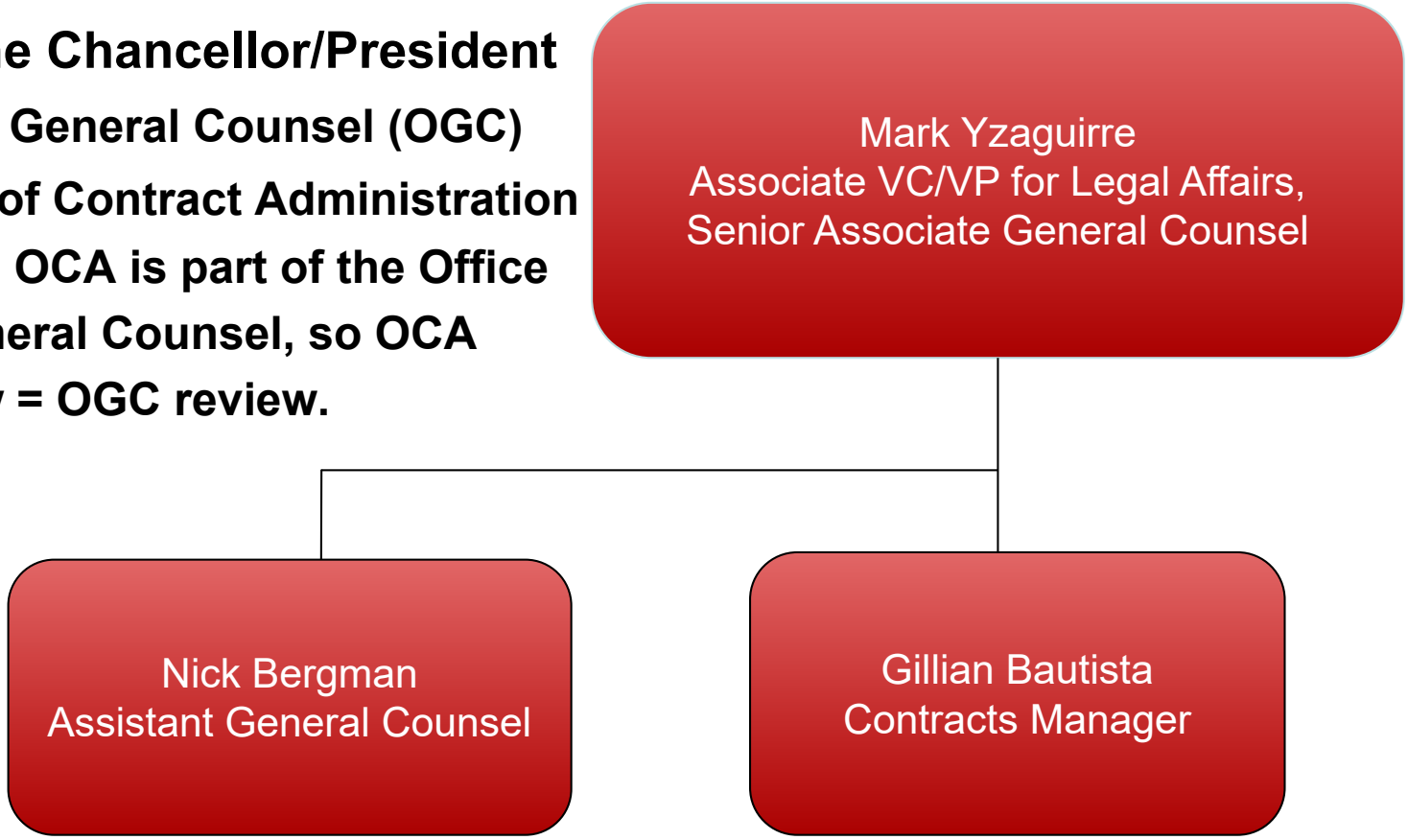
Contract Administration Department Structure

Organizational structure:

- Office of the Chancellor/President

→ Office of General Counsel (OGC)

→ Office of Contract Administration (OCA). OCA is part of the Office of General Counsel, so OCA review = OGC review.



Purpose of Handbook

- This Contract Management Handbook is intended to provide information about OCA and to summarize the University's contracting policies, processes and procedures.
- This Handbook is intended to provide general information as well as to act as a checklist for DBAs and others involved in contracting to follow. It includes information about what departments should do with regard to evaluating and processing contracts, submitting contracts and having contracts executed.
- **Note: the departments own their contracts. They are responsible for ensuring that counterparties are living up to the terms of contracts and for providing necessary reporting relating to contract compliance. OCA does not do such work, though it certainly can provide advice as to interpretation of contracts and issues of concern related to such.**
- Please consult this Handbook regularly for updates and please review it prior to contacting OCA with any questions regarding processes or procedures, because it may answer such questions.

Overview of Our Responsibilities

- **Administer and Review Contracts for <u>entire University of Houston System</u>**
  - Review, modify and approve revenue and expenditure contracts, other those than OCA-approved standard form contracts under $100,000
  - OCA reviews, modifies and approves contracts for legal compliance and clarity, but does not opine on whether the contract is a "good business deal". The department is responsible for that decision.
  - OCA reviews approximately 1,600 contract submissions per year, with a small staff. As such, matters need to be triaged and prioritized, and that issue will be discussed with regard to handling of rush requests.
- Provide protection to the University
  - Legal Compliance
    - Review contracts to ensure they are legally sufficient and compliant with University policies and state law, and to protect the University's interests and legal rights
  - Maintain Contract Records
- Provide training to facilitate compliance with laws and University policies
- Other business-related legal advice in structuring University transactions

Note: Research-related contracts like sponsored research agreements and research subcontracts are handled by the Division of Research's Office of Contracts & Grants, and intellectual property licenses are handled by the Office of Technology Transfer and Innovation (OTTI). So essentially, OCA handles all business contracts that DOR and OTTI would not handle.

Our Workload

- On average, OCA processes approximately **1,600** contracts per year
- These agreements vary in complexity from standard agreement forms to negotiated deals taking several months to complete
- This does not include the various non-contract functions we provide (compliance, advice, training, reporting, etc.)

What is Considered a Contract?

- Contract
- Agreement
- Purchase Order
- Memorandum of Understanding or Memorandum of Agreement (very important – MOUs and MOAs are contracts)
- Terms and Conditions
- Letter of Intent
- License
- Ticket
- …and more (e.g., letter, email, phone call)

A contract doesn't have to have the words "contract" or "agreement" in its name to be a contract. If two or more parties agree in writing to exchange goods, money or services with one another – that's a contract, regardless of what the document calls itself and OCA should review it, unless it's subject to the exceptions described herein.

Contract Process: Overview

1. Need for services
2. Choose a contractor
3. Choose a contract type
4. Submit proper documents for approval
5. Execute the contract after OCA approval
6. Send one fully executed contract to OCA (immediately or no later than 30 days after execution)

Contract Process (cont'd.)
Step One: Need

1. UH Department needs to obtain a good, service, license, etc. (expense); or

2. UH Department wishes to provide a service (revenue)

   – Either way, a contract is required for this to occur
   – Exceptions to requiring a contract for a good include commonly available goods, such as office supplies (you can use a purchase requisition) or when goods are acquired through Purchase Orders (refer to MAPP 04.01.01)

Contract Process (cont'd.)
Step Two: Choosing a Contractor

- **Procurement Method**
  - Request for Proposal, Request for Qualification, direct negotiation, etc.
- **Basis for Best Value** (factors to consider as set forth in SAM 03.A.05, section 7.1)
  - purchase price
  - reputation of the vendor and vendor's goods/services
  - extent to which vendor's goods/services meet University's needs
  - University's past relationship with vendor
  - impact on University to comply with laws and rules relating to Historically Underutilized Businesses (HUBs) and to the procurement of goods or services for person with disabilities
  - long term cost to University
  - any other relevant factor a private entity would use in selecting a vendor
- "Best value" must be determined prior to contract execution and is not determined by OGC/OCA. **Please consult with the Purchasing Department regarding how to determine best value and proper procurement methods. OCA does not determine best value**.

Contract Process (cont'd.)
Step Three: Choosing a Contract

Standard v. Nonstandard contracts

- Must decide between standard or nonstandard form
  - We prefer our standard forms because they provide appropriate protection to the University and they have already been approved for legal sufficiency. Also, usage of standard forms generally results in a shorter review period for OCA. Always try to use standard forms first in negotiation with vendors.
- University Standard Forms
  - Found on our UH website at:
  - http://www.uh.edu/legal-affairs/contract-administration/contract-documents/
  - Standard forms include departmental forms and forms for specific transaction types. Please check to see if a form exists for the transaction contemplated before accepting a counterparty's contract or trying to create something new.
- Nonstandard Form
  - Any other form not previously designated as "standard"
  - A standard form used with substantive alterations, including any deletion or insertion of language that isn't simply filling in business terms like price, term, names, etc.

Using Standard UH Contract Forms

Home > Legal Affairs

Legal Affairs

- Office of General Counsel
- Office of Contract Administration
- FAQs
- Contact Us
- Training

Legal Affairs



The University of Houston System Office of Legal Affairs consists of the Office of the General Counsel and the Office of Contract Administration.

Office of General Counsel

311 E. Cullen Bldg.Houston,
TX 77204-2028
Office: (713) 743-0949
Fax: (713) 743-9179

Office of Contract Administration

311 E. Cullen Bldg.
Houston, TX 77204-5010
Office: (832) 842-7078
Fax: (713) 743-5664

https://uhsystem.edu/legal-affairs/contract-administration/

Using Standard UH Contract Forms (cont'd.)

Home > Legal Affairs > Office of Contract Administration > Contract Documents

Legal Affairs

- Office of General Counsel
- Office of Contract Administration
  - Policies
  - Signature Authority
  - Contract Documents
    - Academic Contracts
    - Administrative Forms
    - Amendments, Addenda, Etc.
    - Department Specific Contracts and Forms
    - General Purchasing/Expense Contracts
    - Miscellaneous Contracts and Forms
    - Revenue Contracts
- FAQs
- Contact Us
- Training

Contract Documents



The following contracts and forms have been approved by Contract Administration and are considered "standard" for University purposes. In general, standard University contracts under $50,000 do not require further approval by Contract Administration and may be processed within the originating department/college. Subject to limited exceptions set forth in University policies, all other agreements typically need to be reviewed and approved by Contract Administration.

Because we revise our standard contract forms periodically based on changes in law or University policy, we strongly recommend that you visit this site each time you need a contract form - as opposed to storing and reusing forms on your computer/network, which could result in your use of an outdated or otherwise inappropriate document.

Search for a Form: Search

https://unsystem.edu/legal-affairs/contract-administration/contract-documents/index.php

Important Contract Provisions

- **Statement of Services**
  - This is the essence of the contract. This is the good/service UH is purchasing or providing.
  - It should be as detailed as possible. If a dispute arises, a contract is only as good as what you can later prove to be the terms of the contract.
  - DO NOT assume the other party knows what is expected of them – make sure it's spelled out.
  - Attach a more detailed description if necessary (this will not make the contract nonstandard unless the description adds legal terms or obligations on University).
- **Automatic Renewals** are discouraged. You don't want to unintentionally renew an agreement and be stuck with it for another renewal term. University policy calls for maximum terms of five (5) years for contracts, unless there are legitimate reasons for longer terms.
- **Termination for convenience** (i.e., at the University's sole discretion with adequate notice) provisions are encouraged. That allows the University to terminate a contract without having to wait for a renewal period or for reasons related to defaults.
- **Payment Provisions**
  - Good example:"This contract is not to exceed $10,000. [describe the method of calculation] Payments will be made according to detailed and specific invoices submitted by Contractor on a monthly basis. University will make payments within 31 days of receipt of such invoices."
  - Bad examples: "as invoiced" or "payment of $10,000"

Contract Process (cont'd.)
Step Four: Complete Proper Documents

- All contracts should always go through your DBA. The DBA will submit the contracts to Contract Administration as necessary.
- Faculty members or non-DBA staff should never submit contracts directly to OCA.
- DBA may submit the hard copies of the contract to our office or the electronic version via email (electronic submission strongly preferred).
- If applicable, submit:
  - Recommendation for Award Form
  - Alternative Dispute Resolution Form
    - Nonstandard expense contracts
  - Any attachments, exhibits, external references
    - Must read the document to make sure all such items are included before submission

Contract Process (cont'd.)
Submitting Documents Electronically

- Departments should submit documents electronically. It streamlines the process of our office. Strictly speaking, hard copies should never be sent to OCA unless they are sent/insisted upon by the counterparty.
- We prefer to receive Word versions of any non-standard contract, if available. This makes it easier if the contract needs to be revised in redline form.
- Your DBA must email the contract file to contractadmin@uh.edu. Contract submissions will not be accepted if sent to personal email addresses of OCA staff and attorneys.

Contract Process (cont'd.)
Step Five: Execute

- Both parties must agree on the final terms before either party signs
- Confirm contract has proper UH signature authority and is signed by both parties **before** services begin (this is imperative – if services begin before a contract is signed, it may expose UH to liability)
- Note: departments are responsible for obtaining signatures, not OCA
- Confirm all modifications, if any, to the contract have been initialed by both sides
- Please make sure Contract Administration is given a fully executed contract

Signature Authority

- Who can bind the University contractually?
  - Only certain individuals have authority to sign University contracts
  - This is for risk management as well as administrative reasons
- Potential personal liability for persons signing a University contract without having appropriate signature authority.
- See:
  - Policies from Board of Regents, UH and UH System (including SAMs, MAPPs, etc.)
  - Chancellor/President Delegation
  - OCA's website link below
- Make sure OCA has the most current Delegated Signature Authority for your area and have such delegation memos sent to OCA by Sept. 1 of the upcoming fiscal year, and revise as necessary if personnel changes occur.
- Information about signature authority, including the dollar amount thresholds for certain signature authority, can be found here: http://www.uh.edu/legal-affairs/contract-administration/signature-authority/

Contract Amendments

- Once a contract has been fully executed by both parties, **the only way a department should change the terms in the contract is by a written amendment which must be submitted to OCA for approval before signature.**
- Amendment Process
  - Coversheet, contract, etc. through same process
  - Submit one copy of the original contract and any previous amendments. We need to know exactly what is being amended.
  - Submit one contract coversheet
    - put the total contract amount on the coversheet (i.e., the amount of the original contract plus all amendments)
  - Execute by the same signatories as the original agreement unless higher signature authority is required or personnel changes have occurred

Submitting Saved Documents

OCA is requiring the departments submit the “saved” version of any contracts to be submitted to OCA.

- This means if you receive a finalized (between the department and counterparty) contract via email from a vendor, send that contract to OCA. Do not send a copy that was printed out and run through a printer scanner, or converted via Microsoft Print to PDF file format.
- The reason for this is because when a document is run through a scanner or is converted in via Microsoft Print, it becomes essentially a flat photographic image of a contract, so OCA attorneys cannot use document word search functions to quickly seek out key words and phrases that we know need to be revised. This makes contract review more difficult and slower for all involved.
- Also, UH standard form contracts that are filled in should be submitted in saved form so OCA attorneys can revise the fillable fields in the contracts as needed. Such revisions are frequently needed, and the ability to revise the fillable fields makes such revisions easier and cleaner in appearance rather than superimposing text in the document. Sending scanned or locked documents prevents such revision.
- This has now become a requirement. OCA has been requesting submissions of saved documents for a long time, and now will reject submissions that do not have saved documents unless the counterparty provided a scanned/flat image document to the department and the department has explained that is the circumstance.

RUSH Submissions

Rush submissions should state that a submission is a RUSH in the beginning portion of subject line of the email transmitting the submission.

- This is because OCA's Contract Manager receives dozens of emails a day and needs to know which emails to triage and prioritize. Please note that OCA does not provide status updates on submissions other than informing the sender that the contract submission has been processed and assigned a K number.
- Stating that a submission is a rush in the coversheet alone means that the rush request will not be seen unless and until the email is opened and the documents in it (namely the coversheet) are initially reviewed. This might take days if there is a big backlog – which there always is.
- Putting RUSH in the subject line is an immediate and obvious visual cue to act quickly on a submission, and takes little or no work on the part of the submitter. Please do that if you want a contract submission to be treated as a rush.
- Resubmissions: When contracts are returned for missing items please resubmit with RESUBMISSION in the beginning portion of subject line of the email transmitting the resubmission, also for prioritization.

Timeframe for Submitting Agreements to Contract Administration

Agreement Type:	Advance days in which agmt. should be submitted:
Standard contracts	At least 10 business days
Non-standard contracts	At least 15 business days
Contracts requiring Chancellor/President signature	Add an additional 7-10 business days to above timeframes
Contracts requiring Board of Regents approval	At least 60 business days (probably in practice 90 calendar days because Board meets quarterly)

* Special rules apply for certain agreement types (such as, leases, etc.).

Legal Decisions

Legal decisions –

- Contract Administration reviews contracts to ensure compliance with the law and University policy.
- Contract Administration is not responsible for determining whether each contract encompasses a "good" business decision, so please review and ensure all business terms are accurate before submission to OCA.
- Contract Administration relies on the departments to provide documentation that shows proper procurement procedures have been followed

Professional Services Agreements

- Professional services include services directly related to: Accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing
- Contracts for these services should not be awarded based on competitive bids, but on qualifications and for a fair and reasonable price
- Work with Purchasing on posting Requests for Qualifications (RFQs)
- Report to LBB if services over $14,000

Standard Contract Addendum

- It is a two page document that can be attached to most non-standard agreements under $100,000. It must be signed by both parties along with the contract.
- It addresses many of the substantive legal topics our office looks to include in contracts.
- If agreed to and signed without revision by the counterparty, then the contract can be treated as if it were a UH standard contract if its value is under $100,000.
- While the Standard Contract Addendum is not a substitute for the Standard Purchasing Agreement, it is a document that can be used if the counterparty insists on using its own contract template and if the counterparty agrees to its terms, can speed approval by OCA.

Standard Purchasing Agreement

- The Standard Purchasing Agreement (SPA) is the main document that should ideally be used for any engagement of services by the University that the University is paying for.
- It includes key provisions that the University wants or needs and the scope of work can be defined in the SPA or in an attachment to the SPA.
- Please encourage counterparties to agree to use the SPA. Doing so will make review and approval occur much more quickly.
- If an SPA (without revision) is used for a transaction that is under $100,000, that SPA does not need to be reviewed by OCA.
- SPAs are often included in RFP packets. If a transaction was bid under an RFP, check to see if an SPA was part of the RFP. If it was and the counterparty wants to use their contract template, tell them they agreed to use the SPA when they bid under the RFP so the SPA should be used. Failure to do so could make them noncompliant with the RFP. However, their contract can be utilized as a subordinate attachment to the SPA if they insist and it properly details the scope of work.

Value Threshold

- Note: even if a department uses a standard contract with no revisions, if the value of the contract (revenue or expenditure) is equal to or over $100,000, then it must go to OCA for review and approval.
- This includes Standard Purchasing Agreements.
- Nonstandard agreements of any dollar amount must go to OCA for review and approval, unless they are executed with a Standard Contract Addendum, as described previously.

Consequences of Not Following Procedures

- Potential personal liability - Any individual executing a contract on behalf of a state agency without authority to do so may be personally liable for damages flowing from repudiation of the contract. Thomas, Richardson Runden & Co., Inc. v. State of Texas
- Delayed turnaround time - Contracts submitted without proper documents will be delayed until necessary paperwork is submitted
- Exposure of University to unnecessary risk and liability
- Violation of UH System Regents policies, SAMs, MAPPs or state laws relating to contract management
- Internal Audits by University
  - May reveal improper RFAs, improper signature authority, etc.
- External Audits
  - State Auditor's Office will audit UH departments on a random basis and publish reports based on its findings



DEPARTMENT BUSINESS ADMINISTRATOR'S RESPONSIBILITIES

Information to know before your contract is submitted to OCA

- Have you negotiated the business terms of the contract?
- Have you read the contract in its entirety and do you understand and agree with the terms of the contract?
- Is the contract complete?

Business Decisions vs. Legal Decisions

Business decisions –

- Contract Administration is **not responsible** for determining whether each contract encompasses a "good" business decision
- the department should carefully **read and understand** the contract obligations
- the department official signing the contract is accountable for its subject matter and business terms
- see contract coversheet, which states:
  - "I have read this contract entirely. I am satisfied with its description of the goods and services to be provided to the University (including, for example, warranties, delivery terms, acceptance period, and maintenance terms). **I am also satisfied with the description of the University's obligations** (including, for example, scope of work, payment due dates, late charges, tax, charges, insurance, and confidentiality requirements) and all other provisions of this contract, **except as noted in any attached memorandum.**…… I acknowledge responsibility to ensure that all good faith efforts are employed in seeing that all terms, conditions, and responsibilities of the contract are met."
  - **Note: the coversheet is the primary checklist for individual contracts. It provides a set of certifications that should be carefully considered and affirmed before signature and must accurately summarize the transaction in the contract.**
- procurement method (must be stated in contract packet)
- authorization of transaction, project, or program
- signature authorization

Legal decisions –

- Contract Administration reviews contracts to ensure compliance with the law and University policy and procedure requirements for submission of contracts.

Risk Analysis

- Entering into a contract entails entering into risk. Always keep this in mind.
- The maximum dollar amount under the contract is a key metric of the risk to the University under that contract. The University could be forced to pay out the entire amount under a contract if things go wrong under that contract, plus other damages.
- The nature of the tasks under the contract also create risks (injury, damage to property, etc.). Insurance provisions help with risk management and should always be approved by the Department of Risk Management before a contract is submitted to OCA, unless the provisions are on a standard form (OCA works with Risk Management on drafting such provisions).
- The steps set forth in the Handbook regarding contract process are intended in part to act as a procedure for risk analysis. Every contract should be considered with its own cost-benefit analysis for the University, including with regard to the risks it may cause for the University.

Oversight and Closeout

- The originating unit assumes primary responsibility for a contract, from inception to completion of the transaction. Such originating units should select a designated contract manager who is responsible for ensuring that the contract requirements are satisfied for contracts that the originating unit is responsible for. This designation should be in writing and if the designated person leaves their position at UH, a new designated manager should be appointed.

- Contract monitoring requirements must be flexible as contracts are unique and specific, and as such there is no single set of monitoring requirements. Originating unit contract managers should use their best professional judgment in determining monitoring processes.

- Originating unit contract managers should make sure that contracts are appropriately closed out upon completion/termination of a contract. As is the case for contract monitoring, there is no single set of closeout requirements because of the uniqueness of each contract and underlying transaction. However, in general the following items should be confirmed at closeout: (i) all deliverables have been provided, (ii) there are no outstanding issues, (iii) if necessary, extensions are obtained if needed to complete work, (iv) contract/work audits are conducted (if required), (v) a final invoice (if required) has been received, and (vi) final payment has been made.

- Please consult the UH System Contract Administration Guide for additional information on oversight and closeout of contracts. Also please note that contracts with a value of over $1 million are subject to enhanced contract monitoring by the originating unit, pursuant to Texas Government Code Section 2261.253 and Section 11 of the UH System Purchasing Guidelines.

What can depts. do to expedite the process?

- **Start early.** Large volumes of contracts are routed through Contract Administration. Allowing adequate time for a thorough review is extremely helpful. **Do not send rush requests unless absolutely necessary and such requests must include written justification. If the work under the contract has already started or the contract is otherwise submitted late, please include the appropriate Late Contract Submittal form or Policy Exception Memo.**
- **Attach everything.** Ensure that all exhibits, appendices, addenda, and terms and conditions are all attached. This includes making sure that documents referenced via hyperlinks embedded in a document (like terms and conditions referenced in an order form) are downloaded and included in a submission packet. If OCA sees that a submission lacks items that are referenced in the contract document, the submission will be delayed or rejected. If the submission is an amendment, you must include all previous amendments and the original fully executed agreement, and the RFP and RFP Award letter if appropriate.
- **Complete Forms.** Ensure that the contract coversheet and other internal forms (such as the Recommendation for Award form) are filled out completely before submission and that you have acquired all necessary department approvals (i.e. Purchasing, Risk Management, UH IT).
- **Insurance language.** If the contract includes insurance language and isn't an unmodified UH standard form document, have Risk Management review and approve or revise such language before submitting the packet to OCA.
- **Review from business standpoint.** Ensure that the contract has been reviewed/approved from a business standpoint by the applicable business personnel. Please provide a memo to our department with any business terms you are concerned with or would like changed that you could not address prior to submission.

Important Takeaways

1 – carefully read and understand the obligations in the contract; does the contract reflect the intent of the department from a business perspective? If no – don't sign the contract!

2 – contracts must be fully-executed before the parties perform any duties set forth in the contract

3 – contracts must be in writing and signed in accordance with UH signature authority

4 – when UH standard forms are appropriate for a transaction (which is in most cases), use UH standard contract forms that are on the OCA website every time you use a standard form. Never use one that you've saved onto your computer or simply duplicated and revised from another deal. OCA updates forms regularly.

Important Takeaways (cont'd.)

5 – follow contract processing timeframe requirements (avoid "emergencies" and unnecessary rush requests)

6 – the person originating the contract on behalf of UH is responsible for the contract from beginning to end

Conclusion/Contact Info.

Office of
Contract Administration

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