



Procurement Contracts Training

Presented by Procurement Services

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This slide features a background with overlapping grey and white curved shapes. The title 'Procurement Contracts Training' is centered in a bold, dark blue font. Below it, 'Presented by Procurement Services' is written in a smaller, dark blue font. The FIU logo is positioned in the bottom right corner.



Agenda 2

- Purpose of the Training
- Total Contract Manager
- FIU Contracts Policy
- Contract Procedures
- Contract Administration
- Contract Amendments, Renewals and Extensions
- Additional Resources

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This slide has a similar background to the first slide. The title 'Agenda' is centered in a bold, dark blue font, with a small number '2' in the top right corner. A bulleted list of seven items is on the left side. The FIU logo is in the bottom right corner.

Purpose of the Training

- This training is designed for:
 - Understanding basic procurement contracts
 - Knowing how Total Contract Manager (TCM) affects the contractual process
- This training provides the tools to effectively review, negotiate, and process contracts
- Training of Procurement Contracts and Total Contract Manager (TCM) are required in order to gain access to TCM

Contract Defined

“An agreement between two or more persons which creates an obligation to do or not to do a particular thing.” [*Black’s Law Dictionary, 6th ed.*]

In other words...

A legally enforceable promise

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Contracts can have many names, such as...

- Agreements
- Memorandum of Understanding/Agreement
- Appointment Letters
- Letter of Understanding
- Click-Through Agreements
- Purchase Orders
- Terms & Conditions
- Proposal Acceptance
- Licenses
- Non-Disclosure Agreements
- Sponsorship Agreements

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How Can You Tell if it is a Contract?

- ✓ If it creates an obligation to do something OR not to do something on either or both parties
 - ✓ It's a contract
- ✓ While contracts can be made verbally, if a signature is required to create the obligation
 - ✓ It's likely a contract
- ✓ A PO is a form of a contract
 - ✓ Formal contract is needed when both parties require a signed agreement

If you have **any questions**, don't guess. Contact Contract@fiu.edu for assistance.

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Why Does FIU Enter into Contracts?

Many reasons, some of which include...

- ✓ Further our mission (education and research)
- ✓ **Buy goods or services**
- ✓ Sell goods or services
- ✓ Employ faculty, staff, teaching assistants, etc...
- ✓ Establish affiliations
- ✓ Generate revenue
- ✓ **Lease or rent space**

Remember this training focuses on **procurement contracts** (i.e., buying goods or services)



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Total Contract Manager (TCM)

- TCM is FIU's online contract management tool used for all Procurement Contracts
 - Reduces risk through compliance questionnaire in workflow
 - Improves visibility and contract accessibility
 - Central contract repository
 - Contract Status
- Eliminates Contract Intake Form
 - No more Business Unit Approver
 - Contract Manager in TCM has been approved by Executive Leadership
 - If a PO is needed, the requisition will go through the workflow approval process, and the draft contract can be attached
 - If method of payment is not a PO, then an internal approval process for contracts may be needed if required by individual departments
 - Procurement Services will no longer be the contract initiator, but instead will serve as a workflow approver and gatekeeper.



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Goals of Total Contract Manager (TCM)

- One software system to execute, manage, and view all procurement contracts - including the electronic signature feature via DocuSign
- Provide contract visibility to system users, and view what stage the contract is in within the approval workflow process
- Ensure that internal compliance issues are taken care of via electronic approval workflow before the contract is executed
 - Examples: IT Compatibility, Export Controls, Tax Compliance, Privacy Obligations, and procurement Regulation Compliance
- Provide a systematic process to ensure that contract deliverables are documented
- Delegated Contract Managers are responsible for submitting the contract for execution, distributing the contract to appropriate parties in the department, and managing the contract post-execution.



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Total Contract Manager (TCM)

- Only individuals designated as a Contract Manager can submit a contract for approval and signature in TCM
- Once the Contract Manager attaches the final draft contract (including any relevant documentation) and submits it for approval, the following automated processes will occur:
 - Routes to all required approvers based on the Contract Manager's responses to the compliance questions
 - Provides statuses of the contract through the workflow approval process
 - Notifies the Contract Manager once all approvals are obtained
 - Sends the contract to Supplier and the FIU Authorized Signatory for electronic signatures using DocuSign
- Once electronic signatures are obtained, the Contract Manager is notified and the work can commence



Contract Manager

- Approved by management (check with Controller@fiu.edu or Procurement Services website)
- Processes all procurement contracts (including renewals, amendments, and extensions) in TCM
 - Contract Manager will process all contracts except for Service, Entertainment and Performance Agreement which should be emailed to Contract@fiu.edu who will process in TCM
 - See Allowable Unencumbered Payment List and Process at <http://finance.fiu.edu/controller/Forms.html>
 - If contract is in TCM and a renewal, amendment, or extension is needed, please contact Contract@fiu.edu.
 - Utilizes the appropriate OGC agreement templates and supplemental addenda: <https://generalcounsel.fiu.edu/contract-forms/>
 - Accurately answers a series of in depth compliance questions
 - Responsible for contract administration during the life of the contract

FIU Contracts Policy

- Office of the General Counsel (OGC) policy states that OGC will conduct a legal review for procurement contracts when:
 - ✓ The contract value is **over \$75K OR**
 - ✓ It is a software agreement regardless of value
- Contract Manager's responsibility is to:
 - ✓ Review all contracts (even if the OGC will be reviewing them)
 - ✓ Know what type of goods/services are being contracted
 - ✓ Answer all TCM compliance questions correctly
 - ✓ Obtain a fully executed contract with the authorized signatory

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Step 1: Review the Contract Define the Scope Of Work (SOW)

- Clearly define the type of goods and/or services need
- Contracts should include **specific statements** of your requirements, obligations, and expectations. This includes:
 - Timing, date, place and description of performance or service
 - Deadlines, timelines, deliverables and due dates
 - Warranties and guarantees
 - Ownership of any intellectual property created
 - Quantity and quality of product
- Read the entire contract
- Revise as necessary



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Step 1: Reviewing Contracts Determining the Proper Procurement Method

Per the FIU procurement Regulation FIU-2201:

- ✓ Take the total value of the contract for initial term
- ✓ **PLUS** all renewal costs
- ✓ Renewal period may not exceed 5 years or twice the term of the original contract , which ever is longer
- ✓ Determine if the contract is over \$74,9999

Can't divide the procurement contract to avoid the requirement of a competitive process (i.e., staying under \$75K)

<p>Example One: Initial contract is \$50K ALL renewals are <u>\$10K</u> \$60,000</p>	<p>Example Two: Initial contract is \$50K ALL renewals are <u>\$50K</u> \$100K</p>
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<p>Total is below the formal bid, but requires 3 quotes threshold.</p>	<p>Total is above the formal bid threshold, Contact procurement!</p>
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Step 1: Review the Contracts Determining the Proper Procurement Method

- Categories of procurement methods:
 - Emergency – As defined in the Board of Trustees (BOT) Policy FIU-2201
 - The Emergency Request Form is located at:
<http://finance.fiu.edu/controller/Forms>
 - Sole Source
 - Review Annual Certification for Sole Source Purchases prior to requesting a sole source purchase at:
<http://finance.fiu.edu/procurement/2procedures1.html>
 - Under \$75K – Send an email with justification to the Director of Procurement Services
 - \$75K or more - Attach a completed Sole Source Request form located at:
<http://finance.fiu.edu/procurement/Docs/solesource.pdf>
 - Refer to the Sole Source flow chart for a quick review of the process at:
http://finance.fiu.edu/procurement/Docs/Sole_Source-Flowchart

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Step 1: Review the Contracts Determining the Proper Procurement Method

- Exempt – As defined in Section 6(d) of BOG procurement Regulation 18.001: <http://www.flbog.edu/about/regulations/regulations.php> -
 - 22 exemptions
 - Competitive solicitation is optional
- Exceptional - As defined in BOG 18.001 (4)
 - 4 exceptional purchases
 - Competitive solicitation is optional
- **Piggy-back/Cooperative:** A contract awarded through a competitive process which allows FIU to purchase the same services or goods at the same contracted terms.

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Step 1: Review the Contracts Determining the Proper Procurement Method

- **Competitive Solicitation:** Openly inviting all interested suppliers to submit a quotation, bid or proposal to supply the procurement need of the University.
 - Informal Competitive Process - Purchases with a total cost under \$75,000 can be obtained through an informal competitive process by obtaining:
 - one quote for purchases under \$14,999
 - two or more quotes for purchases over \$15K
 - three or more quotes for purchases over \$30K
 - Formal Competitive Process - Purchases of goods, services, or deferred payment contracts in an excess of \$75K shall be obtained through a formal competitive process, unless otherwise exempt.
 - Competitive Solicitation Form must be completed:
http://finance.fiu.edu/procurement/Docs/Contract_Intake_FormCS.pdf

Step 2: Choose the Proper Contract Template Option 1: OGC Contract Template

If, **at all possible**, use the OGC Contract Template:

- ✓ Independent Contractor Agreement (for professional services)

See: <https://generalcounsel.fiu.edu/contract-forms/>

If not applicable, go to the next option...

Step 2: Choose the Proper Contract Template Option 2: Supplier Contract

- If the supplier **insists** on using their form, add the applicable supplemental addendum:
 - ✓ General (which contains our standard terms & conditions)
 - ✓ Entertainment-Performance
 - ✓ Hotel-Meeting Space
 - ✓ Library Subscription
 - ✓ Software License
- See Supplemental Addenda:
<https://generalcounsel.fiu.edu/contract-forms/>

Step 2: Choose the Proper Contract Template Option 2: Supplier Contract (Cont.)

- If possible, obtain a Word version of the supplier contract so that changes can be redlined
- If a Word version is not available, revisions can be made to a PDF document electronically or to a print-out of the contract by hand
 - Please ensure all handwritten revisions are in **legible** print
 - Any revision to a PDF document must be marked by the department, as any changes will require the initials of the supplier and the FIU authorized signatory

Step 2: Choose the Proper Contract Template

Option 2: Supplier Contract (Cont.)

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- Revise the contracting name: “The Florida International University Board of Trustees”
 - This is important to change because this is our **legal name**
- Incorporate the Supplemental Addendum by adding the language: “The attached Supplemental Addendum is hereby incorporated by reference.”
 - This must be done **above the signature line**
 - If you fail to do this, the Supplemental Addendum (with all of our terms and conditions) will not be part of the agreement



Step 2: Choose the Proper Contract Template

Option 3: Click-Thru Agreements

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- University employees **should not** accept click-thru agreements
- If a click-thru is necessary, follow these steps in this order:
 - If possible, provide the supplier with written notice of that we cannot accept the agreement as presented
 - Try to obtain an email address for the supplier or their website
 - Request that they allow us to print, review, revise as necessary so that both parties sign the contract
 - Follow our standard supplier contracting process

If the supplier is uncooperative, continue to the next one procedure...



Step 2: Choose the Proper Contract Template Option 3: Click-Thru Agreements (Cont.)

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- After you have provided the supplier written notice that FIU does not accept click-thru agreements & the supplier is still not cooperating
 - Obtain department head approval (i.e., Director, Dean or VP)
 - Email the supplier either directly if you have an email address or an email address on their website) advising them:
 - You are not an authorized signatory for FIU and do not have the authority to enter into agreements on behalf of the University
AND
 - The agreement is not enforceable



Step 2: Choose the Proper Contract Template Option 3: Click-Thru Agreements (Cont.)

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- Additionally refer them to the Signature Delegation page on the procurement website for the formal notice:
http://finance.fiu.edu/procurement/2sig_delegation.html
 - This webpage states that only those individuals with signature authority can bind the University, even with click-thru agreements
 - This email to the supplier puts them on notice about this
 - You should keep the email and any additional documentation on file for your records
 - You will need it if ever audited for ProCard usage
 - After **all** these steps are done, you can proceed with the click-thru purchase



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Step 2: Select the Proper Contract Template Option 4: Hotel Agreements

- FIU has Master Agreements with a number of hotels
 - Use these hotels because the negotiating work has already been done
 - All hotel agreements, addendum templates, and the agreement procedure are available on the Procurement Services website at http://finance.fiu.edu/procurement/4contra_master_hotel_agreements.html.
- If the hotel you want to use is not on the list, follow the supplier contract process
 - OGC has an addendum for hotel-meeting space:
<https://generalcounsel.fiu.edu/wp-content/uploads/sites/26/2014/07/Hotel-Meeting-Space.pdf>



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Step 2: Select the Proper Contract Template Attachments

- Attach contracts and any relevant documentation in TCM
 - Identify what documents you want to print with full contract
- If the contract is already an attachment in TCM and changes are needed, you will need to edit properties
- Upload all revised versions of the contract in TCM
 - TCM will track the different versions
- Mark the contract document you are working on as the **Main Document** in TCM
- Identify the attachment correctly (i.e. contract name, addenda #, amendment, extension, etc...)



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Step 3: Choose the Proper Payment Method Option 1: The ProCard

Is this a transaction that you would be permitted to use Option One: the ProCard?

- ✓ Check the Departmental Card Guidelines & Procedures Manual:
http://finance.fiu.edu/controller/Docs/Commodity_Card_Manual.pdf

If not applicable, go to the next option...



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Step 3: Choose the Proper Payment Method Option 2: The Unencumbered Process

Is this transaction eligible for the Unencumbered Process?

- ✓ Check the Allowable Unencumbered Payment List:
<http://finance.fiu.edu/controller/Forms.html>

If eligible, complete the Unencumbered Request Form, and follow the unencumbered payment procedures

Note: If the service being purchased is entertainment or a performance, use the OGC Contract Template

If not applicable, go to the next option...



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Step 3: Choose the Proper Payment Method

Option 3: Purchase Order (PO)

If the supplier does not require a signed contract by both parties, a PO can be issued

- ✓ Our PO has terms and conditions included in it

The FIU PO is NOT a proper form for a transaction with a complex scope and/or extensive deliverables

If not applicable, go to the next option...



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Step 4: Submit the Contract for Approval/Signature

- Do you have a Services-Entertainment-Performance Agreement?
 - ✓ Yes → Email the completed contract, signed by the Contractor to Contract@fiu.edu for the Director of Procurement Services to sign on behalf of the Florida International University Board of Trustees
- Do you have an Independent Contractor Agreement or a supplier agreement?
 - ✓ Yes → A Contract Manager in your department must submit the contract in TCM for approval and signature by an authorized FIU signatory



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Step 4: Submit the Contract for Approval/Signature

- ✓ For Independent Contractor Agreements and supplier agreements, select the appropriate FIU signatory from the dropdown menu
 - The Director of Procurement Services provides signatory for purchases under \$100K
 - Go to OGC's website to determine who has FIU Signature Authority <https://generalcounsel.fiu.edu/signature-authority/>
- ✓ Not everyone has the authority to sign a contract
- ✓ Unauthorized individuals who sign contracts on behalf of FIU expose themselves to possible personal liability and having the contract voided



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Step 4: Submit the Contract for Approval/Signature (Cont.)

- Once all the approvals have been obtained in TCM, the Contract Manager must submit the contract for electronic signatures using DocuSign technology
 - If a contract is over \$100K, and it requires the signature of either the Provost, CFO, or President, a **who, what and when explanation** needs to be included in the Approval Details window in TCM
 - If a contract is over \$1M, the **President's Cover Sheet** is needed, and either the Provost or CFO will need to initial the contract
- Changes to the contract can not be made in DocuSign
 - Supplier should email the Contract Manager the changes
 - Contract Manager will return contract to draft, check out the contract, attach the updated contract and upload it as a new version
 - The final version will be routed for approval and sent out for signature via DocuSign



Contract Administration

- Once a contract has been executed, the department is responsible for the contract administration
- Below is a list of examples of contract administration activities:
 - Ensuring all supplier deliverables are completed and delivered to FIU
 - Ensuring all FIU deliverables are completed and delivered to supplier
 - All deadlines are met and timelines adhered to
 - Payments are made as outlined in the contract
 - Issue amendments if services exceed the term of the contract
 - Exercising renewals or extensions, as needed
 - Insurance certificates are maintained up-to-date and on file by department during the term of the contract
 - Appropriately addressing supplier non-compliance

Contract Administration

- Renewal options are defined in your solicitation and/or contract and can not be exceeded.
- An extension can be up to 12 months, once all renewal options have be exhausted and the extension is approved by the Director of Procurement Services
- Terminations will be handled by Procurement Services. Please email request to Contract@fiu.edu.
- All contract administration activities can be managed in TCM, such as renewals and obligations (deliverables, bonds, insurance deadlines, payment terms - Phase 2 of TCM Training)

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Contract Renewals, Extensions or Amendments

- An amendment is a written change to the terms and conditions of a contract and signed by appropriate signature authorities
 - Administrative
 - Non-substantial
 - SOW
 - Schedule
 - Budget
 - Substantial changes
 - Within the SOW, but may not be appropriate as a contract amendment
- Must be mutually agreed upon by both parties, as long as it is within scope of the original contract

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Why does an amendment make the most business sense?

- Project Continuity
- Time Savings
- Cost Effectiveness
- New Contract Learning Curve
- Amendment is Time Only

Additional dollars = additional deliverables or service timeframe

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New Contract or Amendment?

Consider the following criteria:

- Change in Scope
- Change in Price Factor
- Contractor Ability
- Change in Competitive Factors
- Contract Length
 - Aggregate Spend exceeds the bid threshold
 - No Renewals or Extension
- Contract Expired



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Contract Administration in TCM

- All renewals, extensions and amendments will be processed in TCM
- Contract Managers will process them as a new contract if contract is not in TCM.
 - Include all contract documentation as separate attachments.
 - Use a common naming convention such as PUR#, then Amen#, or Ren#
 - Procurement Services will process contracts if they are in TCM. Please email renewals, extensions, and amendments to Contract@fiu.edu
- Extensions and amendments should utilize OGC's template
 - Changes to OGC templates requires the approval of OGC
 - Extensions cannot exceed 12 months, and requires the approval of the Director of Procurement Services
- Renewals are normally processed using suppliers template
- Procurement Services will process competitive solicitations over \$75K
- A list of FIU contracts that may require addendums can be found at http://finance.fiu.edu/procurement/3contra_fiu_contracts.html
- FIU enterprise contracts may not be in TCM, but the addendums can still be processed in TCM



Additional Resources

Procurement Services Website:
<http://finance.fiu.edu/procurement/>

Procurement Manual:
http://finance.fiu.edu/controller/QL_ControllerProceed.html

OGC Forms:
<https://generalcounsel.fiu.edu/contract-forms/>

Office of the Controller Contact List:
<http://finance.fiu.edu/controller/ContactUsDept.html>

Office of the Controller Forms:
<http://finance.fiu.edu/controller/Forms.html>

Signature Delegation:
<https://generalcounsel.fiu.edu/signature-authority/>

One-on-One Contract Questions/ Assistance:
Email: Contract@fiu.edu

TCM User Handbook and Training Schedule
<http://finance.fiu.edu/controller/FinSysandSup2.html>

