



College Finance Policy

Policy Name: Contracts Policy

Responsible Office: Office of the Procurement Director

Originator of the Policy: Office of the Procurement Director

Effective Date: February 1, 2023

Web Link: <https://www.middlesex.mass.edu/purchasing/conpolicy.aspx>

I. **Contract Guidelines**

The following guidelines have been established to create a standardized College-wide process to ensure the contracting process complies with state and federal laws and protects the College against unnecessary risks. This process will ensure appropriate control and review over the procurement of goods and services. This policy provides guidance for the development and use of written contracts and contract requirements.

a. **Definition**

A contract is an agreement between two parties whereby one party agrees to sell products or services to another party for a price. It is a legally enforceable promise, which binds the parties. Effective contracts provide a common understanding where the duties and responsibilities of the parties are spelled out in writing to clarify expectation and avoid confusion. The language spelling out the essential terms in a contract should be clear.

b. **Key Areas of a Contract**

1. Definitions
2. Description of deliverables
3. Timing of deliverables
4. Performance
5. Reports
6. Payment terms
7. Terms and conditions

c. **Contracts Required**

The following are examples of types of agreements that **require** written contracts.

1. **Constructions Agreements** (including maintenance and repair): Contractors, Engineers, Architects
2. **Equipment Rental:** Rental or Lease Agreements
3. **Facilities/Venue Agreements (space utilization):** Space Rental or Lease Agreement
4. **Filming license**
5. **International Agreements**

6. **Non-Disclosure Agreement/Confidentiality Agreements:** Consult General Counsel
7. **MOUs/MOAs**
8. **Revocable License vs. Lease Agreements:** Conveys permissive, temporary use of property. Unlike a lease, a revocable license conveys no interest in real property and can be terminated at will by either party. For these reasons, the terms of revocable license is generally short in duration. At most, the term may be (2) years with (1) renewal term available. After that, a new license must be executed.
9. **Service Agreements:** Required for all services \$10k and over. Recommended for service agreements under \$10k such as (guest speakers, artists, models, performers, entertainers, etc.)
10. **Software Maintenance** – Software Licensing/Maintenance Agreement is required for all software services that will cost \$10k or over on an annual basis.
11. **Technology Contracts**

d. **Contracts Not Required**

The following are examples of types of agreements that **do not require** written contracts.

1. Food Delivered (not catered)
2. Tickets
3. Subscriptions (non IT)
4. Memberships

e. **Contract Requirements**

1. The service should not be scheduled or started until the buyer has received the fully executed contract from Purchasing.
2. Funds must be available for contract approval. Banner requisition must be created and approved by Cost Center Manager for contracts \$10k and over.
3. The contract and related documents must be submitted in the Submit Contracts Portal webpage at <https://www.middlesex.mass.edu/purchasing/subcontract.aspx> for signatures and review by the Director of Procurement.
4. The terms of the contract must comply with the Colleges regulations, and applicable local, state, and federal laws.
5. Contracts should not have automatic renewal clauses.
6. Certificate of Corporate Vote must be signed by the vendor for contracts \$150k and over.

f. **Roles and Responsibilities**

1. **Procurement Department**

The purpose of the Procurement Department's contract review is to ensure the contract complies with state and federal laws, which includes state purchasing and contract requirements, not agreeing to prohibited clauses, and operating in accordance with the policies and procedures of Middlesex Community College.

- Review, communicate acceptable contract terms with vendor, sign, or obtain signatures
- Negotiate contract terms
- Assist in conflict management
- Send official notice to terminate contracts prior to contract end.

2. **Department Initiating the Contract**

The individual initiating the contract on behalf of the College is responsible for reading the entire contract and determining that its content and objectives related to the scope of work are acceptable.

- Confirm business terms accurately reflect verbal agreement and terms are consistent with department's requirements
- Agreement is clear and consistent
- Project lead is responsible for managing the contract after contract execution
- Manage all required actions to ensure compliance of the contract. Receives all required reports. Submits invoices to Accounts Payable and closes out contract.

g. **Contract Amendment**

A contract amendment is required for any changes that occur to the contract during the contract period such as change in price, scope, and duration of contract. Submit a request for contract amendment in the Submit Contracts Portal webpage at <https://www.middlesex.mass.edu/purchasing/subcontract.aspx>.

h. **Contract Term (Duration)**

Contracts may be negotiated for up to three (3) years including the term of any renewal, extension or option. Prior approval from the Vice President, Finance and Chief Financial Officer is required for contracts with a term of more than three (3) years.

i. **Timeline for Review and Signature**

The requestor should anticipate a **minimum of 2 weeks** to complete approval and signature process and should plan accordingly.

j. **Levels of Contract Approval**

Depending on the nature of the contract, the following departments must review and approve the contract prior to signature.

- **Chief Information Officer:** Review and approval of all software and technology contracts.
- **Vice President, Finance and CFO:** Contracts over \$50k. Contracts under \$50k per the discretion of the Director of Procurement.
- **General Counsel:** Review and approval of the following contracts.
 - Co-op Contracts (Nursing)
 - Student or Student Data
 - Confidentiality Provisions (FERPA)
 - Non-Disclosure/Confidentiality Agreements
 - Contract Term of (5) or more years
 - New Contracts \$500,000 and over. Contracts under \$500k per the discretion of the Director of Procurement
 - International Contracts
 - Filming License

k. **Authorized Signatory**

Signing a contract on behalf of the College should only be done by staff who have been delegated the proper authority. Please refer to the Signatory Authority Policy found at

https://www.middlesex.mass.edu/purchasing/downloads/authsig_rem.pdf for a listing of individuals delegated the authority to contractually bind a contract on behalf of the College and signing thresholds.

1. **E-Signature**

1. **Definition**

Symbols or other data in digital format attached to an electronically transmitted document as verification of the senders intent to sign the document.

2. **Policy**

Under the provisions of MGL CH. 110 §7 regarding electronic signatures the College recognizes an electronic signature as a valid signature.

MGL CH. 110 §7 provides that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form, A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation. If a law requires a record to be in writing, an electronic record satisfies the law. If a law requires a signature, an electronic signature satisfies the law.

This policy does not mandate the use of an e-signature or otherwise limit the right of a party to conduct a transaction on paper, nor does it apply to any situation where a written signature is required by law.

The authorized signatory policy applies to electronic signatures. Signing a contract on behalf of the College should only be done by staff who have been delegated the proper authority.

3. **Requirements**

The College has developed specific requirements to provide the appropriate level of security, authentication, and record integrity when implementing or using electronic signatures for transactions.

- Must use a digital signature which certifies the date signed and provides tracking of the signatories.

m. **Contract Termination**

The Purchasing Department provides support for all contract issues that cannot be resolved by the department managing the contract. The department managing the contract is responsible for documenting all contract issues. If the issue cannot be remedied the Purchasing Department will follow the appropriate protocol to terminate the contract in accordance with the Commonwealth Terms and Conditions.