



Facilities Contracts

Office of General Counsel

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March 12, 2026

Next Month's Presentation

April 9, 2026

Artificial Intelligence clause in the Minnesota State Software Contract Addendum

Presented by Assistant General Counsel Melitta Drechsler

- » For a complete listing of the upcoming and past Second Thursday topics, please visit the Office of General Counsel's website at <https://minnstate.edu/system/ogc/index.html>
- » For more information email Amanda Bohnhoff at Amanda.Bohnhoff@minnstate.edu

Session Overview

- » Contract Basics (Again)! Yes, you need to know this.
- » Compliance
 - Board Policies and System Procedures
 - Facilities Policies and Procedures
- » Using system template agreements and what to do if not an approved template
- » Risks and Risk Mitigation- Public Solicitation - Facilities Related Contracts
- » Facilities Hot Topics! Don't get burned! Not so "hot" but still simmering
- » Questions and Answers

Lead Time (Louder for the ones in back)

- » Plan accordingly—expect the best and plan for the worst.
- » Have signed contracts in place in plenty of time to be able to successfully perform the work.
- » Use System templates and forms.
 - Resist changing footer.
- » Allow time for negotiation.
- » Allow time for other reviews/questions/decisions.
- » Read Agreement.
- » Not every contract can be an emergency.

What is a Contract?

- » A contract is: a legally binding document between two or more parties that defines the rights and obligations of the parties and sets “ground rules”
 - Offer – a promise to do or not do something (“I’ll wash your car for \$10”)
 - Acceptance – promise or performance (“I agree to pay \$10”)
 - Consideration – the value or inducement to perform (the value received and given-the money and the washing of the car)
 - Agreed to by someone with authority
 - Intra-agency (i.e. two colleges) is not a contract

Why Do I Need A Written Contract?

- » Services, unlike goods, are not governed by Uniform Commercial Code (UCC)
- » Clarity, completeness, and common understanding are essential
- » Supersedes previous oral discussions or “how we’ve always done it”
- » After a contract is signed, if parties wish to change it, conversations or e-mails to change the contract are not sufficient. Changes to contracts (amendments) must be in writing and signed by the parties.

Why Do I Need A Written Contract?

- » Contract must be signed before the parties begin performing duties under the contract.
 - Good practice & required by law
- » Well-written contracts are preventative care
 - Easier to work out issues before signing contract than to leave things unaddressed or “silent” and risk breaching the contract or litigation later.
 - Identify and minimize risk before something happens
 - AVOID relying upon “informal” documents and “how we’ve always done it” behavior/relationship

Comply With Laws and Policies

Politics and Government

Report: Records show DHS violated state contract law

MPR News Staff November 6, 2019 7:34 a.m.



Minnesota lawmakers blast agency heads for sloppy contracting

Special hearing follows disclosure of contract violations at Department of Human Services.

By Glenn Howatt and Chris Serres Star Tribune staff writers |

NOVEMBER 14, 2019 — 5:08AM

GALLERY GRID

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A Document by Any Other Name is Still a Contract

- » Grant
- » Nondisclosure Agreement
- » Memorandum of Understanding (MOU)
- » Terms of Service
- » End User License Agreement (EULA)
- » License
- » Terms and Conditions
- » Memorandum of Agreement(MOA)
- » Affiliation Agreement
- » Joint Powers Agreement
- » Real Estate-Lease, License, Purchase Agreement
- » Clinical Agreement
- » “Click” Agreements
- » Statement of Work
- » Terms of Use
- » Inter-Agency Agreement
- » Letter of Engagement

Contract Basics (Again)!

Yes, you need to know this.

Minnesota State Board Policies and Procedures

» Nuts and Bolts:

- Policy 5.14 Contracts and Procurement
- Procedure 5.14.2 Consultant, Professional or Technical Services
- Procedure 5.14.5 Purchasing

Minnesota State Board Policies and Procedures (2)

- » **IMPORTANT:** Board Policy 5.14, Part 5, Subpart C.
 - Board approval required for:
 - Any procurement, lease agreement, or professional/technical/consulting service contract with a value in excess of \$3,000,000 or contract amendment that would increase the total value of a contract to more than \$3,000,000 must be approved in advance by the Board. (Nuts and Bolts: Plan Accordingly)
- » **IMPORTANT:** Equity in Purchasing and Procurement
 - Board Policy 5.14, part 8

Facilities Policies and Procedures

Nuts and Bolts:

- » E-Manual: [eManual for Campuses](#)
- » eBuilder
 - Enterprise project management system
 - Workflows are designed to comply with Board policies and procedures
 - Routing project contracts through eBuilder will ensure you get the appropriate approvals
 - This is not always the case in Marketplace
- » Items requiring Board approval
 - Reach out to system office
 - Narratives are usually due 1 month+ in advance – plan accordingly

Minnesota State Standard Contract Templates

- » Required Unless Other Form is Approved by Attorney General's Office (AGO) or Office of General Counsel (OGC)
 - Required by System Procedure 5.14.2 Consultant, Professional or Technical Services Part 3, Contract Preparation
 - Contracts must be prepared on forms approved by the system office to assure that they include all state required contract language. Any modification of forms approved by the system office or the use of a non-system office form requires review by the system legal counsel and approval of the vice chancellor – chief financial officer. System legal counsel includes either the Minnesota State Colleges and Universities General Counsel or the Minnesota Attorney General's Office.

Facilities: Minnesota State Standard Contract Templates

- » Attach contract templates to RFPs and require any proposed changes to be noted in proposals
- » Campuses are not obligated to accept vendor-proposed changes
 - May be submitted via Q&A process
- » Changes to scope/project-specific technical language may be approved by campus
- » Changes to template/legal/insurance language must be reviewed/approved by OGC/Risk Management
- » Let attorneys talk with attorneys

General: Not A Minnesota State Form Or Template?

- » College/university must review for essential elements, prohibited provisions, practicality and business decisions.
- » Don't assume that a provision suggested by a party can't be changed or modified.
- » If other party wants to use its contract form, consult with the Office of General Counsel or the Attorney General's Office for legal review and possible negotiation and recommended changes, or drafting addendum or amendment. Your communication is necessary.
- » **Avoid “We'll sign yours, if you'll sign ours” or attaching their contract to Minnesota State contract.**

Facilities: Not A Minnesota State Form Or Template?

- » Don't do it
- » Reach out to system office (Ryan Ries)

Why a Written Contract?

- » Clarity, completeness, and common understanding is essential;
- » Supersedes previous oral discussions or “how we’ve always done it”;
- » After contract signed, if wish to change it, conversations or emails to change the contract are not sufficient. Changes to contracts (amendments) must be in writing and signed by the parties;
- » Contract must be signed before (!) the parties begin performing duties under the contract – good practice and often state law requires.
- » Good Contracts are Preventative Care
 - Easier to work out issues before signing contract than to leave things unaddressed or “silent” and risk breaching the contract and/or litigation later.

Facilities: Why a Written Contract?

- » Write solid scopes of work for RFPs/contracts
- » Be clear in terms of deliverables, timelines, costs, etc.
- » Strike a balance between overly vague and overly prescriptive
- » Avoid jargon

Contract Management

- » Delegated to campuses with system office assistance
- » Finance and Office of General Counsel review for statutory/policy/procedure and best practices
- » Rely on campus leadership and managers to bid, negotiate, and execute high value engagements
- » Rely on campus/system office decision-makers to make the decisions
- » Nuts and Bolts
 - Gather information, evaluate risks, understand and read the contract

Facilities: Contract Management

- » Read the contract
- » Review change order requests in depth
 - Time extensions must demonstrate impact to critical path
- » Review invoices/pay applications in depth
 - Validate
 - GMPs (CM at Risk, design-build) have higher administrative requirements for owners
- » Fulfill owner requirements re: notice, timely submittal responses, change order/payment processing, etc
- » Engage system office for support

Facilities: Who Accepts Risk?

Entering into a contract entails accepting risk.

- » Always keep this in mind.
- » Determine who has the authority to agree to take on any risk(s).
- » It is often the role of the Contract Supervisor to analyze the business risk of a contract and make a determination whether to proceed. Others may need to be consulted or informed before making a determination.

Facilities: Who Accepts Risk? (2)

Construction projects carry inherent risk to campuses

- » Different delivery methods allocate risk differently
- » Risk increases with project cost/size
- » Some project carry more risk than others
 - Schedule risk – impact of project not finishing on time
 - Quality risk (i.e. building envelope)
 - Financial risks
 - Fixed budget (campus funded projects)
 - Unforeseen conditions
- » System office can advise on appropriate delivery model

Facilities: Risk Mitigation

How can you mitigate the potential business risks?

- » Insurance
- » Contract language and provisions - clearly written
- » Contract supervisor oversight during contract term
- » Timely communication and documentation when problems arise
- » Do not enter into the contract

Facilities: Risk Mitigation (2)

How can you mitigate the potential business risks?

- » Project delivery model
- » Contract templates
- » Documentation
 - Meeting minutes, emails
- » Thorough contract administration
- » 3rd party reviews/observation/inspections
- » Timely communication and documentation when problems arise
- » Engage system office for support

Need to find Facility Use/Lease Contracts?

- » 2024 OGC webinar focused on Facility Use Contracts
- » Facility Use (one year and less period) and Lease Agreements are found on Finance Forms and Template webpage
 - <https://www.minnstate.edu/system/templates/index.html>

Prof. Technical Consultant Contracts and Services Contracts for Facilities

- » Templates on eManual
- » For non-design PT contracts, use ND.30
 - Differs from Minn. State “standard” contract in the liability section due to professional design/architect industry. Not new document but make sure Facilities and business offices preparing contracts use correct contract to avoid vendor objections or rejection and delay.
- » Service Contracts
 - With or without Prevailing Wage language. If project is subject to Prevailing Wage requirements and law, use the correct contract

Facilities: Public Solicitation

- » Open, fair, transparent - maintain integrity and transparency in public solicitation process
- » Start with your Program Manager
- » Include appropriate, verifiable prequalifications
- » Conduct and document the evaluation and award process as prescribed in the RFP
 - Standard evaluation/interview/award forms for facilities RFPs - in process
- » Maintain neutrality
 - Bidder questions must be sent per RFB/P
 - Don't discuss with vendors
- » Notify unsuccessful proposers

Facilities: Public Solicitation (2)

- » Reference checks
 - Avoid subjectivity
 - Should only be used to validate prequalification's, i.e. sample projects
 - “Did Firm X do the MEP design on your project?” vs “How did you like working with Firm X?”
- » Surety and performance bonds
 - Required by Statute for projects above \$175,000
 - Check validity
 - Often only valid up to 120% of original contract amount
- » Liquidated damages
 - Only appropriate for projects with clearly defined schedule risk (not punitive)
 - “No LDs assessed on any Minn State project in last 5 years”
 - Contact system office

Facilities Program Managers

- » Roles and Responsibilities: [eManual - Responsibility Matrix](#)
- » Assigned based on geography, workload, etc.
- » If problem arises with solicitation, project, contractor etc... Start with your program manager
- » Future project manager role
 - Campuses can “hire” from system office
 - Ensure procurement and contracting compliance, processes, etc.

Facilities Related Contracts

- » eManual
 - Standard construction (design-bid-build)
 - Construction Manager at Risk
 - Professional/technical
- » In process (talk to Ryan Ries)
 - Design Build
 - Energy Services Performance Contracts (GESPs)
- » Cooperative contracts
 - State of MN
 - Sourcewell, etc.

Demands, Challenges, Litigation : Oh My!

- » Administer your project with the assumption it will get audited/end up in a claim
- » If encountering issues, or not sure how to proceed, start with your Program Manager.
 - Best to engage early. Some issues can be mitigated before it's too late
- » Do not engage with attorneys from another party. If contacted, send to OGC ASAP.
- » If contractor vendor hints of legal action, contact OGC.
- » Copy Ryan Ries on project issues
- » Mn Attorney General's Office assists in legal challenges and litigation, not general construction guidance. If needed, OGC can assist in connecting.



HOT TOPICS! Don't Get Burned!

Hot Topics - Facilities

- » Indemnification language
 - Use ND.30 for non-design facilities consulting
- » Deeper bid/proposal pools
 - New-to-Minn State contractors
 - Data requests for RFP evaluation/award docs
- » Schedule compliance

Other Common Issues to Identify & Navigate- Don't Trip! Find your helpers!

- » Risks - Physical, Financial, Reputational.
 - What happens “if”?
 - Decision-maker decides.
 - Risk Management can help.
- » Subject matter experts– ensure appropriate divisions are engaged and knowledgeable about the expectations and responsibilities.
- » Not knowing your campus contract process, or who has authority can slow you down!
- » How are you/others managing the contract terms, dates, deliverables?
- » Avoid inconsistent dealing, language and contracts with third parties for same things.
- » Unrealistic timelines or deadlines.

Final Thoughts - Facilities

- » Start with your program manager
- » Project delivery method can mitigate project risks
- » Follow the RFP/contract
 - Use correct templates
- » Assume the project will get audited
- » Engage early on potential project issues
- » System office project manager

Resources: OGC Contract Related Webinars

Review again and share!

- » Contact Office of General Counsel for access to following webinars:
 - November 14, 2024, Facilities Use Agreements- What You Need to Know
 - March 14, 2024, Contracts: Academic Focused and Student Experience Agreements (not allied health) **Note: Includes info on “redlining” documents**
 - November 9, 2023, Checking Up on Clinical Affiliation Agreements
 - March 9, 2023, Grants and Grant Agreements
 - November 10, 2022, Filling Your Contract Toolbox: Don't Forget the Nuts and Bolts

- » Review other webinar subjects related to contracts including Data, and Data Sharing, Intellectual Property and other topics on [OGC website](#).

Resources

- » For previous OGC webinars, contact Amanda Bohnhoff, OGC Legal Assistant
 - amanda.Bohnhoff@minnstate.edu
- » Ryan Ries, System Director, Design & Construction
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- » Keswic Joiner, System Director, Risk Management
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Thank you.



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