



**SOUTHERN UNIVERSITY SYSTEM
SYSTEM ADMINISTRATIVE MEMORANDUM
NO. 1**

TITLE: SOUTHERN UNIVERSITY SYSTEM GENERAL COUNSEL—CONTRACT REVIEW POLICY

FROM: SOUTHERN UNIVERSITY SYSTEM—OFFICE OF THE PRESIDENT

TO: ALL CAMPUSES

ISSUE DATE: OCTOBER 8, 2010

EFFECTIVE DATE: OCTOBER 15, 2010

The attached System Administrative Memorandum (SAM) establishes a process for the review and authorization of all contracts entered into on behalf of the Southern University System (SUS) and/or any of its affiliated campuses or units by the SUS—General Counsel (SUS—GC). SAMs are designed to address system-wide policy issues and are established for the purpose of SUS administrative governance. Further, SAMs may implement or interpret laws, rules, by-laws, regulations and reflect SUS policies.

The SUS takes care to assure that SAMs, when issued, are in compliance with currently applicable and controlling laws, rules, by-laws, regulations and policies. However, it is recognized that changes in such laws, rules, by-laws, regulations and policies may result in all or a portion of a SAM being revised periodically.

Submitted by:
Dr. Ronald Mason, Jr., President
Southern University System



**SOUTHERN UNIVERSITY SYSTEM
GENERAL COUNSEL
CONTRACT REVIEW POLICY**

A. GENERAL AUTHORITY

Pursuant to the pertinent provisions of R.S. 17:3351 and Article VII, §2A of its by-laws, the SUS—Board of Supervisors authorizes the President, as the chief executive officer, to generally conduct the affairs of the SUS, which encompasses the review and approval and of all contracts entered into by or on behalf of the SUS and/or any affiliated campus or unit. The President hereby delegates the review and approval of all contracts to the SUS—GC, in accordance with the terms and conditions outlined in this policy.

B. DEFINITIONS

For purposes of this policy, the following definitions shall apply:

1. **Contract**—is an agreement between two (2) or more parties, one of which is the SUS or any of its affiliate campuses or units, intended to have legal effect or be otherwise recognized at law. Other terms that are sometimes used instead of “contract” may include agreement, letter of agreement, letter of understanding, letter of engagement, or consortium operating agreement.¹ There must be a common understanding among the parties as to the essential terms, the mutual obligations, and the existence of valid and sufficient “legal consideration”, meaning that something of value is exchanged between the parties. An agreement may be a binding contract even though one party provides something of value to the other party at no charge. There must be a University interest at stake. A contract may involve a commitment of University funds, facilities, personnel, other resources, the University’s name, or it may be a commitment for the University to give up a right it otherwise may have.

Examples of University contracts include, but are not limited to:

- Agreements for the purchase or rental of goods or services;

¹ NOTE: It is not the name or description given to a document or the specified amount that dictates the SUS’s requirement for contract review but instead it is the intention of the document, i.e. to create an obligation for the SUS Board of Supervisors, System and/or a respective campus.

- Intellectual property transactions (non-disclosure agreements, assignments, material transfer agreements);
- Agreements that set terms for acceptance of gifts;
- Sale or donation of University goods or services;
- Leases of movable property, such as tools, equipment, vehicles, etc.;
- Leases, deeds and other conveyances affecting interests in real property;
- Liability waivers/releases;
- Settlement of disputes;
- Licenses;
- Student or faculty exchange agreements;
- Memoranda/letters of understanding or cooperation (also known as memoranda of agreement or binding letters of intent);
- Facility access agreements;
- Vending/supply agreements;
- Athletic agreements;
- Affiliation agreements;
- Regulatory filings;
- Employment contracts;
- Instructional agreements;
- Educational testing or testing preparation agreements;
- Inter-agency or inter-institutional agreements;
- Professional service or consulting agreements;
- Speaker/performer engagements having non-standard provisions;

- Software license/maintenance/development agreements;
- Cooperative Endeavor Agreements;
- Any purchase order or equipment acquisition that varies from the SUS's standard provisions;
- Grants, sub-grants and grant sub-recipient agreements awarded by governmental agencies and private organizations;
- Contracts with hotels, convention centers or other facilities which require written agreement; and
- Assignment of the right of a person, group, or agency to use the University's name, logo, trademarks or resources, etc.

The above list is not all-inclusive.

2. **Execution**—acceptance of the contract terms and conditions is evidenced by the signing of the contract by authorized individuals representing each party to the agreement.
3. **University**—used interchangeably with SUS and includes the following five (5) campuses: Southern University and A & M College at Baton Rouge (SUBR); Southern University at New Orleans (SUNO); Southern University at Shreveport, Louisiana (SUSLA); Southern University Law Center (SULC); and the Southern University Agricultural Research and Extension Center (SUAREC).

C. PURPOSE

This policy clarifies and consolidates all prior directives emanating from the SUS—Board of Supervisors and the SUS—Office of the President pertaining to the review and approval of SUS contracts. Specifically, this policy sets forth a uniform requirement for the SUS—GC to review all SUS agreements and contracts.

D. OBJECTIVES

The objectives of this policy include:

1. Ensuring that the SUS's contractual arrangements are legally acceptable;
2. Monitoring and maintaining an inventory of all SUS contractual commitments;

3. Enabling the SUS to achieve more uniformity in its contracting practices; and
4. Developing a procedure that will insure the receipt and approval of all SUS agreements and contracts in a consistent manner.

E. APPLICABILITY

This policy applies to all affiliate campuses, institutions, units, departments, students, faculty and staff within the SUS. Excluding certain exceptions, this policy applies to any contract that is binding upon the SUS and/or any of its affiliated campuses or units and to which it is a party or signatory in any capacity, regardless of the funding source, amount of funds expended or generated, and whether or not remuneration, either monetary or in kind, is involved. This policy not only applies to the initial contract but to every amendment, renewal or extension of such a contract.

Any contract reviewed and authorized before this policy's adoption remains in full force and effect. Any contract not signed as of this policy's adoption is void and of no effect unless it is reviewed and authorized as set forth under this policy. Any contract's modification or extension made after this policy's adoption is subject to review and authorization under this policy.

SUS departments, divisions, or employees do not have authority to enter into any agreement that binds the SUS naming solely that department, division, or employee as a party to the agreement.

The SUS—GC should be contacted to confirm the applicability of this policy if a proposed agreement does not name the SUS as a party, but instead names:

- a. an associated entity such as the Southern University System Foundation; or
- b. an organization to which the SUS or a SUS employee holds membership.

F. EXEMPT CONTRACT CLASSES

This policy does not apply to: (1) contracts for consulting or outside employment entered into by a SUS employee where the SUS employee acts as an independent consultant or contractor; and (2) contracts pertaining to sponsored projects, programs, activities for research and/or intellectual property which are funded by grants or other external funding sources.

G. CONTRACT REVIEW PROCESS

All contracts whose obligations in aggregate or related financial exposure exceed the amount of \$10,000 or more must be reviewed and approved as to form and legality prior to their execution by the SUS—GC. In addition, any contract that (1) has rights or commitments extending for three or more years; (2) contains automatic renewal provisions; (3) does not allow the SUS to terminate the agreement under any circumstances; (4) contains defense, indemnification or hold harmless provisions; (5) seeks to limit the amount or types of liability of the other contracting party, its subcontractors, agents, or successors; (6) establishes the choice of law or the forum or means for the resolution of disputes; and (7) all contracts with confidentiality or non-disclosure obligations must be reviewed by the SUS—GC.

To facilitate the review process, the contract's requestor must submit the subject contract accompanied by a SUS—GC Contract Routing Form. (*See: Appendix A*) This form, among other things, certifies that the contract's requestor has read the entire contract and determined that:

- a. The contract meets programmatic requirements and the mission of the SUS;
- b. He/she can ensure compliance with the obligations the agreement places on the SUS;
- c. He/she has consulted with all divisions or departments affected by the contract; and
- d. He/she has followed pertinent SUS policies and procedures in submitting the contract and seeking its approval.

The submitted contract will be logged in by the SUS—GC and a confirmation receipt will be issued to the contract's requestor. If no changes are required, the contract will be approved. If changes are required, the SUS—GC will prepare and submit a modification memorandum. The contract's requestor is responsible for making or submitting to the third party all SUS—GC changes to the contract and to then return the revised contract to the SUS—GC for review and approval.

If all changes are made, the contract will be approved and forwarded to the contract's requestor with either the President's signature, if required, or for the contract's requestor to obtain the appropriate University official's signature. If all changes are not made, the contract will be returned to the contract's requestor for insertion of the required amendments.

Once a request is submitted to the SUS—GC for the drafting of a contract, the SUS—GC will work along with the contract’s requestor and other parties to draft, negotiate and execute the final contract.

A request for SUS—GC review and approval should be submitted a minimum of two (2) weeks prior to the time it is needed.

H. CONTRACT RETENTION

Each administrative unit, department or area of the SUS which executes a contract pursuant to this policy shall keep the signed contract on file for the duration of the contract or for a period required by law, whichever is longer and a copy of the contract should be forwarded to the SUS—GC. All contracts executed by the SUS—President for SUS activities will require the original to be executed and that contract shall be maintained in the office of the SUS President. When contracts are executed by campus Chancellors, the original copy of that document shall be maintained in the office of the respective Chancellor

I. POLICY DEVIATIONS

Any deviation from this policy which does not conflict with law or the SUS—Board of Supervisors’ by-laws or regulations, must be approved on an individual bases by the SUS President.

J. POLICY VIOLATION

Contracts executed in violation of the foregoing policy may be found to be void or voidable. Additionally, University employees signing contracts in violation of this policy could result in those persons either being held personally liable for the contractual obligations and/or subjected to disciplinary action, including termination.