2109 – Contracts, Agreements, MOU

Contractual arrangements legally binding the College/Foundation may only be executed according to the procedures set forth below. Contracts entered into on behalf of Barton Community College/Foundation must be reviewed and approved by designated College/Foundation personnel to ensure compliance with established College procedure regarding contract language and stipulations. Contracts may only be executed by College/Foundation designated signatories as specified in this procedure.

Only authorized signatories may sign contracts on behalf of the College/Foundation which obligate the College or the Foundation to terms exceeding one year. Contracts must follow Procurement procedure 2315. The President, or his/her designee and the Dean of Administration must actively participate in the negotiation, approval and execution of all contracts which obligate the College/Foundation to terms exceeding one year.

For the purposes of this procedure, a "contract" is defined as an agreement between two (2) or more parties, which is intended to have legal effect and documents the pricing, scope of work and other related terms and conditions of the relationship, and obligate the College/Foundation to terms exceeding one year. All contracts document a common understanding among the parties as to the essential terms of their agreement, contain mutual obligations, and set forth "legal consideration," meaning that something of value is exchanged between the parties and include “agreements”, memorandum of agreement (MOA), and memorandum of understanding (MOU). Oral arrangements are **not** an acceptable method of procurement; therefore they must be written to be enforceable. An agreement may constitute a binding contract even though one party provides something of value to the other party at no charge.

Elements of a Contract. The elements necessary to form a legally binding and enforceable contract are:

- Offer and acceptance. All contractual relationships require an offer by one party and acceptance by another party.
- Legally enforceable. Contracts must be for a legal purpose to be legally enforceable.
- Mutuality of obligation. Parties entering into a contract must have a “meeting of the minds”, which means that the parties are agreeing to the same thing, in the same sense, and at the same time.
- Certainty of subject matter. Contractual provisions must be sufficiently defined to enable courts to understand the parties’ obligations.
- Consideration. This is an essential element, without which contracts are unenforceable, even if all other elements are present. Consideration often is, but is not necessarily monetary. It consists of either a benefit to the party receiving the promise or a detriment to the party making the promise. It may consist of some right, interest, profit, or benefit accruing to the other party.
- Competent Parties. Parties to a contract must have legal capacity to contract. By definition, college representatives do not have legal capacity; only the President or his/her designee may contract.

Contract Signatory Authority

The authorized individuals to sign contracts on the behalf of the College/Foundation are set by College Policy and Procedures and are as follows:

- Board Chairperson (Foundation Chairperson for Foundation specific contracts)
- College President, or the Acting President
- Dean of Administration, when so designated in writing by the College President
- Executive Director of Institutional Advancement for Foundation specific contracts, when so designated in writing by the Foundation Board Chairperson.

Delegation of Signatory Authority

No employee or agent of the College/Foundation has the authority to enter into any contract on behalf of the College/Foundation, unless so designated in writing by the College President (College) or Foundation Chairperson (Foundation). Designation of signatory authority requires a valid and effective delegation of authority before individuals may execute agreements on behalf of the College/Foundation consistent with all other applicable College purchasing and agreement-related policies and procedures.

An agreement that is not expressed in writing and approved and executed in accordance with this procedure shall not be binding or enforceable against the College/Foundation.

Commitments made by unauthorized employees may become their personal obligation and may subject them to disciplinary action. Any employee who signs a contract or seeks to bind the College/Foundation to an agreement in violation of this policy may be subject to discipline, up to and including termination.

Initiation, Negotiations, Review and Approval

The initiation, negotiations, review and approval of contractual documents by College employees who wish to involve College/Foundation resources shall follow the procedures as outlined below.

Initiation

Before entering into negotiations, the supervising Dean must notify the Dean of Administration and Vice President of Instruction and Student Services (as applicable). The supervising Dean, or their designee, will work with the Dean of Administration on the contract. The Dean of Administration will notify and consult with the President as necessary.

Negotiations

- Only the employee(s) designated by the supervising Dean shall participate in the negotiation process.
- Contract negotiations must be completed prior to the development and processing of paperwork in order to best serve the potential relationship.
- The Vice President, Dean of Administration, or President may also require consultation with the College Attorney prior to final approval.

Review and Approval

The Supervising Dean will oversee the following review and approval procedure prior to finalizing the contract and obligation of funds.

- Program Director review and approval (signature, if required)
- Supervising Dean review and approval (signature, if required)
- Dean of Administration review and approval
- Vice President of Instruction and Student Services review and approval (if applicable)
- President or his/her designee, review, approval, and signature
- The Vice President, Dean of Administration, or President may also require consultation with the College Attorney prior to final approval.

Maintenance of Contracts, Agreements, MOUs

- The supervising Dean must forward a copy of all signed, final contracts, agreements, or MOUs to the Assistant to the President and the Dean of Administration for inclusion in the administrative file.
- The Assistant to the President will review the documents for completeness and maintains a scanned and hardcopy of the document.
- The appropriate program office must maintain original or copy of the final contract, agreement, or MOU.

Contracts Made under a Federal Award

All contracts made by the College/Foundation under a Federal award must contain provisions covering the following as applicable.

- Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- All contracts in excess of $10,000 must address termination for cause and for convenience by the College including the manner by which it will be effected and the basis for settlement.
- Equal Employment Opportunity.
- Davis-Bacon Act.
- Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708).
- Rights to Inventions Made Under a Contract or Agreement.
- Clean Air Act (42 U.S.C. 7401–7671q.)
- Federal Water Pollution Control Act (33 U.S.C. 1251–1387)
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- Debarment and Suspension (Executive Orders 12549 and 12689)
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Contact(s):
Dean of Administration

Related Form(s)

- None

References

§§ 200.317 – 200.326, 200.33, Appendix II to §200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards (Federal Register, Vol.78, No. 248/Thursday, December 26, 2013/Rules and Regulations).

Relevant Policy or Procedure(s): 1107 – Contracts and Other Institutional Commitments

Approved by: President

Date: 6/1/15

Revision(s):