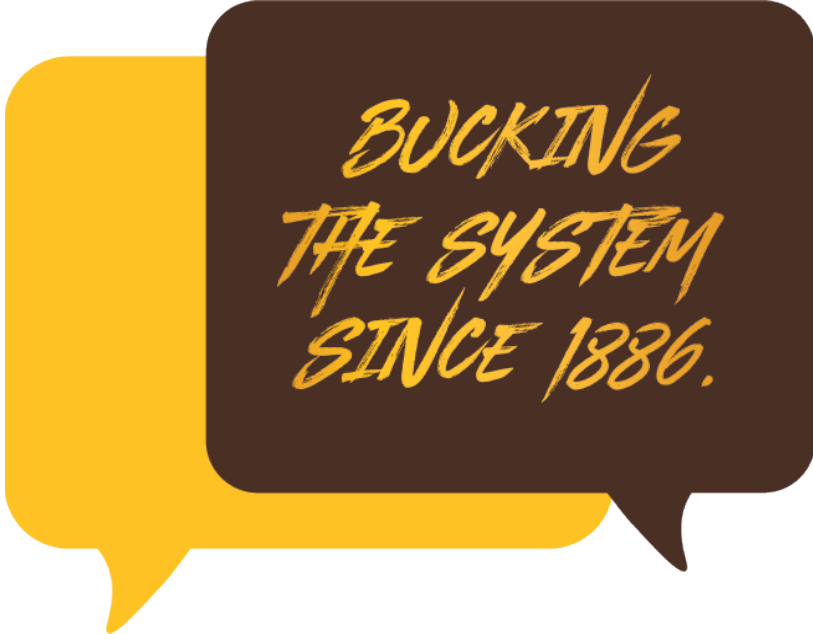


Contracts:

***What is a Contract,
when do I need a contract,
and
how a contract moves
through WyoCloud.***

START EARLY, START EARLY, START EARLY

- More steps involved in the review process, so the earlier the better
- Holidays/Winter Closure/End of Year
- Number of contracts reviewed



*BUCKING
THE SYSTEM
SINCE 1886.*

What is a contract?

A contract is an agreement (oral or written) between two or more parties where there is a mutual exchange of promises or other consideration upon defined terms and/or conditions. Although contracts for the University of Wyoming are primarily written documents, there can be enforceable oral contracts. Written contracts may take many forms including:

- Agreements for Services
- Letter of Agreement
- Purchase Orders
- Online Terms and Conditions
- Invoices
- Quote with a link to terms and conditions

What is a good?

Goods are defined as supplies, materials, and equipment purchased by University departments.

For example, these are all considered goods:

- Pens
- Equipment

What is a service?

Services are defined as labor, time, or effort furnished by an outside entity to the University.

For example, these are all considered services:

- Providing training
- Performing a seminar
- Writing a report
- Designing a website

What if the purchase involves both a good and a service?

If a purchase involves both a good and a service (for example, you purchase a piece of equipment and the company provides training to University employees on how to use the equipment), then the purchase should be treated as a service.

What if the purchase is software or other technology?

Purchases of information technology services and products by the University, including, but not limited to use of hardware and software products and web page design or maintenance, need to adhere to the [Accessibility Policy for Technology Purchases](#). This policy requires all software and other technology that is purchased by the University to be accessible to persons with disabilities.

The ADA regulations have been updated and in April 2027, all vendors providing software and other technology to the University (and other public entities) must meet certain accessibility requirements. This will require VPATs from the companies and more time and negotiation to resolve issues regarding these contracts.

What if the purchase is software or other technology?

In addition to ensuring that all software and other technology is ADA compliant, please ensure that you have worked with IT regarding coordinating and scheduling resources and support for implementation of new software prior to entering a contract into the contracts module.

This includes software that requires integration with currently existing University systems and other new software.

Process for working with IT: Contact the IT Portfolio Manager Emma-Jane Alexander (emmajane.alexander@uwyo.edu) and schedule a project intake session.

Types of contracts that go through the Contract Process?

Services: These are examples, not an exhaustive list

All supplier-created contracts for services (quotes with terms and conditions, terms and conditions, service agreements, etc.) regardless of amount

All service agreements on the Agreement for Services template (found on our website)

Generally over \$10,000, but can be used for more complex arrangements for less than that amount

Contracts for goods AND services (training/installation for equipment, for example)

MOUs /CEAs on our template or the supplier template (even if for no money)

Facilities Use Agreements (rental of space for event, etc.)

Technology:

All contracts/agreements/terms and conditions for the purchase of technology

The most common document you will see is a software license agreement/master software license agreement/end user license agreement (for the purchase of software)

Purchases of technology almost always have terms and conditions from the company

Types of contracts that do not go through the Contract Process?

- Statements of Work on our template for \$9,999 or less
Once completed by department, and signed by contractor/supplier, straight to payment process
- Terms and conditions for the purchase of only goods
To Procurement Services
- Agreements between UW departments
Example: department is paying for a room and catering in the UW Conference Center, and UW Catering and Events sends you a contract. That can be signed by the department head/director/dean, because the payment is being made within UW
- Contracts that are sent through the separate process in the Compliance, Proposals, Agreements, and Strategic Services (COMPASS) Office in REDD

Why must a contract go through this process?

The University of Wyoming is a state entity

- There are certain contract terms to which UW legally is not allowed to agree as a state entity
- There are certain contract terms that UW is legally required to add to contracts as a state entity

Protecting the interests of the University

- Risk Management
- Compliance
 - Tax law
 - Federal, state and local laws
- International

Technology Contracts

- IT approves system requirements, etc.
- Compliance with Accessibility Policy for Technology Purchases
- Same reasons as above



What happens to my
contract in WyoCloud?

*THE WORLD NEEDS MORE
ADVENTUROUS SPIRIT.*

Contract routing and approval process

Payment Terms

Carrier

Freight Terms

FOB

Source Document Details

Source Application

Source Document Number

Additional Information

* Department

* Foreign Supplier

* Technology Supplier

* Grant-Related Supplier

* Construction Supplier

* Service Supplier

* Receiving Credit/Debit Card Payments on behalf of UW

Deferred Revenue (OSP use only)

Help your contract get routed appropriately

- Type of contract – software, space rental, equipment repair, presenter agreement
- Special Circumstances – no money exchanged, expedite

- Then click **Submit**.



The screenshot shows a web form titled "Submit Contract: Review Approvers". In the top right corner, there are four buttons: "Back", "Next", "Submit", and "Cancel". The "Submit" button is highlighted in orange. On the left side, there is a label "Note to Approver" next to a large, empty text input area. Below this input area, there is a button labeled "Approvers" with a right-pointing arrow, which is also highlighted with an orange border.

- The Contract will route through the appropriate WyoCloud approval workflow. To check the status of the approval, see the [Searching for & Amending the Contract QRG](#)

Help your contract get approved quickly

- Compile all documents that will be part of the contract into a single file
- If you've already had email discussions regarding contract terms (for instance, including the University of Wyoming Standard Addenda), upload those emails as supporting documents
- Include the other party name AND email address in the Parties tab
- Another tip for success: let the other party know about our Transparency Initiative early in the process so they won't be surprised when we talk about posting the contract online

Real Estate Operations Review

LEASES

- UW Standard Administrative Policy and Procedure

IV. Signature Authority

D. Vice President for Campus Operations

c. Agreements involving real property or mineral interests, including financing, sale, purchase, **lease** or easements of any type;

e. **Facilities use agreements**

- PLEASE ALLOW AT LEAST 30-DAYS TO NEGOTIATE AND PROCESS ANY LEASES THAT DO NOT REQUIRE BOARD OF TRUSTEE APPROVAL.
- UW Board of Trustees Approval needed:
 - Sale or purchase of real property, improvements to real property, and timber sales
 - Longer than One Year
 - Greater than \$50,000
 - 1st Step: Introduction and Approval of Facilities Contracting Committee

Real Estate Operations Review

LEASES

- 2nd Step: Introduction and Approval of Full Board of Trustees
- Usually, a **FOUR month process!**
- Short-term Residential Housing (30 days or more)
 - The University of Wyoming is not to be a party to the lease agreement
 - UW Department agrees to pay for the short-term housing
 - Rent and Security Deposit ONLY
 - Real Estate Operations (REO) has a **Process for Renting Housing** document
 - Occupant and the Lessor are the parties to the lease
 - Fully completed and executed lease agreement(s) is/are provided to REO and the department's accountant/business manager
 - REO approval => UW Rent Guarantor Letter sent to department's accountant/business manager to be submitted with signed lease and payment request
 - Occupant(s) must sign and return to REO an Apartment Occupant letter which is to be held by REO

Procurement Services

First Stop in Contract Review Process

To ensure that all university expenditures are made in accordance with the university [Quote & Bid Threshold Policy](#) and all other university, state, and federal requirements.

Overview of Dollar Thresholds

- 1) **Micro-Purchase Thresholds (MPT):** \$0- \$9,999
- 2) **Simplified Acquisition Threshold (SAT):** \$10,000 - \$99,999
- 3) **Sealed Bid & Competitive Proposal Threshold:** \$100,000 +
- 4) **Non-Competitive Procurement:** Exemptions and Sole Source

Procurement Review- Cont.

\$0- \$4,999 : *Micro-Purchase Threshold (MPT) - Discretionary*

1. Supplier Selection: Minimum of **one** documented quote
2. Contract: as required by [Office of General Counsel](#)
3. Payment Request:
 - [Requisition](#)
 - [Non-PO Invoice](#) (if allowable)
 - PCard

Procurement Review- Cont.

\$5,000-\$9,999 : *Micro-Purchases Threshold (MPT) - with approval **

1. Supplier Selection: Minimum of **one** documented quote
2. Contract: as required by [Office of General Counsel](#)
3. Purchase Request:
 - [Requisition](#) A university *Purchase Order* must be issued before goods and services are provided
 - [Non-PO Invoice](#) (if allowable)
 - PCard (with prior approval)

Procurement Review- Cont.

\$10,000- \$99,999 : *Simplified Acquisition Threshold (SAT)*

1. Supplier Selection: Minimum of **two**, documented quotes, or an approved [Sole Source](#)
2. Contract: as required by [Office of General Counsel](#)
3. Purchase Request:
 - [Requisition](#) A university *Purchase Order* must be issued before goods and services are provided.
 - [Non-PO Invoice](#) (if allowable)
 - PCard (with prior approval)

Procurement Review- Cont.

\$99,999 + : *Sealed Bids (IFB) & Competitive Proposals (RFP)*

1. Supplier Selection: Formal Solicitation; *Request for Proposal* (RFP) or *Invitation to Bid* (IFB) conducted by Procurement Services or an approved [Sole Source](#)
2. Contract: as required by [Office of General Counsel](#)
3. Purchase Request:
 - [Requisition](#) A university *Purchase Order* must be issued before goods and services are provided
 - [Non-PO Invoice](#) (if allowable)

Procurement Review- Cont.

Non-Competitive Acquisitions : allowable when these circumstances apply

1. Available only from a single source as approved via [Sole Source Request Form](#)
2. Public Emergency
3. After soliciting from a number of sources, competition is deemed inadequate
4. Allowable *exceptions* as listed in [Quote & Bid Threshold Policy](#) (III-E)

UW Operations Review

Select Construction Supplier – YES from the options on the Overview tab, IF:

- Agreement involves the construction or design for alterations or improvements to existing buildings for grounds, or construction or design for new construction or capitalized projects, or installation of new equipment. This will route the contract to UW Operations for review and approval.
- Per UW Regulation 6-4, all alterations or improvements or maintenance shall be requested through UW Operations.
- It is recommended that departments contact UW Operations prior to entering into agreements or purchasing equipment to ensure facility infrastructure is in place to support the operation of equipment. Significant costs or modifications to facilitate to meet needs would be best discussed in advance of expenditures.
- To Request Services: <https://www.uwyo.edu/uwops/request/index.html>

UW Operations Review

- As a state agency, UW is subject to local and state building codes and Wyoming State Statutes, University Regulations, Campus Construction & Design Standards, and Procurement policies.
- UW Operations protects the interest of the University in that any contractor/consultant performing work on behalf of UW has an appropriate contract in place that includes liability insurance, workers compensation, unemployment insurance and bonding, as required by statute.
- UW Operations also performs hazardous materials testing to ensure the safety of building occupants.

Tax Review

Employee Versus Independent Contractor Determination

Background

- Employees are subject to FICA taxes - Social Security (6.2%) and Medicare (1.45%) for a total of 7.65%
- Employers are required to match this – 7.65%
- Independent contractors must cover the whole thing and are subject to 15.3% for self employment tax
- Because of this, it is advantageous for employers to classify workers as independent contractors rather than employees to avoid matching these taxes

Tax Review

Employee Versus Independent Contractor Determination

Background

- Employers were taking advantage of these rules and misclassifying employees as independent contractors to pass the tax burden to their workers
- The IRS has highly increased scrutiny in this area over the last 10-20 years to protect the average employee from being misclassified and overtaxed
- The IRS conducts payroll audits to determine if independent contractors have been classified correctly

Tax Review

Employee Versus Independent Contractor Determination

Background

- If they don't agree with an employer's classification, they can re-categorize the income, and the employer is then liable for fines, penalties, and the share of taxes that they should have paid
- Employers need to document how they determined the status of all of their independent contractors

Tax Review

[UW Employee/Independent Contractor Determination Checklist](#)

- Based on IRS guidelines and criteria
- Required for all payments to individuals that exceed \$5,000
- Generally, not required for payments to entities that have an Employer Identification Number (EIN)
- Someone with knowledge of the contract and arrangement should be completing and signing this

Tax Review

University of Wyoming Employee/Independent Contractor Determination Checklist

Instructions: Employee/ Independent Contractor Determination Checklist **must be completed prior to commencement of services** AND attached to all personal service contracts and purchase requisitions for personal service arrangements.

Contact Information

Contracting Department: Date:
Department Contact: Phone No: Fax No:
Company OR Contractor Name:
Street Address:
City: State: Zip Code:

- Please fill in the Contracting Department, Department Contact, and Company OR Contractor name fields.

Tax Review

Citizenship

Payee is U.S. Citizen or Permanent Resident individual or U.S. business
(If no, please forward to Tax Office for additional analysis - tax@uwyo.edu)

☐ Yes ☐ No

US entities and individuals:

- US businesses and persons can follow the normal [Supplier Self-Registration process](#) to get set up
- They will provide an [IRS Form W-9](#) during setup
- Generally, no tax withholding will apply
- Will be issued a Form 1099-MISC @ yearend if they receive more than \$2K per calendar year and are not an exempt entity

Non-US companies and individuals:

- Non-US businesses and persons will need to contact tax@uwyo.edu to get setup as a Supplier
- An analysis must be done to see what tax forms need to be obtained, depending on what is being purchased
 - [Form W-8BEN-E \(Entity\)](#)
 - [Form W-8BEN \(Individual\)](#)
 - Other forms may be required
 - Tax treaties may apply
- Generally, payments for services provided in the US to a Non-US company or individual are subject to 30% tax withholding
- Will be issued a Form 1042-S @ yearend
- Generally, payments for services provided outside of the US to a Non-US company or individual are exempt from tax withholding
 - [Foreign Sources Income Statement – Entity](#)
 - [Foreign Sources Income Statement – Individual](#)
 - No reporting or withholding obligations are required for foreign sourced income

Employee Relationship

1. Is individual a former employee? ☐ Yes ☐ No
2. If yes, will the individual be performing services in a substantially similar capacity or under the similar direction and control as when they were an employee?
(If Yes, stop and process payment through payroll) ☐ Yes ☐ No
3. Is individual a current employee? ☐ Yes ☐ No
4. If yes, does employee offer similar services to the public?
(If No, stop and process payment through payroll) ☐ Yes ☐ No

- Employees receive a Form W-2 and Independent contractors receive a Form 1099-NEC at year end. When an individual receives both forms from the same payer in the same tax year, it raises red flags with the IRS and can initiate a payroll audit
- Current employees cannot be setup as a Supplier using their Social Security Number (SSN). If they are operating a separate business that serves other clients and has an Employer Identification Number (EIN), that business can be set up
- Former employees that were paid in the current calendar year cannot be setup as a Supplier using their Social Security Number (SSN). If they are operating a separate business that serves other clients and has an Employer Identification Number (EIN), that business can be set up.
- Former employees who have not been paid in the current calendar year may be set up with their SSN if they otherwise qualify as an independent contractor

Tax Review

Description of Services / Relationship

a. Please describe the services:

b. Dates services will be provided:

- If this information is readily available in the contract, you don't need to write it again here
- Write "See attached contract"

Tax Review

c. This is an extension of a previous personal services agreement (PSA)? ☐Yes ☐No

1. How many extensions have been made?

2. Please provide the reason for the extension:

d. There is a continuous relationship. (The recurring intervals can be irregular.) ☐Yes ☐No

e. The worker is required to provide written or oral reports on the status of a project. ☐Yes ☐No

f. The worker can terminate his or her work and not be liable to the University. ☐Yes ☐No

g. Is there an issue that could create a potential conflict of interest? ☐Yes ☐No

1. Example: The worker is the spouse or relative of an employee. If there is a potential conflict please describe how the conflict will be avoided:

- Generally, “Yes” answers will indicate more of an **employee relationship** and “No” answers will indicate an **independent contractor relationship**
- All answers are evaluated together to make the determination rather than individually

Tax Review

Scope of Work / Behavioral Control

- | | | |
|---|------------------------------|-----------------------------|
| a. The University directs when, where, and <u>how</u> the work is done. | ☐ Yes | ☐ No |
| b. The University requests that the worker undergoes University-provided training. | ☐ Yes | ☐ No |
| c. The University designates the number of hours worked per week. | ☐ Yes | ☐ No |
| d. The University requests that a particular person of the business performs the work. | ☐ Yes | ☐ No |
| e. The University has control over supervising, hiring, firing, and paying the worker's assistants. | ☐ Yes | ☐ No |
| f. The University provides tools, equipment and / or office space for the worker to perform the services. | ☐ Yes | ☐ No |

- The most important aspect of this section is how much control UW has over what the worker is doing
- A lot of times we tell contractors when and where to do the work, but we should not be telling them how to do it
- If the answer to Line a is yes, they should be paid as an employee

Tax Review

Payment / Financial Control

- a. The worker is paid by the hour, day, week, or month, rather than by the job or on from an invoice. ☐Yes ☐No
- b. Is the University the worker's only client? ☐Yes ☐No
(If Yes, stop and process payment through payroll – the worker must be operating an independent business or sole proprietorship that serves other clients in order to be paid as an independent contractor)
- c. The University pays the worker's ordinary business expenses. ☐Yes ☐No
(Examples include: travel, equipment, or materials necessary for the job)

- The most important aspect of this section is how much financial control UW has over the worker
- If the University is the worker's only client, this indicates that they are financially depended on UW and should be treated as an employee
- The worker must be operating an independent business that serves other clients

Conclusion and Certification

If the majority of the answers to the above questions are No, the service relationship may qualify for independent contractor classification. If the majority of the answers to the above questions are Yes, the service relationship may be deemed an employment relationship. Contact the Tax Office (307-766-2821; tax@uwyo.edu) for assistance in making a final determination. If there are additional circumstances that qualify this person as an independent contractor, please explain them below.

I certify that I have a sufficient understanding of the service relationship to accurately complete the Employee/Independent Contractor Determination Checklist. Based on the above analysis, I have determined that _____ is to be treated as an independent contractor with respect to the services to be performed for the University of Wyoming.

I understand that should the Internal Revenue Service disagree with the classification made, my department will be held financially responsible for any additional compensation (due to gross up, including fringe rates), taxes, penalties and interest that the IRS or other regulatory bodies may assess.

Name of Department _____ Date _____

Department Signature _____ Printed Name _____

Title _____ Phone Number _____

- Someone who has knowledge of the service arrangement should be completing and signing this form
- Most of these analyses are fairly straight forward, but if you are having trouble making the determination or have any questions or concerns, don't hesitate to reach out
- The Tax Office makes the final determination through the Contracts Module approval process, but you are acknowledging that you have answered the questions to the best of your ability

Tax Review

UNIVERSITY OF WYOMING

Tax Office

Room 250, Knight Hall • Dept 3314, 1000 E. University Ave • Laramie, WY 82071
(307) 766-2821 • fax (307) 766-4836 • e-mail: tax@uwyo.edu • www.uwyo.edu

Employee / Independent Contractor Determination Worksheet Instructions to the Form

Purpose of the Form:

The Employee/Independent Contractor Determination Worksheet is required to comply with tax and employment laws and regulations concerning the classification of a service provider as an employee versus an

Company OR Contractor Name:

Enter the name of the individual or company that the services are being provided by.

Street Address, City, State, and Zip Code:

Enter the street address, city, state,

If the service provider is an individual, it must be determined if they are a former UW employee. This is very important information that is taken into consideration when determining if an individual can be paid as an independent contractor for providing services.

- There are detailed instructions attached to the EIC Worksheet with examples
- You can always reach out to the Tax Office with questions, concerns, or to talk through service arrangements and scenarios

COMPASS' Review -WyoCloud

- Dates
- Budget
- Ensure compliance with prime sponsors T&Cs and institutional policy
- Subrecipient vs. Vendor determination in accordance with 2 CFR 200

COMPASS' Review – Other Agreements

- Provide expertise and assistance on leading the negotiation of external sponsored projects and research related agreements.
- **Types of Agreements reviewed:**
 - Grants (and subawards) – incoming and outgoing
 - Contracts (and subcontracts)
 - Cooperative Agreements
 - MOUs
 - Collaboration & Teaming Agreements
 - Research/Ancillary Service Agreements & related Equipment Loan or Purchase Agreements
 - Master or Umbrella Agreements
 - Clinical Trial Agreements
 - Amendments (Modifications)
 - NDAs, MTAs, and Data Use and Transfer Agreements

COMPASS' Review – Other Agreements

- **Types of Entities we work with:**
 - Federal
 - State
 - Non-Profit
 - Institutions of Higher Education
 - Industry/ Private Sector
 - International Entities

COMPASS' Review – Other Agreements

- **Primary Focus:**
 - Protect the interest of UW while considering the risk or impact of the proposed terms on the researcher, students, University, and sub-recipient(s).
- **Process:**
 - Review and negotiate the terms and conditions of agreements to ensure compliance with applicable UW policies and applicable local, state and federal regulations
 - Review and address any exceptions included in the RFP at the time of proposal preparation.
 - When necessary, engage the Office of General Counsel, Technology Transfer Office, and Risk Management.
 - Track Agreements through to full execution.

COMPASS' Review – Other Agreements

- **Problematic Clauses**
 - Indemnification Language
 - Governing Law
 - Termination
 - Sovereign Immunity
 - Insurance
 - Arbitration
 - Intellectual Property
 - Publication

Risk Management Review/Considerations

Vendor Providing Goods/Services to UW

- Standard Insurance Requirements
- Specialty Insurance Based on Type of Work
 - Technology/Cyber
 - Professional – licensed individuals – architects, engineers, physicians or medical providers, attorneys, etc.
 - Aviation
 - Cargo
 - International
 - Property
 - Environmental
- Other Risks
 - Disputes

UW as the Vendor

- Insurance Limits
- Worker's Compensation in other states
- Medical
- Cyber
- Environmental
- International
 - Liability
 - Employment
 - Privacy
- Waiver of Subrogation
- Other Risks
 - Joint Liability
 - Warranty
 - Scope

Signature process

- UW Regulation 7-2 Signature Authority
- [NEW]DocuSign: will now route contracts to both parties. Will need name and email address for the person signing for the supplier on the Parties tab.
- Supplier's signatures can be scanned copy of wet signature or digital signature that has been approved by the University's Vice President for Information Technology. Examples include, DocuSign, AdobeSign and SignNow. Questions regarding a specific digital signature may be directed to the Office of Information Technology.

Questions?

- Andara Frasier, Associate General Counsel, afrasier@uwyo.edu
- Arron Sullivent, Manager, Real Estate Operations, asullive@uwyo.edu
- Jon Babcock, Chief Procurement Officer, Strategic Sourcing and Procurement, Jon.Babcock@uwyo.edu
- Trinidad Padilla, Procurement Officer, Procurement, tpadill1@uwyo.edu
- Casey Green, Accountant, sgreen1@uwyo.edu
- Laura Betzold, Chief Risk Officer and Senior Associate General Counsel, lpeter18@uwyo.edu
- Heather Earl, Contracts Coordinator, UW Operations, hearl@uwyo.edu
- Farrell Rapp, Senior Director, COMPASS, fgraf@uwyo.edu