



Contracting Basics

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SS PRESENTATION



FORDHAM
UNIVERSITY

Fordham Contract Review Team

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Goals

Provide guidance
and tools that
improve the
efficiency and
quality
in contracting for
goods and services

Increase
compliance with
Fordham
University's
purchasing policies
and procedures

Drive greater
self-sufficiency for
contracting within
University schools,
departments, and units

Ultimately, this will help Contract Managers to be more successful in your roles by improving your knowledge/understanding of contracting

Overview of Contract Process

Contracting Process On Campus

- ☐ Guiding Principle: There are University Contracts and Department Contracts. **Departments OWN their Contracts**
- ☐ Purchasing and Payment Policy: Contracting Guidelines
- ☐ OLC Review: “Rules of Engagement”
- ☐ Process Workflow
- ☐ Contract Authorized Signatories
- ☐ Key Contracting Do’s and Don’ts

Refresher: The Basics

- ☐ Contract Formation
- ☐ Elements of a contract
- ☐ Written vs. Oral
- ☐ Battle of Forms

Checklist of Key Contract Terms

- ☐ Generally
- ☐ Scope of Work in Services Contracts
- ☐ Pricing and Payment Terms
- ☐ Delivery Terms (Goods only)
- ☐ Inspection of Goods and Services
- ☐ Taxes
- ☐ Term and Termination
- ☐ Representations and Warranties
- ☐ Indemnification
- ☐ Limitations of Liability
- ☐ Insurance
- ☐ Intellectual Property Rights
- ☐ Choice of Law, Dispute Resolution, and Choice of Venue
- ☐ Other Terms / Issues to be Aware Of

Guiding Principle: Departments Own their Contracts

- What does this mean?
- With limited exceptions, Fordham allows individual schools, departments, and units to make their own purchasing decisions for goods and services, provided University policies and procedures are followed.
- Contracts cannot be signed without going through the review process.
- University employees involved in these purchases are to take full responsibility for understanding Fordham's policies and procedures for contracting with suppliers, including purchasing, payment, and supplier relations.
- Departments are expected to know and understand their contracts.
- It is not expected that departments are experts on every contract provision, subject matter experts within the University can assist.

Contracts are used for Services

What is a Service?

- Services are works or duties provided to the University, and are provided by business organizations or individuals (even if they work for a larger entity such as a partnership, corporation, or other form of business organization)
- Services may be standalone (one time), repetitive, or ongoing
- Services require contracts

Departments Own their Contracts and the process

Departments purchasing goods and services are part of the hub in the contracting process on campus

This Includes:

- ☐ Knowing and following FINBUY and FINCON policies and procedures.
- ☐ Reading and understanding contracts.
- ☐ Identifying and routing issues and questions through the FINCON portal (stakeholder /subject matter expert)
- ☐ Leading and setting the tone of negotiations with suppliers.



Contracts that need FINCON Review

- ☐ IT service contracts where suppliers will have access to Fordham's sensitive IT systems or sensitive / confidential information (cloud services suppliers that host personally identifiable information of employees, students, or research participants)
- ☐ "Mission critical" software licenses
- ☐ Contracts for the purchase or lease of real property
- ☐ Consulting, Professional Services Agreements
- ☐ Purchase finance transactions (contracts involving debt or debt-like obligations, such as capital leases or lease-to-own contracts)
- ☐ Restrictive contract clauses that prevent Fordham from:
 - interacting or doing business with certain individuals or entities, or undertaking otherwise lawful actions or operations (e.g., non-compete or exclusivity clauses)

Pre FINCON

You must obtain sufficient approval from your department chair, Dean's Office, or VP before a contract moves forward in the process, especially before it reaches the contract review team. Additionally, on each contract, the budget line must be completed as a requirement.

This upfront approval is crucial because reviewing, revising, and negotiating contracts demands significant time, effort, and cost. Proceeding without departmental budget and final approval can lead to wasted resources and a negative outcome for everyone involved.



Contract Management Process Overview

As owners of supplier relationships, purchasers must also own and manage the contract process.

These are your contracts.

1

Contract Manager checks within FINCON for an existing contract with a preferred supplier. If none exists, the Contract Manager (CM) starts the Contract process within FINCON.

2

The Contract Manager engages the supplier for all the necessary documents, like the Statement of Work, Terms and Conditions and MSA. **The CM shares supplier insurance requirements.**

3

After contract creation, the Contract Manager releases it for FINCON Review Rounds. The Contract Review Team will review and edit the contract during the Internal Review Round and may contact the supplier if needed. Once internal reviews are complete, the CM releases the contract for an external review with the supplier.

4

Contract has been returned from the supplier, with all terms and conditions either agreed upon or subject to further negotiations.

5

The Contract Manager reviews and finalizes all documents, including obtaining a Certificate of Insurance (COI). The Contract Manager then routes the contract through an automated approval workflow for all necessary approval and e-signature, creating a fully executed contract.

Contract Management Process Workflow: Step 1 Supplier Determination

Contract Manager checks within FINCON for an existing contract with a preferred supplier. If there is none, the Contract Manager starts the Contract process to request a new contract in FINCON.

Check the list of Preferred Suppliers to see if we already have a contract with an appropriate supplier for the products or services you need. The University has contracts with many suppliers. Don't re-invent the wheel!

If there is no preferred supplier proceed to Step 2.

Contract Management Process Workflow: Step 2 Engage Supplier

- ❑ **Pre-FINCON requirements:** To initiate a contract with a supplier, the University follows a process of entering the contract into FINCON. The following steps outline the process:
 - ❑ The Contract Manager should obtain all necessary documentation prior to commencing the contract in FINCON.
 - ❑ The Contract Manager and supplier should agree upon a written Scope of Services.
 - ❑ Contract Manager and supplier should agree upon using Fordham MSA or supplier Paper.
 - ❑ If using supplier paper, the supplier should provide the Statement of Work, and/or Quote in Word format, as they may require Contract editing, also known as "Redlining".
- ❑ Once the documents are received, the Contract Manager can proceed to Step 3.

Contract Management Process

Workflow: Step 3 Contract Creation

- ❑ Contract Manager will initiate the contract creation.
- ❑ Contract Manager will complete a Question Informational Page and upload the necessary documents into FinCon.
- ❑ After contract creation, the Contract Manager will start and manage the FINCON Review Rounds. Both Internally and Externally .
- ❑ The Contract Manager will also work with IT on an IT Questionnaire in keeping with Fordham due process.
- ❑ The Contract Review Team will review and edit the contract during the Internal Review Round and may contact the supplier if needed. Once internal reviews are complete, the Contract Manager releases the contract for an external review with the supplier.
- ❑ When the contract is returned after all parties have completed their reviews, the CM will assure a clean copy and then the Approval process can begin.

Contract Management Process

Workflow: Step 4 Submitting for Approval

- ❑ Following the return of the contract from the supplier, with all of the terms and conditions mutually agreed, and redlines have been reviewed and accepted, the Contract Manager will undertake several verification steps:
 - a. Confirm that the contract is a clean copy.
 - b. **Verify that the Certificate of Insurance (COI) coverage limits matches the agreed-upon limits as per Risk Management.**
 - c. Ensure all blanks (e.g., date, party names, contact information, etc.) are filled in.
 - d. Verify the presence of all exhibits/attachments in the final version.
- ❑ The Contract Manager will verify the accuracy of the signatory name for the supplier, submit it for approval, and upon approval by the FINCON team, the contract will be returned ready for e-signature. The CM is responsible for releasing it for signature.

Ongoing monitoring and review of all contracts are essential responsibilities of the contract manager.

Contract Management Process

Workflow: Step 5 Launching E-signature

- ❑ The Contract Manager (CM) will receive a notification through Jaggaer, indicating that the contract is pending signature.
- ❑ Upon receiving this email notification, the CM can access FINCON and initiate the eSignature process.
- ❑ Initiating the eSignature will redirect the CM to DocuSign, where placeholders must be included.
- ❑ Pursuant to University By-Laws, only a duly authorized Officer of the University can sign a contract on behalf of the University.
- ❑ It is crucial to confirm the accuracy of all information before launching the eSignature.

Contract Management Process Workflow Electronic Signatures

- ❑ Electronic signatures are acceptable and legally enforceable
- ❑ Fordham has partnered with DocuSign to provide the University community with a standard digital signature solution.
- ❑ Once the Contract Manager receives the notification to launch the e-signature they will be routed to DocuSign to insert the placeholders.
The supplier should always be the first to sign.

Contracting Do's and Don'ts

| Don't | Instead, Do |
|--|---|
| Don't send a clean or marked contract to FINCON review team before reading it to understand the open issues / questions in the draft | Instead, (1) read the contract first, (2) insert your questions and comments, noting items for business / Subject matter expert (SME)/ OLC review, and then (3) send to FINCON for review. |
| Don't expect the FINCON review team to take ownership of the contract or process | Instead, conduct a preliminary review of the contract before sending it to FINCON or SMEs for review. Check the parties, terms, formatting (no PDFs), schedules, exhibits that need to be attached to the contract; finalize business terms with the appropriate authorized person. |
| Don't expect the FINCON review team to make business edits to the contract | CM should have a complete scope of services negotiated and drafted prior to FINCON Contract request. FINCON review team will not be responsible for edits to the scope of services. |
| Don't tell your supplier that Fordham would be happy to use the supplier's standard agreement / T&Cs. | Instead, first, tell your supplier to use our form of agreement as it's Fordham policy. You should try to use Fordham's templates as much as possible for speed, efficiency and consistency. |
| If you don't know the right process / procedure, don't act first and ask for forgiveness later when something goes wrong. | Instead, know the rules, follow the rules, and ask questions if you aren't sure. |

Key Contracting Do's and Don'ts

| Don't | Instead, Do |
|--|---|
| Don't assume the FINCON review team is conservative in its approach. | Instead, please understand that the FINCON review team is here to protect Fordham's interests now and, in the future, including from "what if" hypotheticals. We work hard to strike a balance between enabling opportunity and minimizing unnecessary risk to you and the University community. |
| If you need a contract done quickly, don't submit for FINCON review prior to negotiation of material business terms or applicable SOW. | Instead, submit your contract for FINCON review (if needed) once key business terms (or SOWs) are negotiated or have been vetted. Prior to submitting to FINCON, you should review the supplier's comments to key business terms with the applicable campus stakeholder and insert your own comments. |
| Don't expect your contract is more important than others that came in before it. | Instead, please understand that the FINCON review team is constantly receiving numerous contract review requests, and some are very complicated, lengthy, risky, expensive, etc. FINCON review team has limited resources and we order and prioritize requests to address the University's contracting needs as quickly and efficiently as possible. With this in mind, plan ahead to give FINCON review team as much time as possible to review your contract. |
| Don't assume FINCON review team will be able to review your contract / issue immediately. | Instead, FINCON review team typically has to review the entire contract / circumstances to understand the "why" behind the supplier's changes or issues, which takes time. Any contract change or issue, no matter how seemingly insignificant, can have a big consequence. |
| Don't wait to contact FINCON review team with supplier issues only after you have <u>NO</u> other options. | Instead, please call FINCON review team early so that we can help structure practical solutions to business problems/contracts. Let us help you before it becomes a crisis! |
| Don't view the contract only through the lens of the present day. | Instead, look into the future and try to envision the impact of the contract down the road, including under various scenarios. And a contract could set the tone with a supplier for years to come! |



**THANK
YOU.**



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