

MEMORANDUM

TO: Cabinet and Other Authorized Contract Signers
On behalf of the University and Hospital

FROM: Florence W. Prioleau, Esq.
Sr. Vice President, General Counsel & Secretary to the Board

RE: New Procedures for Referring Contracts to OGC for Legal Sufficiency Review

DATE: August 7, 2019

This memorandum provides information on the revisions to the process for submitting contracts to the Office of General Counsel (OGC) for legal review. The changes are in response to the 2019 BDO Management Letter finding of “material weakness” in the current process that presents the possibility that unauthorized and improper changes can be made in contracts after legal review and before final execution. Under the new procedures, OGC will verify that only the changes recommended in the Legal Sufficiency Memorandum have been incorporated into the final executable contracts before they are signed on behalf of the University and the Hospital.

Please Note: These procedures apply to contracts forwarded to OGC by all Accountable Units in the University and the Hospital. References in this memorandum to the “University” shall include the Hospital unless otherwise noted.

This memorandum is intended to provide a quick reference to the new procedural steps you are expected to follow in submitting contracts to OGC for legal review. Many of the contracts initiated for, or on behalf of, an Accountable Unit are routed to OGC by the Office of Procurement and Contracting (“OPC”) after that office has conducted the necessary pre-contracting procurement review, such as ensuring a competitive price and vendor qualification, and placement of a requisition and/or purchase order as may be required. Please note that this memorandum does not change any requirements applicable to contracts with respect to those functions required to be performed by the OPC. Nor does this memorandum change any requirements applicable to the Unit’s accountability to the OPC. Please confer with the OPC if you have questions about its procedures.

For purposes of the memorandum the following definitions apply:

Accountable Unit- An individual, school, department, office or other unit that is recognized within the organizational structure of the University to have the authority to carry out certain



activities (including the authority to initiate contracts) for which that Unit is held responsible by and accountable to the University leadership.

Contract Signer or Authorized Signatory- Usually a Cabinet member whose position is designated for such authority under the University Contract Signing Authority Policy, or an employee who has been granted a written delegation of signature authority pursuant to a letter signed by the President of the University. Contracts binding the University can be signed only by authorized signatories holding such a delegation.

Contract Manager- The University employees whose duties include one or more functions related to negotiation of contracts, outreach to vendors or any of the myriad functions related to negotiating, implementing and managing active contracts on behalf of the University. The names of those employees were requested in a memorandum dated July 22, 2019 from OGC to “Cabinet and Other Authorized Signatories” for compilation of a list of such managers which is attached to this Memorandum ([Attachment 1](#)). If anyone wishes to make any changes in that list, please notify Ms. Brianna Hamilton whose contact information appears below.

Contracts Paralegal- The University has hired a contracts paralegal, Ms. Brianna Hamilton, who is primarily responsible for overseeing and ensuring compliance with the new procedures. Ms. Hamilton can be reached at (202) 806-2674 or via email at brianna.hamilton1@howard.edu.

Requester- The University employee (including a representative of the OPC) who transmits the contract to the OGC for legal review on behalf of the requesting Accountable Unit. This person also may be the Authorized Signatory or the Contract Manager, or another employee authorized to send the contract for review.

Vendor or Contractor- The non-University company or individual which or who is the other party to the contract and will be expected to supply the University with goods or services pursuant to an executed contract.

Purpose of the New Procedures

The new procedures for referring contracts to OGC for legal sufficiency review apply to ALL contracts--University and Hospital-- but these new procedures have one major purpose, which is for OGC to subject those contracts valued at \$100,000 or more to two levels of review. The initial review will result in the issuance of the Legal Sufficiency Memorandum (as is currently the process). No contract should be signed without a Legal Sufficiency Memorandum from the OGC. Upon receipt of a Legal Sufficiency Memorandum by the Contract Signer, it is incumbent upon such person and his/or her Contract Manager(s) to ensure that the advice contained in the Memorandum is followed.

The second level of review requires that OGC conduct a second review of the contract after all of the negotiated terms and conditions—business and legal terms—are incorporated into the contract, the contract is signed by the prospective Vendor, and **before** the Contract Signer executes the contract on behalf of the University. The purpose of the second review is to ensure that recommendations in the Legal Sufficiency Memorandum have been incorporated into the contract, and that no subsequent unauthorized changes have been made that would cause the contract to be legally insufficient. This second level of review will determine whether the final execution version of the contract complies with the legal advice offered by OGC in the Legal Sufficiency Memorandum. If a contract does not clear the second level of review, the Contract Signer cannot execute the contract on behalf of the University. The BDO auditors’ finding of “material weakness” would not be addressed if non-compliant contracts are being executed. It is the obligation of the Contract Signer, and his/her designated Contract Manager(s), to ensure that the contract is compliant with the Legal Sufficiency Memorandum before the Contract Signer signs the contract on behalf of the University.

Following the procedures and obligations set forth in this memorandum will also facilitate a more thorough and timely review process.

Step-By-Step Procedures

The step-by-step procedures are as follows:

Step 1: Submit the Contract Documents to OGC and to Risk Management as soon as the business terms, any scope of work, and other terms and conditions are agreed to with the prospective Vendor.

OGC will prepare an appropriate contract, but first we must receive all the necessary information from the Requester. It is the preference of OGC that the University-developed template contracts be used whenever possible which would expedite review by OGC; therefore, the Contract Signer or Contract Manager should express that preference up front in initial discussions with the prospective Vendor. However, if using one of the templates is not possible, and instead the Vendor offers its contract, the Vendor’s contract will be reviewed ONLY if a Microsoft WORD version is provided to OGC. Thus, the Requester must submit i) a Microsoft WORD version of the contract, and any attachments, ii) a fully completed and signed University Contract Submission Checklist, including the best estimate of contract value (Attachment 2 which is a current requirement), and iii) a fully completed and signed Term Sheet setting forth in detail the business terms the Authorized Signatory has agreed to with the Vendor, and certifying that he/she agrees with the business terms and the statement of work (if applicable) (collectively, the “Contract Documents”). Please note that the Term Sheet is a new requirement, a copy of which is attached (Attachment 3). All Contract Documents should be sent to: Contracts.OGC@howard.edu ATTN: Contacts

Paralegal. Please send a copy of the Contract Documents to Risk Management for its review at the same time you send them to OGC.

Step 2: Once the legal review is complete, the Contracts Paralegal will return the Legal Sufficiency Memorandum and OGC-approved version of the contract to the Requester (with a copy to the OPC) for signature by the Vendor.

If requested and if the Contracts Paralegal has been given contact information for the Vendor, the Contracts Paralegal can send the OGC-approved contract to the Vendor as a convenience for the Contract Signer, with a copy to the Contract Signer, Contract Manager and/or Requester, as appropriate. ***Please note however that it is the responsibility of the Contract Signer, Contract Manager or Requester to follow up with the Vendor to ensure that the Vendor signs the OGC-approved contract and returns it for execution on behalf of the University.***

In rare instances, the University may be required to sign the contract first, in which case the transmittal to the Vendor for signature will be accompanied by a letter (i) making it clear that any changes made unilaterally in the OGC-approved version of the contract by the Vendor without OGC consultation and approval are prohibited, and thus rejected by the University, and (ii) requiring the Vendor's execution within five business days. OGC will provide a letter for that purpose.

Step 3: Once the Vendor signs the contract, the Requester will deliver the Vendor-signed contract original to the OGC at Contracts.OGC@howard.edu ATTN: Contracts Paralegal.

Step 4: The OGC will conduct a compliance review of the returned Vendor-signed contract to ensure its compliance with the Legal Sufficiency Memorandum.

If unauthorized changes have been made in the contract, OGC will consider those changes in consultation with the Contract Signer, Requester and/or Contract Manager, as appropriate, to determine if the changes adversely affect the University to such an extent that the contract is made legally insufficient, in which case the response from OGC will state that the contract cannot be executed by the University and the reasons why so that the Contract Signer and/or Contract Manager can address the issues with the Vendor. Any contract that is rejected as non-compliant must be re-submitted to OGC for review, and clear that review, before being signed on behalf of the University.

Step 5: The OGC will submit a legally sufficient contract, along with a statement or other notation denoting that the Vendor-signed contract complies with the Legal Sufficiency Memorandum, to the Contract Signer (with a copy to OPC) for signature on behalf of the University, with instructions to send a copy of the fully-executed contract back to the Contracts Paralegal.

Step 6: The Contract Signer, or his or her designee, will return a copy of the fully executed contract to brianna.hamilton1@howard.edu in OGC for storage in the QuickTag document repository in the Controller's Office and will send a copy to OPC for storage in its GHX database system.

Effective Date

The procedures set forth in this Memorandum will apply to all contracts submitted to OGC on and after August 15, 2019.

Please feel free to contact OGC with any questions.

cc: Paul Monteiro, Chief of Staff to the President
Michael J. Masch, VP & CFO
Rawle Howard, AVP & Chief Procurement Officer
Brenda Douglas, Asst. VP for Risk Management
John Gloster, Sr. Counsel for Business Transactions & Intellectual Property
Lisa Jones Gentry, Sr. Counsel for Business Transactions and Technology
Mustafa Hersi, University Chief Compliance Officer, Office of Compliance
Josephine Harriott, Deputy Chief Compliance Officer for Health Sciences