

## Issues to Consider when Developing Contracts

1. What is the length of the contract (period of performance)?
2. What is the total amount of the contract?
3. Who can I contract with?
4. What is the rate of pay? What are the qualifications of the contractor?
5. What is the payment schedule?
6. Is travel involved?
7. What is the scope of work? Is a budget detail required?
8. What will you require as proof of completion of the contract terms?
9. If a subcontract/subaward, were there special terms in the primary agreement?
10. Is any special documentation required from the contractor?
11. Other issues that may need to be considered.

1. What is the length of the contract (period of performance)?

Each contract should specify the effective dates (start and end dates) of the contract. Contracts may be short-term, one year, or multi-year. In some cases, the start date is "upon execution" or "date of last signature." Start dates should NEVER be before SFA's president signs the contract.

If you know in advance that a contract will be multi-year, it is better to set up one contract for all years rather than a new contract each year. Special language can be added for annual renewal based on prior year performance and availability of funds.

For your convenience, you can enter a single Purchase Requisition to set up a multi-year Purchase Order with multiple payment lines. Funds for future years will not encumber unless and until the contract renews. Contact Purchasing for more details.

2. What is the total amount of the contract?

Be sure to specify the total amount of the contract award. In addition, be aware that if an individual's lifetime total of \$25,000 in contract funds from SFA will be met over the effective period of your contract, approval by the President and posting in Texas Marketplace and the Texas Register are required. This process takes a minimum of 45 days prior to the contract start date.

The \$25,000 limit is often difficult to determine because your contractor may have entered into contracts with other departments at SFA. Check with your contractor first, then with Purchasing to see how much a particular contractor has been paid to date. This will avoid potentially lengthy delays in the award of your contract. If your contractor has or will meet the \$25,000 threshold, contact General Counsel for assistance with the required paperwork.

Will your individual contract exceed \$100,000? If so, not only are there special requirements for awarding such a large contract, but approval is required from the SFA Board of Regents.

Refer to SFA's Purchasing Manual for general information, policies, and procedures for contracts and the bid process.

3. Who can I contract with?

*To determine whether an individual should be hired as a consultant or an employee, answer the questions in the IRS 20 Questions test.*

*Current SFA Employees* - SFA cannot contract with a current employee; however, SFA employees may perform services for grants and contracts in addition to their regular assignments as salary or (rarely) as additional compensation.

*Former SFA Employees* - For state-funded contracts, former SFA employees must be separated from SFA for at least twelve (12) months before they can enter into a contract with SFA. After they become eligible, if employed by SFA within the past 24 months, a disclosure must be made in the professional and consultant services contract.

For non-state funded contracts, if a former employee of SFA within the past 24 months, a disclosure must be made in the professional and consultant services contract.

*Newly Hired SFA Employees* - If an individual becomes an employee of SFA while under contract with SFA, the contract dates must be amended to end the contract before the effective date of hire. If the services of the individual are still needed, the individual may be eligible to receive payment as additional compensation (Policy E-9).

*Non-US Citizens* - SFA may contract with citizens of other countries; however, special forms may be required before payment can be made to these non-resident aliens. Some forms require 3-4 months to process so check with Human Resources as soon as possible.

It is the responsibility of non-US citizens to obtain, and provide to SFA, any required travel documents or other pertinent documentation (visas, passports, etc.). This information needs to be sent to Accounts Payable by the PI/PD. Accounts Payable will not pay a contract until they have copies of these documents. Also, if a foreign contractor is doing work while in the U.S., there is a tax form that needs to be completed.

4. What is the rate of pay? What are the qualifications of the contractor?

Rates of pay should be comparable to others performing similar services and should be reasonable. In some cases, rate of pay should be specified in the contract. In some cases, a vita may need to be attached to document the expertise of a given contractor. ORSP will be able to assist you with these issues.

5. What is the payment schedule?

Will you pay once, or will multiple payments be made on a designated timeline? Be sure to clearly outline when payments will be made and what you expect to receive in the way of products or activities before each payment is authorized. It is best if payments are tied to specific deliverables.

6. Is travel involved?

Will you pay the contractor for travel expenses in addition to a fee, or will travel be included as part of a single fee?

If travel expenses are to be paid separately, be sure to outline a reimbursement rate (contractor's, SFA's, or state of Texas travel rates) and specify if travel is in-state, out-of-state, or foreign and if per diem or actual expenses will be reimbursed. Refer to SFA's Travel Policy for additional information.

- If a contract fee states "excluding travel," travel expenses are not included in an individual's lifetime \$25,000 total.
- If travel is included as part of a single fee, it will be reported on the IRS form 1099-Misc.
- If travel is paid separately on a cost-reimbursement basis, it will not be included in the total amount reported to the IRS on form 1099-Misc.
- If reimbursement for meals is on a per diem basis, it is always reported to the IRS.
- To be reported to the IRS, total reimbursements in a calendar year must exceed \$600.

7. What is the scope of work? Is a budget detail required?

EVERY contract should outline what is expected from the contractor. In some cases, expectations and/or deliverables can be integrated into the body of the contract. For more extensive activities, a detailed scope of work is added as an appendix. It is best if you can tie payments to specific deliverables outlined in the scope of work.

If the contract is for development of a product for SFA that involves intellectual property (curriculum, Web site, software, etc.), a "work for hire" statement is required.

Subawards from cost-reimbursable awards also should be cost-reimbursable and will require a detailed budget. Subawards from fixed-price awards are generally also fixed-price.

Be sure to include contact information in contracts to SFA and in subcontracts / subawards from SFA (not required in professional/consulting services agreements). ORSP should be named as the contracting contact.

8. What will you require as proof of completion of the contract terms?

If you or the Prime Sponsor will require proof of completion, be sure that you specifically outline these in the contract. Clearly outline terms that ensure you get the products or services you require.

9. If a subcontract/subaward, were there special terms in the primary agreement?

If the contract is a subaward, contract certifications, provisions, and assurances must be passed down to the subcontractor. Also, the primary agreement (a grant, cooperative agreement, or contract) could impact how you develop the statement of work and if you need any special documentation. This is particularly important for federal and state awards. ORSP will help you to determine what you should include in your subcontract.

10. Is any special documentation required from the contractor?

Special documentation could include time sheets, effort forms, documentation of cost-share or matching requirements. Be sure to require that you actually receive any pertinent documentation before you approve contract payment.

***Other issues that may need to be considered include:***

- Is there a potential conflict of interest with the proposed contractor? (Policy A-11.5)
- Is there a vendor warrant hold on the contractor at the time that the contract is being executed? Is the individual on the Federal Excluded Parties List?

SFA cannot contract with individuals or companies that appear on the Texas Vendor Warrant Hold list at the time that the contract is executed or on the Federal Excluded Parties List. Vendor holds include defaulting on student loans. [It is the responsibility of the account holder to verify the vendor hold status.] At the present time, SFA's Purchasing department searches for federally excluded parties.

- Is the contractor a citizen of another country? If so, you will need to consult with Human Resources to see which type of visa may be required. In addition, special tax laws apply that impact the actual payment the contractor will receive.
- When developing proposals to commercial sponsors, issues concerning intellectual property (patent and copyright) provisions, publications restrictions, and confidentiality should be directed to General Counsel as early as possible.