

**Clark County, Wisconsin**  
**Title: Contract Policy**

<b>Title:</b> Contract Policy	<b>Effective Date: January 1, 2018</b>
	<b>Adoption/Revision Date: March 1, 2019</b>
<b>Custodian:</b> Administrative Coordinator	<b>Approving Body:</b> Clark County Board of Supervisors

**1. Authority**

- a. Wis. Stat. 59.01, 59.06, 59.52(6), 83.07, 83.08, 59.06(2), 59.52(9), 59.52(29), 66.0901, 66.0903, 59.52(30), 83.035, 83.04, 83.05, 83.16, 66.0301, 66.0303, 75.365, 175.46, 323.40, 19.59, 946.13, and 43 CFR 12.76.
- b. Clark County Boards, Committees, and Commissions Ordinance Section 2(a)(vi)

**2. References**

- a. Adopting Resolution/Ordinance/Motion: 6-2-19
- b. Other Resolution/Ordinance/Motion: Resolution 49-12-17
- c. Other Policies: Purchasing Policy and Record Retention Policy

**3. Purpose**

- a. To establish a program for the drafting, review, approval, administration, and retention of contracts.

**4. Scope**

- a. This policy applies to contracts associated with all Clark County purchases or sale of services, real estate, and goods. In the event any policy violates federal or state law or is held invalid by a court of competent jurisdiction, the affected policy shall be deemed to have been severed from this policy to the extent of its invalidity.

**5. Policy Overview**

- a. This policy defines a process for appropriate review and approval of contracts.
- b. This policy defines who has authority to approve and execute contracts.
- c. This policy defines who shall administer and retain contracts.
- d. This policy defines contract provisions to carefully review and incorporate into county contracts to minimize county liability.

**6. Policy Performance**

- a. All Clark County personnel and Clark County departments/offices shall ensure contracts are approved, executed, administered, and retained according to this policy.

**7. General**

- a. A contract involves an offer, acceptance, and consideration that is evidenced by a written or verbal agreement between Clark County and another entity or individual.
  - i. Clark County strongly prefers all contracts be put into writing to protect Clark County's interests. Some contracts must be in writing to be valid (ie transfer of rights in real property).
- b. When Clark County decides to enter into a contract, the transaction must be for a public purpose for the benefit of the general public and not for the furtherance of any private purpose or interest.
- c. When Clark County defines the scope of the contract and who the contractual parties will be, Clark County must exercise reasonable business judgment unless the law provides otherwise.
- d. Pursuant to Wis. Stat. 59.12(1), Clark County Board Chairperson has the authority to execute county contracts only as set forth in this policy.

**8. Contract Development**

- a. Department head or designee is responsible to determine, in consultation with County Attorney, when a written contract is required.
  - i. A written contract will be required when, because of the nature of the purchase and agreement provisions as well as the potential risk with such purchase, the contract is necessary to clarify the specific goods or services that will be provided to the county and limitations on liability is necessary for the county.
- b. Department head or designee is responsible to develop and establish specifications associated with goods or services. Such specifications shall meet the operational needs of the county as required by county policy and departmental need.
- c. Department head or designee, in consultation with County Attorney, is responsible to obtain or develop the contract.
- d. County Attorney will determine the standard county contract format. The county's standard contract is the preferred written contract unless contracts are provided by state or federal agencies for goods or services and include terms that are in the county's best interests. The county's standard contracts are available upon request and are subject to change per County Attorney's discretion.

**9. Contract Review**

- a. Department head or designee is responsible to ensure contracts are appropriately reviewed per county policy.
  - i. Department head or designee shall complete a preliminary review of contracts taking into consideration contract items and provisions as set forth in Section 13.
- b. Contracts for the following transactions shall be reviewed by County Attorney before the county enters into a written contract:
  - i. Purchase of services or goods of \$100,000 or more for a single transaction.
  - ii. Any purchase, sale, or transfer of any rights or interests in Clark County real property.
  - iii. Any purchase of legal services.
- c. Once a contract is reviewed by County Attorney and the content and form of the contract does not change for subsequent transactions, additional review by County Attorney is not required but strongly recommended.
- d. Department head or designee shall submit the following to the County Attorney via electronic means in an editable format (ie .doc, .docx, or .pdf (if available)) for contract review:
  - i. Proposed contract
  - ii. Request for proposal or bid documents
  - iii. Any other relevant documents or information requested by the County Attorney
- e. County Attorney's review of contracts is limited to the form of the contract in protecting the county's legal interests and minimizing potential liability.
  - i. The technical specifications of the goods or services are not within the scope of County Attorney's review.
- f. County Attorney's review shall be completed before a contract is presented to a governing body for review and approval (if required) unless time concerns exist for the transaction.
- g. County Attorney's review will be completed in light of available time and resources.
- h. County Attorney will work with department heads or designee on the contract review and will work with vendor directly upon request.
- i. Once County Attorney's review is complete, the contract, with changes and comments, will be provided to department head or designee for approval.

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- j. If a contract is not reviewed by County Attorney, the department head is responsible to ensure Clark County’s interests are protected with the transaction as set forth in this policy.

**10. Contract Approval**

- a. This section does not apply to the purchase of vehicles. Refer to the Clark County Purchasing Policy for guidance for such purchases.
- b. With the exception of transactions involving real property and the purchase of legal services, this section does not apply to purchases within the Highway Department. The Highway Department must follow applicable state or federal laws (ie Wis. Stat. 83).
- c. Department head or designee is responsible to ensure contracts are approved and signed per county policy.
  - i. If approval is required by a governing body, department head or designee is responsible to ensure the contract is appropriately addressed by the governing body.
  - ii. Signed contracts are acceptable in an electronic format unless the law requires otherwise. Electronic signatures are also acceptable.
  - iii. Contracts that have been approved by each party on separate copies are acceptable and shall be stored together.
- d. Approval, as set forth in this policy, means approval of the transaction as well as the contract itself, including, but not limited to, scope, term, and amount/means of payment.
- e. Contracts shall be approved and executed as follows unless state or federal law provide otherwise:

<b>Amount of Contract</b>	<b>Approval(s)/Signor</b>
< \$100,000	1. Department head (approval and signor)
\$100,000 or more	1) Department head (approval) 2) Oversight Committee (approval) 3) Board Chairperson or County Clerk (signor)

- i. Transactions for the sale, lease, and conveyance of an easement involving Clark County real property shall be approved by the Oversight Committee and the Board of Supervisors with the County Clerk signing any real property contracts.
- ii. All transactions involving outside legal services shall be approved and signed by County Attorney or Corporation Counsel.
- f. For change orders or amendments to a written contract, the department head or designee shall obtain the necessary review/approval and follow the same process as with the initial written contract.
- g. If the department head has to complete an emergency purchase that does not allow for the approval as set forth in this section, the department head shall have such purchase reviewed at the next scheduled meeting of the governing body (if required considering the amount of the contract at issue).
- h. Unless law provides otherwise, all contracts must be signed by the individuals in positions as set forth in this section in order for the county to be bound by the terms of the agreement.

**11. Contract Administration**

- a. Department head or designee is responsible to administer and monitor vendor’s compliance with the terms of the contract.
  - i. Department head or designee shall retain any documentation associated with contract execution and document any issues that may arise.
- b. If department head or designee is concerned the vendor is not providing goods or services per the contract, County Attorney may be contacted for assistance.

12. Contract Retention

- a. All written contracts shall be retained by the department head who is responsible for administration of the contract.
- b. The hardcopies or electronic copies of the contract with associated documentation shall be retained.
- c. All contracts shall be retained for periods as stated in Clark County Record Retention policy.

13. Contract Considerations

- a. The following contract components shall be considered by department heads or designee and County Attorney as part of contract review and approval:

Topic	Question/Considerations
<b>Completeness</b>	Is the contract complete? Are all the pages, exhibits, attachments, etc. accounted for, referred to, and attached to the contract? Are all the necessary terms contained in the contract? If the contract is the result of an award from an RFP or RFB, are all of the required terms set forth in the RFP or RFB also contained in the contract?
<b>Parties</b>	Make sure the parties are properly identified. Are all references to the parties, including references in the first paragraph of the contract, the abbreviations or defined terms referring to the parties, and the signature blocks, complete, accurate and consistent? Make sure there is a point of contact for each party (name, mailing address, email, telephone & fax).
<b>Signature Authority</b>	Make sure the person signing on behalf of Clark County has authority to sign the contract. Signing a contract without appropriate authority could lead to personal liability for performance of the contract. The contract should state that the person signing on behalf of the other party has authority to sign as its representative.
<b>Subject Matter &amp; Performance</b>	Does the contract clearly state the goods and/or services to be provided to or by Clark County? The subject matter of the agreement, whether it involves the purchase of goods and services, must be clear and unambiguous as to what is expected and specific in its description of who does <b>what, when, where and how</b> . Any addenda further describing the subject matter of the contract must be labeled properly, identified clearly and consistently throughout, and attached to the contract. What is the mechanism for assurance that the products/services are delivered? Can the department head adequately monitor under the terms of the contract?
<b>Effective Date</b>	Does the contract clearly state the beginning or effective date (month, day, year)?
<b>Termination Provisions</b>	Does the contract clearly state the ending or expiration date (month, day, year)? How is the right to terminate the Agreement prior to the ending or expiration date expressed (e.g., at any time, for any reason, etc., or ‘in the event of’ clause)? Are the circumstances allowing termination clearly identified? Does Clark County have flexibility to terminate the contract in the event it becomes necessary or appropriate? If the other party has the right to terminate does the contract require them to provide sufficient advance notice to Clark County? Do you want to include a clause providing that the agreement’s termination does not affect the rights and obligations of the part that accrued before termination? If yes, make sure that the rights

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	and obligations specified are ones that you want to exist beyond the termination of the contract. If terminated, what is the monetary penalty for Clark County?
<b>Renewal/Extension of Contract</b>	Do you want the agreement to be renewed or extended automatically? If renewal/extension is automatic, does the agreement provide for renewal or extension unless notice of non-renewal/extension is given or some particular non-renewal/extension action is taken by a specific date? If renewal/extension is not automatic, it should be accomplished only with the written mutual consent of both parties.
<b>Payment Terms</b>	Does the contract clearly and accurately state the maximum amount that Clark County will be obligated to pay? Does the contract clearly establish the place, time and method of payment?
<b>Equipment Purchases</b>	Has the purchasing policy been followed? Are we getting what we wanted to purchase?
<b>Services</b>	What is the scope of work to be done? Is it measurable per the contract language?
<b>Limitations &amp; Restrictions</b>	Are there copyright provisions that limit the Clark County's use of the purchased services/product? Are there "ownership of product" issues? For example, in a contract relating to a building project, Clark County would be paying for and getting a design that will remain the property of Clark County and NOT the property of the architects.
<b>Representations and Warranties</b>	What level of service does other party warrant? Are goods new that come with warranties? If so, how long? Does the other party warrant that they clearly know Clark County's specifications? Does the other party warrant they will comply with the law?
<b>Insurance Issues</b>	Does the contract require Clark County to carry any kind or amount of insurance? Should the other party to the contract carry insurance to protect Clark County's interests?
<b>Assignability Clause</b>	Does contract provide that the other party cannot assign any rights under the contract to another party without the consent of Clark County?
<b>Governing Law, Venue &amp; Jurisdiction</b>	If a company wants to do business in Wisconsin, particularly a Wisconsin county, we should expect that company to agree to use the laws of the State of Wisconsin and Wisconsin courts to resolve disagreements. If the governing law and venue are a state other than Wisconsin, the County would have to hire outside counsel if there is a dispute. The contract should contain language which makes Wisconsin law apply and requiring claims to be brought in Wisconsin with the appropriate venue being Clark County. If the other party refuses to agree to this, suggest striking the entire clause. If the other party refuses to agree to Wisconsin law, or striking the clause altogether, consult with the County Attorney Office.
<b>Confidentiality</b>	Is there adequate confidentiality of information provisions if access is allowed to confidential material (i.e. DHS, Health Care Center, employee records)? Is a HIPAA Business Associate Agreement required? The availability of information concerning the contract is subject to disclosure under the Wisconsin public records statute. The existence of the agreement itself can never be confidential. Any confidentiality provisions should be tailored to reflect this requirement and drafted narrowly to protect any proprietary interests or trade secrets without running afoul of the public

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	records statute.
<b>Independent Contractors</b>	The contract must be clear that this is an independent contractor relationship with all the magic words. Consult with the County Attorney Office for standard contract language to include.
<b>Breach &amp; Remedies</b>	Are events that constitute a default/material breach in performance listed? If they are, they should be clear and specific and the consequences on the rights and obligations of the parties identified. Is there a specific method for providing notice of default/breach? Is there an opportunity to cure? What are the specifics? What time period is allowed for cure?
<b>Hold Harmless &amp; Indemnification Clauses</b>	Does the contract contain liability limitations or liability shifting mechanisms and what is the impact on the County?
<b>Waiver of Damages</b>	Does the contract require Clark County to waive damages? If so, what type of damages? What is the risk in Clark County waiving such damages?
<b>Unacceptable Clauses</b> (these are clauses that are unacceptable and must be stricken from proposed contracts)	<p><u>Requiring Payment of Costs and Attorney Fees to Prevailing Party</u>  Strike any clause which suggests that the prevailing party shall be entitled to recover court costs and attorney’s fees in the event of litigation. The laws that apply to the type any lawsuit that may be brought will determine whether a party can recover attorney’s fees and costs. If the other party refuses to strike this clause, consult with the County Attorney Office.</p> <p><u>Requiring Binding Arbitration</u>  Strike any clause requiring the parties to use binding arbitration if a dispute arises. Clark County will not agree to binding arbitration. Non-binding arbitration clauses may be permissible. If you have a non-binding arbitration clause or cannot get the other party to agree to strike a binding arbitration clause, consult with the County Attorney Office.</p> <p><u>Hold Harmless and/or Indemnity Clause That Burden Clark County</u>  Strike out any hold harmless or indemnity clause that requires the County to accept liability for the negligence of anyone other than a County official or employee.</p>
<b>Lack of Appropriation</b>	Clark County should always reserve the right to cancel any contract in whole or in part without penalty due to non-appropriation of funds or for failure of the contractor to comply with terms.

<b>Revision History</b>		
<b>Adoption/Revision Date</b>	<b>Overview of Adoption/Revision</b>	<b>Adoption/Revision Reference</b>
December 21, 2017	New Policy	Resolution 49-12-17
March 1, 2019	All land transactions require Board approval; removed Attachment A; and review/approval of legal services by Corporation Counsel or County Attorney	Resolution 6-2-19