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M E M O R A N D U M

TO: State Institutions of Higher Learning

FROM: Katie Lusk, Special Assistant Attorney General
          Universities Division

DATE: November 10, 2011

RE: State Contract Checklist

The following is the State Contract Checklist used by the Attorney General's Office, Universities Division when reviewing contracts submitted by the State Institutions of Higher Learning:

1. There must be consideration present and a clear contractual purpose.

2. The contract should include a period of performance or contract term.

3. The parties to the contract should be clearly identified and correctly named.

4. All contracting parties must be licensed to do business within the State of Mississippi and in good standing with the Secretary of State's Office. Note certain exceptions.

5. There should be a termination clause providing for the specific circumstances under which either party may terminate the contract.

6. The contract should provide for events of default of all parties. Notification of default and a method to cure should also be included.

7. There should be signature lines for execution by the proper individuals who have the legal authority to represent and legally bind the parties to the contract.

8. All provisions should be clear and unambiguous, leaving no room for multiple interpretations of the parties' obligations under the contract.

9. All exhibits and attachments referenced in the contract must be attached.

10. The contract should clearly specify the required amount, time and manner of payment. The provision should comply with Miss. Code Ann. § 31-7-301, et. seq. that provides for payment within forty-five (45) days of the date the invoice is received.

11. The university cannot contractually agree to pre-pay in advance for goods and services.

12. The contract should include a non-availability of funds clause that provides for termination by the university in the event the funds appropriated by the legislature become unavailable.

13. Clauses that require the university to indemnify or hold harmless the other party should be deleted.

14. Clauses that limit the other party's liability to the university should be deleted. The exception is an expressed limitation for breach of implied warranties of merchantability and fitness for a particular purpose concerning computer hardware, computer software and services performed on computer hardware and software, which are sold between merchants.

15. If the contract is for computer services, etc., it should contain the following language:

    "Upon expiration or earlier termination of the Agreement, Contractor agrees that University may elect to have Contractor migrate the data to a University computer at no cost to University, or for Contractor to provide the data to University in another form which is acceptable to University at no cost to University."

16. Arbitration clauses should be deleted.

17. Most contracts should include a "Force Majeure" or "Acts of God" provision.

18. If the contract contains a confidentiality clause, it should be modified to make the clause enforceable to the extent permitted by the Miss. Public Records Act.

19. The contract should be governed by the laws of the State of Mississippi and venue cannot be agreed to outside of the State of Mississippi.

20. The contract should contain a clause stating that the contract contains the entire agreement of the parties.

21. The contract should specify that the contract can only be amended by written agreement of the parties.

22. The contract should provide specific steps for providing notice to the parties.

23. All requirements that the university purchase insurance should be deleted.

24. Delete any provision requiring the university to be liable for payment of taxes. State agencies are tax exempt.

25. Delete any waiver of defenses or immunities.

26. Any provision limiting the time frame in which the university may bring suit should be deleted. The contract may not change the statute of limitations period. The contract may not waive the university's right to a jury trial.

27. Any provision giving the other party exclusive control over litigation must be deleted.

28. Delete provisions requiring the university to pay any attorney's fees.

29. All service contracts must contain an E-Verify clause.

30. Any provision prohibiting or penalizing the university from hiring an employee who works for the contracting entity should be deleted.

31. The contract should not allow for assignment or subcontracting without written consent.

32. The contract should contain a severability clause stating that if any provision is found to be invalid, etc., the remaining provisions shall continue.

33. The contract should contain a provision which indicates that a contract shall comply with all applicable laws, ordinances, rules and regulations, etc.