

# INTERNAL CONTROL GUIDE: LEGAL AND REGULATORY

## I. Contracts

**Description of Risk:** The Institute may incur unintended financial obligation, legal liability, or negative public opinion if unauthorized employees act as agents of the Institute in contracting with third parties. Also, employees are personally liable because they unknowingly contract in the name of the Institute.

**Criteria:** According to the Institute's "Contracts" policy, [Contract Policy Link](#), very few people within the Georgia Tech community are authorized to sign contracts on behalf of the University. Those authorized to sign contracts include the President; the Vice President for Finance & Administration; the Vice President for Research; Purchasing Agents; and certain staff of the Office of Contract Administration.

*The authority to sign a purchase order does NOT give a member of the Georgia Tech community the authority to sign a contract. No member of the faculty or staff may sign a contract without specific written authorization from the President to do so. State law provides that persons entering into contracts without complying with all applicable state laws and regulations become personally liable for any amounts due under those contracts.*

**Auditor's Overview:** The purpose of reviewing this area is to promote awareness of the issue of restrictions on signing contracts on behalf of Georgia Tech. A contract signed by an unauthorized person, while possibly binding on Georgia Tech, may also create a legal and/or financial obligation for that person. In addition, the Institute may suffer legal entanglements or less than optimal public relations.

### **Best Practices:**

1. Maintain any written authorization from the President to contract that you may have on file in your location
2. Ensure that all faculty and staff are made aware of the restrictions regarding contracting on behalf of the Institute
3. Reinforce this message through periodic discussion of the topic at faculty and staff meetings
4. Seek advice from authoritative sources anytime you are uncertain about a potential contracting situation

### **Process:**

#### COMMUNICATE WITH EVERYONE

It is a good practice to communicate this issue periodically during faculty and staff meetings. If this is not practical, the issue could be communicated via email, hard copy memo, or postings on bulletin boards, whatever means works most efficiently for your mode of operation.

## COMMUNICATE WITH PROCUREMENT SERVICES OR OTHER AUTHORITATIVE SOURCES YOU FEEL ARE NEEDED

If you have any doubt about your authority to make a contractual commitment, contact Procurement Services or another authoritative body. There is strength in numbers and these organizations are meant to be a resource to you so that you do not have to be without advice when dealing with contractual situations.

### **Related Issues:**

The term “contract” may include a letter, document, memo of understanding, email, or other communication that gives the impression to a third party that the Institute is obligating itself in any manner. This activity may or may not involve compensation. It may also include employees bypassing Institute purchasing functions in ordering equipment or supplies for their unit.

## **II. Gifts**

**Description of Risk:** The risk is that accepting gifts could give the appearance of improper preference or treatment in the conduct of normal business activities. If any laws were broken, the individuals involved could be criminally liable and this occurrence could bring significant adverse publicity for the Institute.

**Criteria:** Georgia Board of Regents’ Personnel Manual, Section 8.2.13, Gratuities contains the following: An employee of the University System or any other person on his/her behalf, is prohibited from knowingly accepting, directly or indirectly, a gift from any vendor or lobbyist as those terms are defined in Georgia statutes (O.C.G.A. 21-5-70(6) and 45-1-6(a)(5)b).

The Governor of Georgia issued an Executive Order dated January 13, 2003 that, in essence, precluded state employees from accepting gifts exceeding a value of \$25.

**Auditor’s Overview:** The purpose of reviewing this area is to promote awareness of the issue of restrictions on accepting personal gifts. A personal gift accepted by a Georgia Tech employee may create the appearance of improper favoritism towards the gifting party. In addition, the Institute may suffer legal repercussions and/or less than optimal public relations.

### **Best Practices:**

1. Ensure that all faculty and staff are made aware of the restrictions regarding accepting personal gifts from potential vendors to the Institute, as sited in the Governor’s memo and the Board of Regents policy
2. Reinforce this message through periodic discussion of the topic at faculty and staff meetings

### **Process:**

## COMMUNICATE WITH EVERYONE

It is a good practice to communicate this issue periodically during faculty and staff meetings. If this is not practical, the issue could be communicated via email, hard copy memo, included in the faculty/staff handbook, posted to the web page, or posted on physical bulletin boards; whatever means works most efficiently for your mode of operation.

## COMMUNICATE WITH LEGAL AFFAIRS OR OTHER AUTHORITATIVE SOURCES OF INFORMATION

If you face any situation in which you are uncertain as to the nature of events or how to proceed, contact Legal Affairs or any other source you feel would be appropriate.

## BE A RESPONSIBLE GEORGIA TECH EMPLOYEE

All Georgia Tech employees should be familiar with the rules regarding the acceptance of gifts. Adhering to these rules is the responsible professional legal course of action.

### **Related Issues:**

The Office of the Vice President for Development handles the receiving of gifts to the Institute. These Institute employees are trained and experienced in appropriate policies and procedures concerning the transfer of assets to Georgia Tech. Gifts to individual Georgia Tech employees from vendors, potential vendors, or others, who may benefit from a decision by the gift recipient, may create the appearance of impropriety and should be handled with care. In a situation where giving and receiving of gifts is culturally the norm, seek the advice of the Office of the Vice President for Development as to how to approach the situation.

## III. Open Records Act

**Description of Risk:** A violation of ORA requirements could result in fines and penalties for the Institute and the record custodian, including criminal liability, as well as adverse publicity for the Institute.

**Criteria:** As a public institution, Georgia Tech is subject to the Open Record Act, O.C.G.A. 50-18-70 et seq. The law requires that Georgia Tech make available for public inspection public documents within three business days of receiving a request. The Institute's policy regarding ORA is available at <http://www.policylibrary.gatech.edu/open-records-act-policy>

Employees receiving ORA requests are instructed to contact their supervisor and Office of Legal Affairs without delay, for assistance in a correct response. Further information is available through Office of Legal Affairs web site <http://www.legalaffairs.gatech.edu> under the subject "topics". Open records request details should not be released without the approval of the Office of Legal Affairs.

**Auditor's Overview:** The purpose of reviewing this area is to promote awareness on the issue of the importance of compliance with the Open Records Act. Proper and timely responses to ORA requests ensure legal compliance and responsible stewardship of public information.

### **Best Practices:**

1. Ensure that the school or business unit has an explicit plan for responding to ORA requests
2. Ensure that all faculty and staff are informed and periodically reminded of the rules and regulations regarding timely and accurate responses to ORA requests

**Process:**

**COMMUNICATE WITH EVERYONE**

It is a good practice to communicate this issue at any orientation your unit may have, and periodically during faculty and staff meetings. If this is not practical, the issue could be communicated via email, hard copy memo, included in the faculty/staff handbook, posted on the web page or on physical bulletin boards, whatever means works most efficiently for your mode of operation.

**KNOW PROPER ORDER OF RESPONSE**

These are:

- Notify your immediate supervisor that you have received an ORA request
- Notify the Office of Legal Affairs that you have received an ORA request
- Begin collecting the materials that have been requested
- Ensure that you have authorization for release from your supervisor or the Office of Legal Affairs prior to releasing the material