

Library

ADMINISTRATIVE REGULATIONS

TAB: Administration

DOCUMENT NUMBER: ARM 50-30-25

SECTION: Finance

SUBJECT: CONTRACTS

SUMMARY

This regulation describes the source of the Library Board's authority for entering into contracts independently, its intent to follow County procedures, where it does and does not delegate its authority to enter into contracts, adherence to the Kansas Cash Basis Law, and the reporting on contracts to be made to the Board. This regulation covers all contracts adopted by the Library Board pursuant to its governing authority under K.S.A. 12-1223. Agreements between the Johnson County Library and public agencies, not-for-profit organizations and for-profit businesses on co-sponsorship of programs and events (Program Agreements) are covered by ARM 10-50-85, "Program Agreements with Public Agencies, Not-for-Profit Organizations, and For-Profit Businesses." All Johnson County Library contracts are subject to the Kansas Cash Basis Law and the Kansas Tort Claims Act.

Effective Date: Reaffirmed
Reviewed

March 9, 2017
March 9, 2017

POLICY;
CONTRACTS
COVERED BY THIS
REGULATION

a. The power to contractually bind the Johnson County Library resides solely in the Board of Directors of the Johnson County Library, pursuant to K.S.A. 12-1223, or in the County Librarian in those instances where the Library Board has specifically delegated the power to the County Librarian. The Board of County Commissioners does not have statutory authority to contractually bind the Johnson County Library. K.S.A. 12-1223 provides, "In Johnson county, the library board shall constitute a body corporate and politic possessing the usual powers of a corporation for public purposes, . . . and under such name may contract . . ." This regulation covers all of the contracts into which the library enters pursuant to its authority as a governing body under K.S.A. 12-1223 (Governance Contracts), with the exception of the Program Agreements covered by ARM 10-50-85. Governance Contracts include but are not necessarily limited to contracts for construction and renovation of library facilities; all contracts for consulting and professional services; all contracts with vendors and for the acquisition of goods; all leases and contracts pertaining in any way to library real estate, including easement and cross-parking agreements; all contracts relating to the acquisition of books and other library materials; and all contracts relating to the acquisition and maintenance of library technology and

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CONTRACTS FOR
ACQUISITION OF
MATERIALS

equipment. All of the contracts described in this regulation are Governance Contracts.

b. The Library Board of Directors has the complete authority, pursuant to K.S.A.12-1225(c), to enter into contracts for the acquisition of "books, magazines, papers, printed materials, slides, pictures, films, projection equipment, phonograph records and other material and equipment deemed necessary by the Board for the maintenance and extension of modern library service."

CONTRACTS FOR
CONSULTING,
ETC.

c. The Library Board of Directors also has the complete authority to enter into contracts for consulting, professional, and other services pursuant to K.S.A. 12-1223.

CONTRACTS FOR
CONSTRUCTION

d. The Library Board of Directors has complete authority to award bids and enter into contracts for construction and renovation for specific projects when such specific projects have been authorized and funded by the Board of County Commissioners.

CONTRACTS FOR
THE ACQUISITION
OR DISPOSITION
OF REAL ESTATE;
ALL OTHER
CONTRACTS

e. The Library Board of Directors has the authority to enter into contracts for the acquisition or disposition of real estate, subject to the approval of the Board of County Commissioners of Johnson County. The Library Board, as a quasi-municipal corporation under K.S.A. 12-1223, has the complete authority to enter into other contracts in accordance with this regulation.

DELEGATION TO
COUNTY
LIBRARIAN

Library Materials

f. Subject to the review and approval of the form of the contract by Library Board Counsel, the County Librarian is authorized to enter into contracts for library materials in cases where the Library Board's intent is provided in the Collection Development Policy and annual operating budget. The Library Board shall approve contracts for the acquisition of library materials of \$100,000 or more.

Other Areas

g. Subject to the review and approval of the form of the contract by Library Board Counsel, the County Librarian is authorized to enter into all other contracts up to \$99,999, where funds and the Library Board's intent are provided in the Johnson County Library's annual budget, except as noted below.

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PURCHASING
DEPT.
PROCEDURES

h. Johnson County Purchasing Department regulations are strictly followed for all purchasing procedures, except as noted in (b) above. Purchases under \$10,000 require no competitive quotations. Purchases of \$10,000-\$49,999 for which there is more than one source, require informal competitive quotations. Expenditures above \$50,000 require formal, advertised competition (RFP's or RFB's); award can be made to any or all of the respondents to an RFP. Expenditures resulting from an RFP or RFB for amounts of \$50,000 to \$99,999 may be approved by the County Librarian in consultation with the Purchasing Director. The Library Board must approve all contracts arising from an RFP or RFB and other purchases amounting to \$100,000 or more.

Change Orders

i) Change orders for construction projects and construction-related professional service contracts not specifically described in section ii may be approved by the County Librarian.

ii) The following types of change orders must be approved by the Library Board: change orders which equal or exceed \$100,000; for projects with a base contract amount of \$500,000 or less, change orders which equal or exceed \$50,000; for projects with a base contract amount of \$100,000 or less, change orders which equal or exceed \$10,000 and cause the total contract to exceed \$100,000; for projects with a base contract amount between \$100,000 and \$500,000, change orders which individually or in combination with others exceed \$50,000; for projects with a base contract amount between \$500,000 and \$1,000,000, change orders which individually or in combination with others exceed \$100,000; for projects with a base contract amount of \$1,000,000 or more, any change order which individually or in combination with others exceeds 10% of the base contract amount; and any change order which causes a project to exceed its project authorization or scope.

BOARD APPROVAL

i. All contracts for consulting and professional services that amount to \$100,000 or more must receive the approval of the Library Board. Contracts for consulting and professional services that amount to less than \$50,000 may be negotiated

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and approved by the County Librarian without competitive quotations. Contracts for consulting and professional services for \$50,000 or more require at least three competitive quotations and may, at the direction of the County Librarian or Library Board, be made subject to a formal competitive quotation or RFP process. However, nothing in these regulations shall require the approval of such contracts strictly on the basis of the low dollar bid. Library board counsel shall review and approve the form of all contracts for professional and consulting services.

BOARD APPROVAL

j. The Library Board must approve all contracts not delegated to the County Librarian in this regulation.

REPORTS

k. The Library Board will receive monthly a summary of all contracts entered into by the Library and all change orders approved by the County Librarian during the previous month.

CASH BASIS LAW

l. The Johnson County Library is subject to the terms of the act setting out the Kansas Cash Basis Law, K.S.A. 10-1101, et seq. The law's statutory scheme requires the Johnson County Library to contract all indebtedness in conformity with the act. Except where the act provides a specific exception, it is illegal for the Johnson County Library to create any indebtedness "in excess of the amount of funds actually on hand in the treasury of the library at the time for such purpose." (K.S.A. 10-1112). All library contracts that are lease-purchase agreements or installment sale agreements that extend over a period in excess of 12 months shall contain the following language:

The Johnson County Library is obligated under this agreement only to pay periodic payments or monthly installments under the agreement as may lawfully be made from (a) funds budgeted and appropriated for that purpose during the library's current budget year or (b) funds made available from any lawfully operated revenue producing source. (K.S.A. 10-1116b). The Johnson County Library has the right to not renew said agreement by an act of non-appropriation at the end of each fiscal year.

In the event that the proposed agreement is for a term exceeding the current fiscal year of the library, the

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AUTOMATIC
RENEWAL
CLAUSES IN
CONTRACTS

agreement shall be subject to the following: (1) The amount of capital cost required to purchase the item if paid for in cash as of the end of the fiscal year, (2) the annual average effective interest cost (simple interest payable in arrears), and (3) the amount included in the payments for service, maintenance, insurance or other charges exclusive of the capital cost and interest cost. (K.S.A. 10-1116c). The principle and interest portions of each periodic lease payment shall be denoted.

PROHIBITED

m. The Library Board or the County Librarian must approve all library contracts in accordance with this regulation. No library contracts shall contain provisions that “automatically renew” the term of the contract without specific new approval by the Library Board or the County Librarian pursuant to the terms of this regulation. Any automatic contract term renewal provisions in library contracts not stricken or deleted by mistake shall be null and void under the terms of this regulation.

MANDATORY
VENUE CLAUSES
PROHIBITED

n. The library shall retain the right, under all of the contracts to which it is a party, to bring actions on claims or disputes under those contracts in the state courts of Johnson County, Kansas or the federal courts of the state of Kansas. No library contracts shall contain provisions that mandate placement of venue of disputes or claims under the contracts in some state other than Kansas. In the event that any such “mandatory venue” provision is not stricken or deleted by mistake, such provision shall be deemed null and void under the terms of this regulation.

CONTRACTS
SUBJECT TO
KANSAS TORT
CLAIMS ACT;
INDEMNIFICATION
CLAUSES
SUBJECT TO
LIMITATIONS

o. Contracts to which the Library is a party are subject to the Kansas Tort Claims Act, K.S.A. 75-6101, et seq. The Kansas Tort Claims Act limits liability for the Library and other Kansas governmental entities. The law caps the amount of damages and grants immunity to the Library and its employees and agents for a variety of tort actions.

Nothing in any contract shall be construed as a waiver by the Library of the immunities and liability limitations afforded to it by the Kansas Tort Claims Act. Indemnification agreements in Library contracts are limited by and made subject to the terms of the Kansas Tort Claims Act. Nothing in any

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CERTIFICATION BY
LIBRARY BOARD
COUNSEL;
INCORPORATION
OF STANDARD
LIBRARY
CONTRACT
ADDENDUM IN
LIBRARY
AGREEMENTS

CONTRACTS ARE
SUBJECT TO AND
LIMITED BY THE
KANSAS CASH
BASIS LAW AND
THE KANSAS TORT
CLAIMS ACT;
NOTICE

indemnification agreement in a Library contract shall be construed to set aside the immunities and liability limitations of the Kansas Tort Claims Act or to expand the Library's liability under that Act.

p. Prior to execution by the Library of a contract, Library Board Counsel shall certify in writing that he has reviewed the contract, approves the same as to form, and that it may be approved and executed in accordance with this regulation. The Standard Library Contract Addendum set forth in the Appendix to this regulation shall be made a part of Library contracts if Library Board Counsel so directs in his certification. The Standard Library Contract Addendum should be used with construction contracts unless Library Board Counsel directs in his certification that it need not be used.

q. All contracts to which the Library is a party shall be subject to and limited by the Kansas Cash Basis Law and the Kansas Tort Claims Act, and amendments thereto. The Library makes the provisions of ARM 50-30-25 and other administrative regulations available to the public and to contractors and vendors on its website.

March 9, 2017

ARM 50-30-25 End