

Pass-Through and Third-Party Contracts

Ken Wallis, Chief Legal Advisor to Governor Riley, recently distributed a memorandum concerned with ensuring compliance with Section 29-2-41, *Code of Alabama*. This provision states that “[e]ach state department entering into a contract to be paid out of appropriated funds, federal or state, on a state warrant which is notified by the committee is required to submit to the committee any proposed contract for personal or professional services.” The “committee” referred to here is the Contract Review Permanent Legislative Oversight Committee (CRPLOC). As a public corporation, the University is not required to submit contracts for personal or professional services to the CRPLOC based upon Section 29-2-41.3, which excludes “[c]ontracts entered into by public corporations and authorities” from the requirements of Section 29-2-41. As a result, the memorandum is not directly addressed to the University.

However, this memorandum does potentially impact the University because of the way that certain state government departments, which are required by Section 29-2-1 to submit proposed personal or professional services contracts for CRPLOC review, have managed to circumvent their obligation. The departments have done this by entering into contracts with colleges and universities (which are excepted from the CRPLOC review requirement) with a provision requiring the college or university in performing the contract to obtain personal or professional services from a specific individual or entity outside of the institution. The end result is that the department effectively contracts for personal or professional services with the individual or entity of its choice without having that contract submitted to the CRPLOC. Such contracts are referred to in the attached memorandum from Mr. Wallis as “pass through” or “third party” contracts.

The Wallis memorandum states that any “pass through” or “third party” contract for personal or professional services made by a college or university with an outside individual or entity is not to be treated as a contract exempt from the CRPLOC review requirement. The UAH Office of Counsel has advised that it would be appropriate for the University to request written verification of CRPLOC review and approval from any state department proposing to enter into a “pass through” or “third party” contract with the University. Absent such verification, the University should not enter into such a contract.