

CONTRACTS:

GUIDELINES AND PROCEDURES

Prepared by Legal Services



UNIVERSITY OF
KWAZULU-NATALTM
INYUVESI
YAKWAZULU-NATALI

1. PURPOSE

- A. To educate the University Community on the following aspects:
1. **GUIDELINES** relating to contracts and the **PROCEDURAL REQUIREMENTS** of UKZN;
 2. That UKZN, a higher education institution (ito Higher Education Act) is a **JURISTIC ENTITY** capable of suing and being sued;
 3. That all Colleges, Departments and Student Bodies are part of the UKZN structure and are **NOT SEPARATE LEGAL ENTITIES**;
 4. The designated **SIGNATORIES** that have the necessary authority to execute contracts obo UKZN;
- B. To introduce **LEGAL SERVICES** to the University Community.

2. WHAT IS A CONTRACT?

A contract may be defined as a binding agreement between 2 or more persons that is enforceable by law.

ELEMENTS OF BINDING CONTRACT:

A. LEGAL CAPACITY

Take note that if an employee of UKZN signs a contract on behalf of UKZN without having the authority or legal capacity to do so, s/he will be personally liable to any third party.

B. OFFER AND ACCEPTANCE

Take note that UKZN requires that all contracts must be in writing.

C. MEETING OF THE MINDS (consensus)

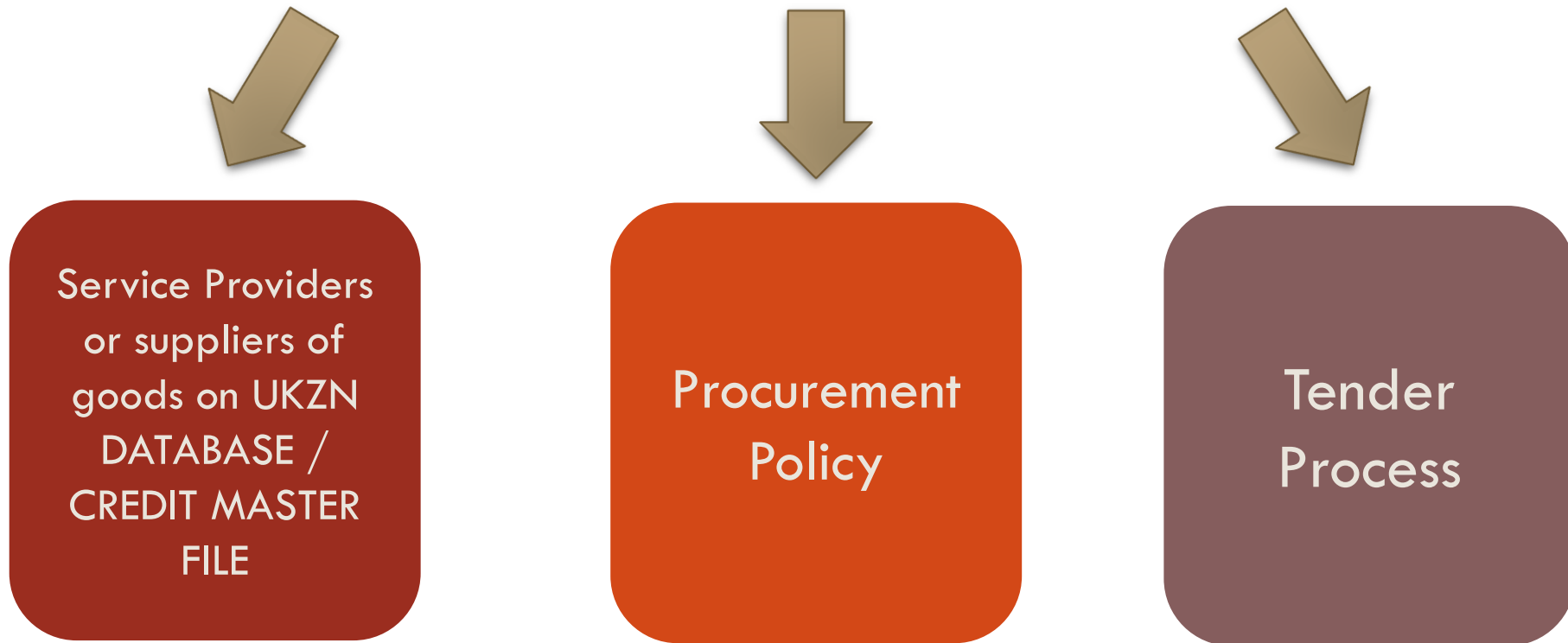
The parties must agree on all the terms and conditions

3. TYPES OF CONTRACTS @ UKZN:

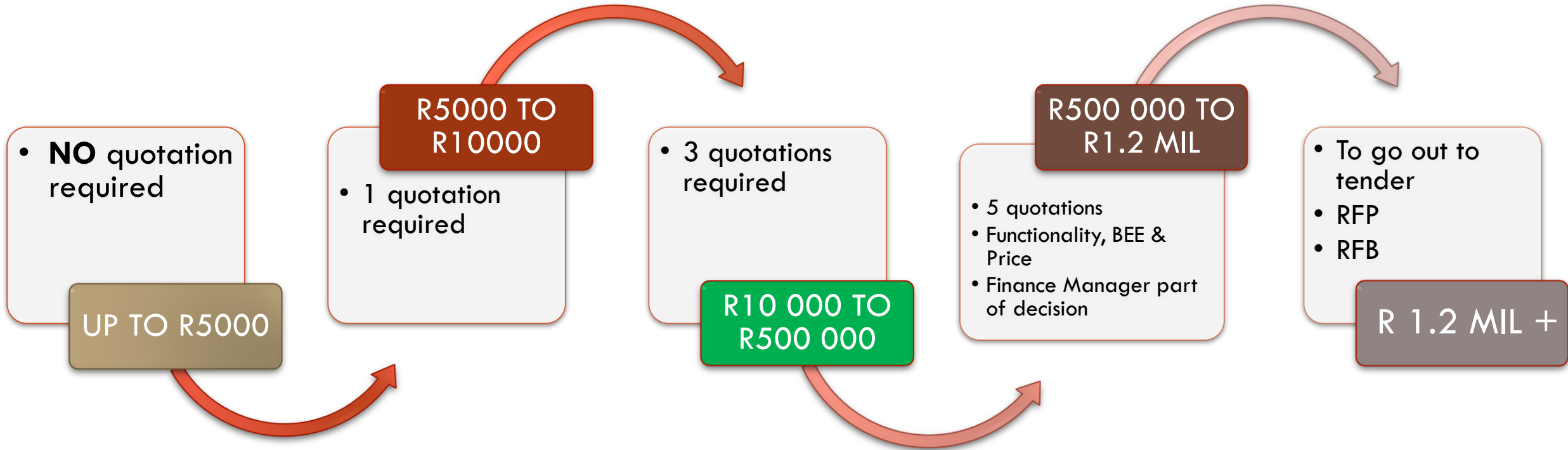
- Memorandum of Agreement (MOA);
- Memorandum of Understanding (MOU) – agreements usually concluded with other Universities both locally and internationally;
- Joint Venture Agreements;
- Co-operation /Collaboration Agreement;
- Service Level Agreements (includes independent contractor agreement, supply agreement);
- Maintenance Agreements;
- Lease or Rental Agreements (includes agreements for hire of equipment e.g. Konica Minolta
- Licensing Agreements – Software licensing e.g. Microsoft, Novell GroupWise ©
- Intellectual Property Agreements – copyright, trade marks etc.
- Research Agreements

4. PROCEDURE FOR PROCURING SERVICES

UKZN = Centralized Purchasing Procedure



5. PROCURING GOODS / SERVICES:



NOTE: All services / goods acquired from **UKZN SUPPLIERS DATABASE/CREDITORS MASTER FILE** (except tenders)

6. GOODS / SERVICES (R500 000.00 – R1.2 MILLION)

SCOPE

AT LEAST 5 QUOTATIONS MUST BE SOUGHT

From UKZN Suppliers

Contract must be executed for services above R500 000

PRINCIPALS

- Fairness
- Equitable
- Transparent
- Competitive
- Cost-effective

ACCOUNTABILITY

DVC / EXECUTIVE DIRECTOR – to ensure that process is compliant with policies

- CAN DELEGATE TO -
- Director : College Professional Services
- Any Senior official

SOURCING QUOTATIONS



SPECIFICATIONS ➡ INVITING ➡ EVALUATION ➡ APPROVAL



FORMAL WRITTEN CONTRACT



SUBMITTED VIA IMAGE NOW – LEGAL SERVICES

**DIVISION / COLLEGE /
SCHOOL / PROCUREMENT
LEGAL
SERVICES**

7. TENDER PROCEDURES

WHY?

Quality goods / services

Cost Effective Price

Manner that is competitive

Promotes social goals of RSA

All goods and
services
exceeding
R1.2 million

NB!!
SPLITTING
TRANSACTIONS
NOT ALLOWED

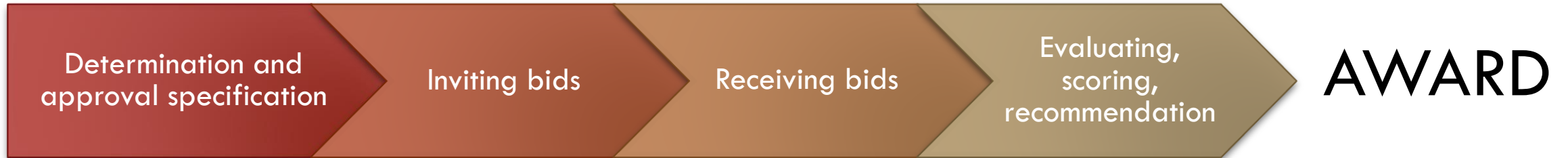
REQUEST FOR
INFORMATION
RFI



REQUEST FOR
PROPOSAL
RFP



TENDER



INVITATION TO TENDER



SELECTION COMMITTEE (MFST)

Adjudicates / Evaluates / Functionality / Scoring



PROCUREMENT OFFICE

Recommendations to Council (DELEGATION TO AWARD)

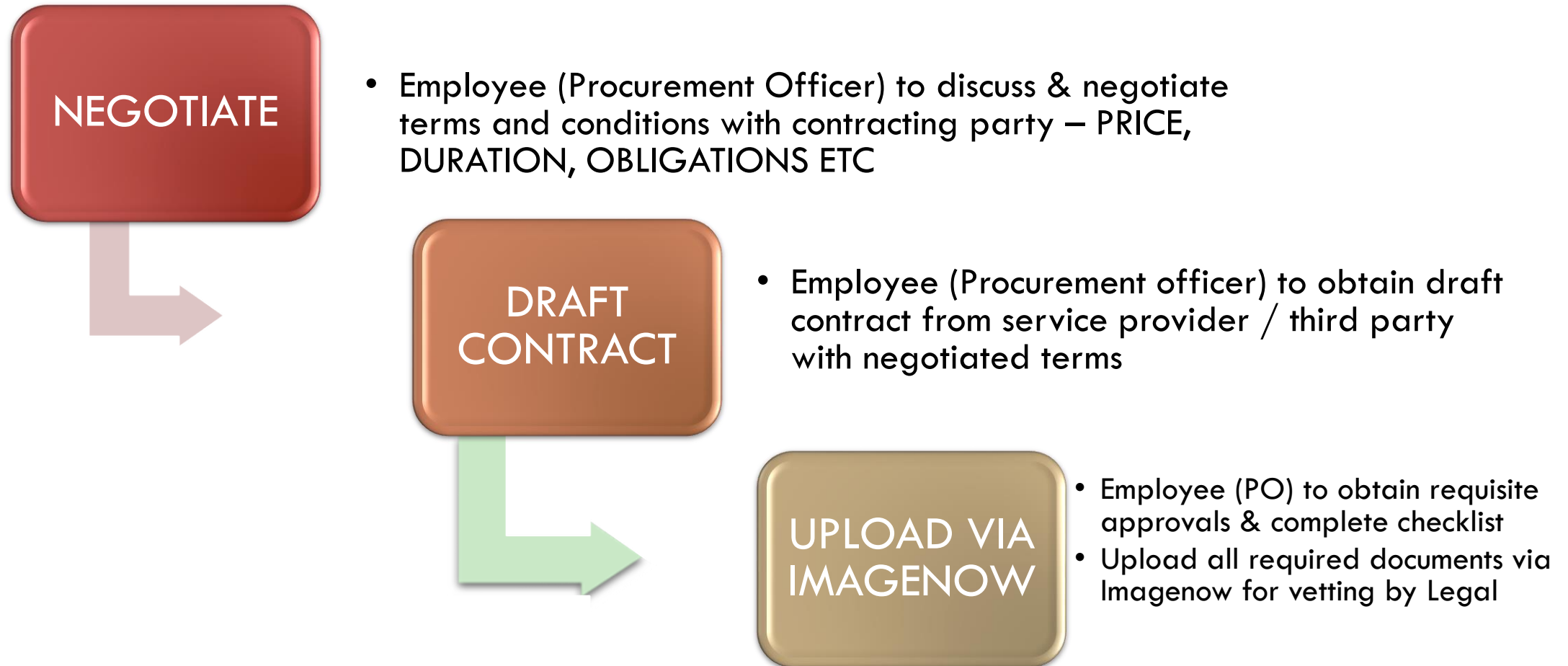


BUDGET HOLDER / EMC MEMBER / COUNCIL AWARDS TENDER (DEPENDING ON THRESHOLD)



LEGAL SERVICES (DRAFTING / VETTING OF SLA)

8. CONTRACTS : CENTRALISED PURCHASING PROCEDURE



Review

- Once all documents uploaded via Imagenow, will be sent to Legal Advisor for vetting

Liaise / Approve / Amend

- Legal Advisor to liaise with employee on amendments or issues arising from contract

Execution

- UKZN authorized signatory to execute contract



What must I look out for in my contract before submitting?

CONTRACT PRICE	Must have a value inserted
PAYMENT TERMS	Important to state how payment will be made
DURATION	Must have end date (only in exceptional circumstances left open ended)
RENEWAL	Automatic renewals NOT allowed
SURETY	We don't sign surety – EVER (Immediately strike out)
BREACH	Must have this clause
TERMINATION	Must have this clause
INTELLECTUAL PROPERTY	Very NB for Research Contracts (See IP Policy)
SIGNATORY OF UKZN	Please insert correct details (where and when you can)

9. SIGNATORIES

LEGAL DOCUMENTS

Agreements, contracts, deeds of suretyship, deeds of pledge, AOD, institute or defend legal action

Vice-Chancellor : Dr. Albert van Jaarsveld

Chief Finance Officer : Bulelani Jacob Mahlangu

Registrar : Prof. Deo Jaganyi (Acting)

Director: Governance & Administration : Eric Njabulo Zuma
(to maximum value of R1 million)



OVER
R1 million

RESEARCH CONTRACTS

Deputy Vice-Chancellor : Jonathan Blackledge

Pro Vice-Chancellor: Innovation, Commercialization and
Entrepreneurship : Deresh Ramjugernath

University Dean of Research : Urmilla Bob
(to maximum value of R1 million)



OVER
R1 million

OTHER LEGAL DOCUMENTS

Africa Centre – To execute contracts where centre disbursing funds

- Deenan Pillay

Intellectual Property – all forms relating to registration and assignment of IP

- Prof. Johnathan Blackledge

Cooperation and exchange agreements with foreign universities only

- Lesiba Job Seshoka

Leases of University owned immovable property

- Registrar – to a max value of R500 000pa & 3 years
- Director :CMS – to max value of R250 000 pa & 3years

INFRASTRUCTURAL DEVELOPMENT (BUILDING WORKS/CONSTRUCTION AND PLANS) LAND LEASE OF UKZN OWNES IMMOVABLE PROPERTY

Chief Finance Officer with Registrar

- Where contract value greater R10 million

Registrar

- Contract value greater R5 million to max R10 million

Directors : Infrastructure Planning & Projects / Campus Management Services

- All plans

Directors : Infrastructure Planning & Projects / Campus Management Services

- Contracts where value is R5 million or less

9. GENERAL

1. Contract must be **UPLOADED / VETTED AND / OR EXECUTED** before the **commencement date**;
2. A Contract is only properly concluded and binding **once signed** by all parties;
3. **Employees** are **responsible for keeping copies** of the contracts and managing the rights or obligations of UKZN;
4. **Finance Department** will not pay any service providers without an executed contract.

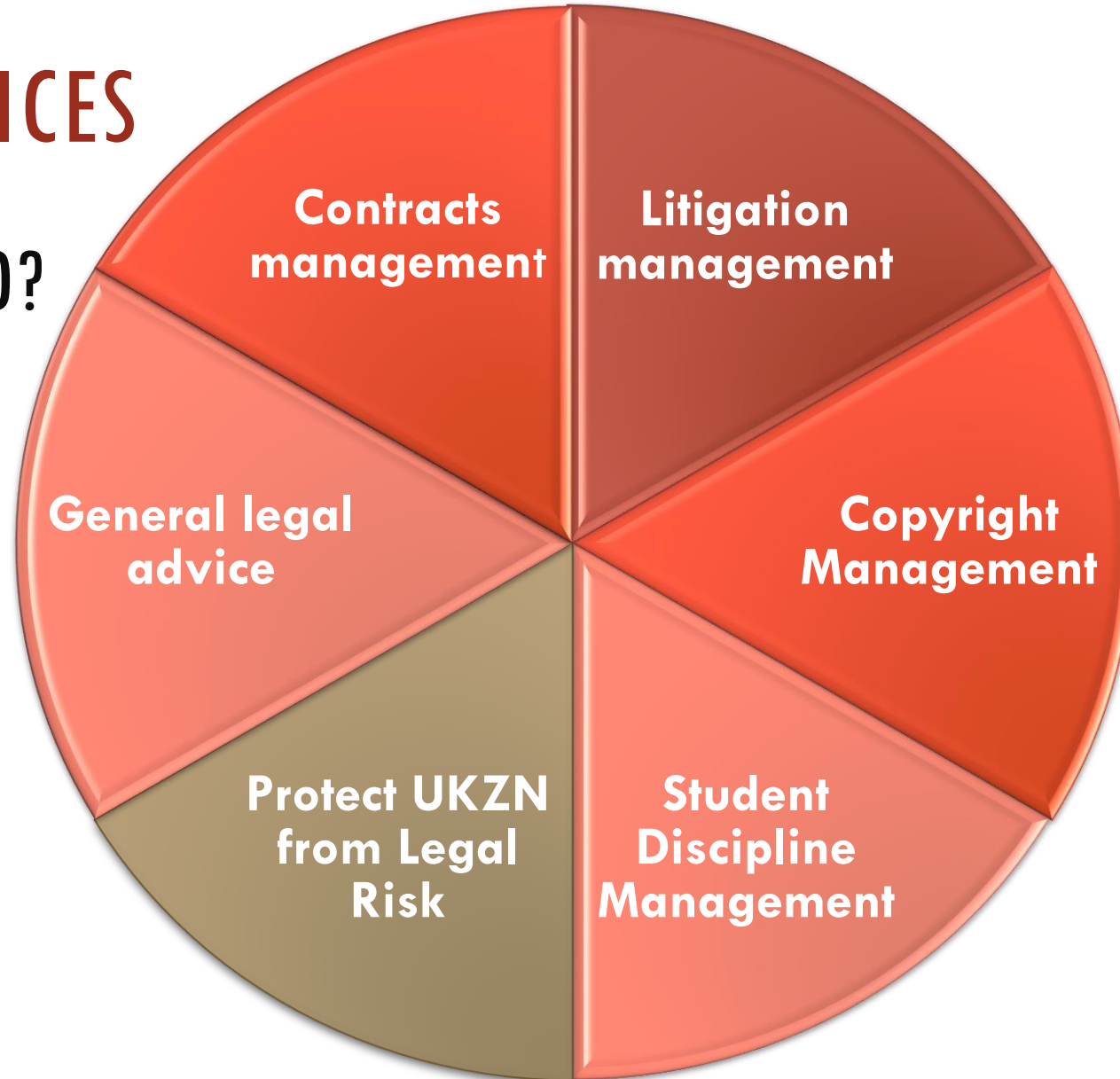
Employees who fail to act in terms of policies & procedures:

1. Will be held **personally liable** in the event that a **claim** is made against UKZN arising from a contract purportedly concluded by UKZN;
2. Charged with **misconduct** and **disciplined** accordingly

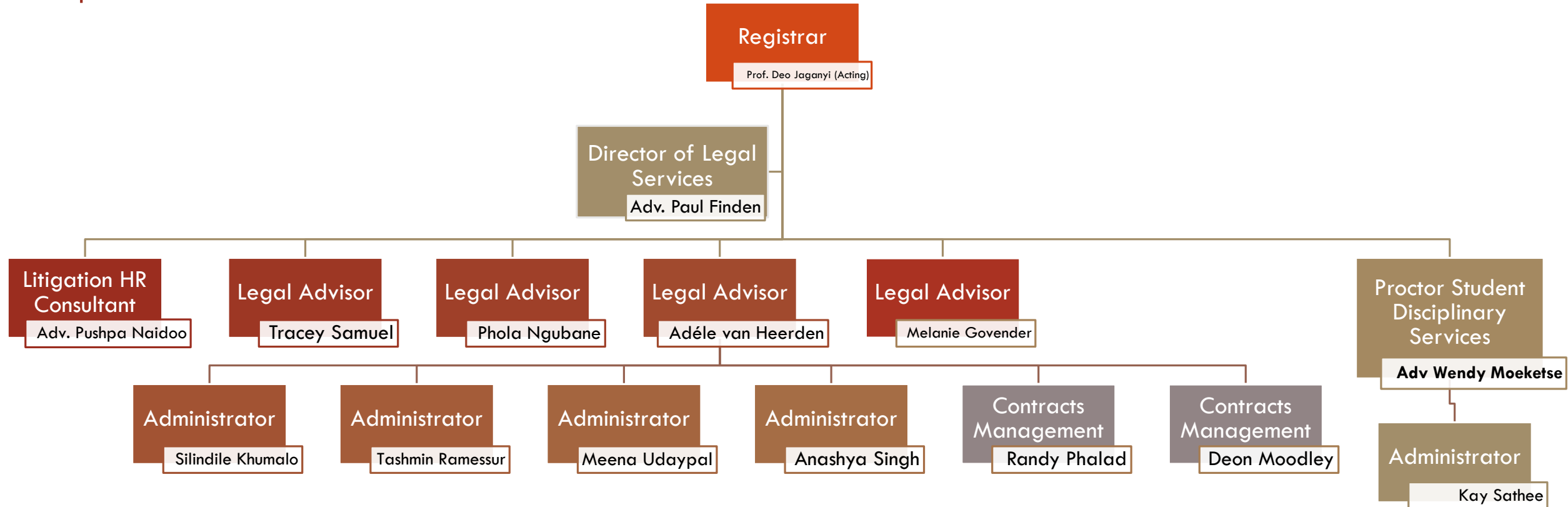


B. LEGAL SERVICES

WHAT DO WE DO?



2. OUR STRUCTURE



**Director of
Legal Services**
Adv. Paul Finden

→ All civil litigation matters for
UKZN / General legal counsel

**Litigation HR
Consultant**
Adv. Pushpa Naidoo

↓
**Litigation -
Employment Law
/ HR Matters**

**Legal
Advisor**
Tracey Samuel

Research Contracts

- College of Agriculture, Engineering & Science
- College of Humanities

Professional Services:

- UKZN Press
- Corporate Governance (incl. VC)
- Quality Promotion & Assurance (including DVC Teaching & Learning),
- Corporate Relations (UKZN Foundation)
- Student Services Development

**Legal
Advisor**
Phola Ngubane

Research Contracts

- College of Health Sciences
- College of Law and Management Studies

Professional Services:

- Africa Centre for Health and Populations Studies,
- HIVAN,
- UKZN Libraries,
- CMS (Westville & Edgewood),
- Research Office (incl UKZN Incubate)
- University Extended Learning

**Legal
Advisor**
Adèle van Heerden

Non-research Contracts

- College of Health Sciences
- College of Law & Management Studies

Professional Services:

- Finance(incl Procurement),
- CMS (Howard College, PMB & NRMSM)
- Physical Planning & Operations (Thembelani),
- Corporate Relations(including Audio Visual)
- Student Services Division

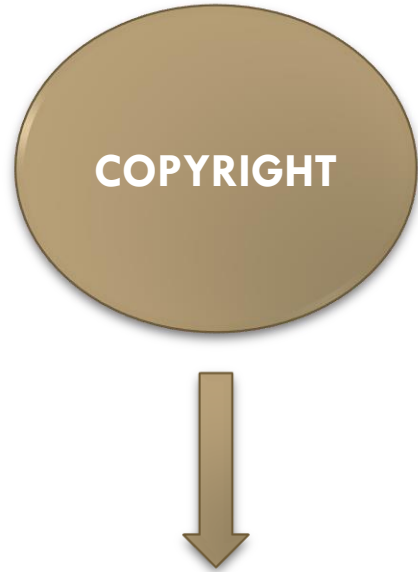
**Legal
Advisor**
Melanie Govender

Non-research Contracts

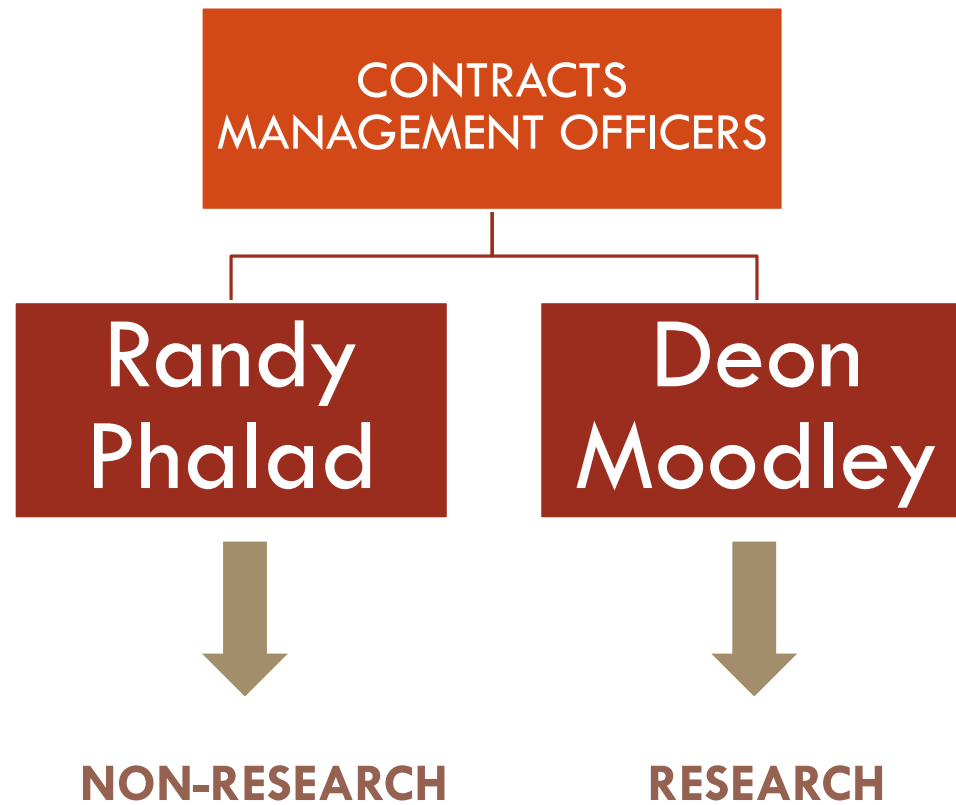
- College of Agriculture, Engineering & Science
- College of Humanities

Professional Services:

- HEARD
- Registrar's Division (GENERAL)
- RMS
- ICS
- Human Resources (General)



- Attend to all copyright **queries**
- **Process** Applications / Declarations received from Colleges
- **Lodge** Applications / Declarations with Publishers / DALRO



Receive & acknowledge all incoming uploaded contracts

Verify documents

Request outstanding docs

Prepare for execution for signatories

3. SERVICE LEVEL AGREEMENT — LEGAL SERVICES

The objectives of this SLA:



Provide clear reference to service ownership, accountability, roles and/or responsibilities

Present a clear, concise and measurable description of service provision to UKZN community

Match perceptions of expected service provision with actual service support & delivery

Workflow for the Instructing Party at Schools/Colleges/Divisions and Departments for the contract submission via Image Now System/ general legal advice

STEP 1

NEGOTIATION PHASE



All terms and conditions relating to the grants, proposals or contracts terms must be negotiated (eg. obligations; duration; price).

STEP 2



DOCUMENT SUBMISSION

PRE-SUBMISSION STAGE



RESEARCH CONTRACTS:

Applications for Research Grants and Research Contracts by UKZN staff;

Any other document intended to be submitted to Funders to secure funding, in full or in part, for Research.

Research specific documents	
• Proposal	• Scope of Work
• Award Letter	• Main Agreement – if UKZN subcontractor
• Budget – internal	• Ethics Approval
• FORM 1 - Completed	• Other documents referred to in contract

Research Specific Documents:

In terms of the Research Policy VI Grants and Contracts Policy (Policy) the following must be submitted to the Grants and Contracts Cluster of the Research Office at UKZN for review and approval prior to submission to Funders.



NON-RESEARCH CONTRACTS:

Instructing Party to obtain the documentation as listed below:

-Draft contract (in word format);

Non-research specific documents	
• Quotations/ Proposals/tender documents	
• Other party company documentation	• Certificate of Incorporation
• Current BBBEE certificate	• Current & valid Tax clearance Certificate
• VAT registration certificate	• BBBEE certificate
• Proof of banking account	



STEP 3

CHECKLIST & APPROVAL

The Instructing Party is required to seek a complete **Checklist** (to ensure that the contract is in order) and the required **signed approval** form from the authorised representative of the School/College/Division (if applicable) prior to submitting the contract via the contracts submission system. The required **checklist** and approval forms are annexed hereto



RESEARCH CONTRACTS

FORM 1 (to be signed for new research contracts);

FORM 2 (to be signed or renewal, amendment and sub-contracts for an existing contract



NON-RESEARCH CONTRACTS

PROOF OF AUTHORITY to be signed for all types of non-research contracts

PROOF OF AUTHORITY – NON RESEARCH



Can only be signed by:

COLLEGES / SCHOOLS:

Deputy Vice Chancellor /
Dean & Head of School /
College Director of PS

PROFESSIONAL SERVICES:

Executive Director /
Director

FORM 1 & 2 – RESEARCH



Can only be signed by:

FORM 1:

Principal Investigator +
Dean & HOS +
College Dean of Research

FORM 2:

Principal Investigator +
Dean & HOS

STEP 4



SUBMISSION OF LEGAL DOCUMENTS

Instruction submitted by Instructing Party by completing the Submission e-Form via ImageNow and uploading supporting documentation

STEP 5



VERIFICATION : CONTRACTS MANAGEMENT

Within **3**
working days

Contracts Management to verify documentation uploaded in respect of the contract (Contract, Copy of previous fully signed Contract, Proof of Authority, Quotations, Budgets, proposals, etc.)



STEP 6



If the uploaded documentation is incorrect or incomplete, Contracts Management shall request in writing that the incomplete or incorrect documentation be rectified by the Instructing party.

STEP 7



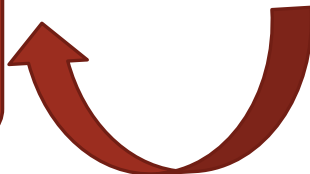
If the Contracts Manager receives no response/feedback after **5 working day period** referred to in Step 3 above, the Contract will be placed in the "REJECT QUEUE"

STEP 8



If all documents have been received Contracts Management will route contract to Legal Advisor for review **within 3 working days** of receipt of instructions and complete documentation.

**Within 3
working days**



**AFTER 5
working days**



STEP 9



Legal Advisor to review contract within

15 WORKING DAYS
= RESEARCH

10 WORKING
DAYS
= NON-RESEARCH



**Subject to all
documents
submitted and
no outstanding
queries**

STEP 10



CONTRACT APPROVED

- Confirm review and route to Contracts Manager for pre-approval by authorised signatory.
- The file will then be closed on the ImageNow System and archived.

CONTRACT NOT APPROVED

- Provide Instructing Party with reasons and/or legal advice.
If applicable:
 - Administrator to pend for follow-up with Instructing Party (maximum of 2 follow-ups, every 10 working days); or
 - Contracts Management to place contract **“ON HOLD QUEUE”** pending receipt of information, results of investigation or any other feedback that may be required.

STEP 11



EXECUTION BY SIGNATORIES

If contract is in order as per Step 10 above, Contracts Management will request **instructing party** to obtain **external party's signature**. Alternatively, the University's authorised signatory will be requested to sign first, depending on instructions received.



The signed original contract will be archived thereafter

4. GENERAL LEGAL ADVICE

LS receives instruction via email / post



Administrator opens file, allocates to LA and confirms receipt within **48 hours**



File handed to Legal Advisor

NB: Instruction will not be processed by LA without

PROOF OF AUTHORITY from DVC/DIRECTOR/DEAN/EXECUTIVE