

Title/Subject: **CONTRACT REVIEW PROCESS**

Applies to: faculty staff students student employees visitors contractors

Effective Date of This Revision: June 23, 2017

Contact for More Information: Contracting & Purchasing Services or General Counsel

Board Policy Administrative Policy Procedure Guideline

PURPOSE:

This policy and procedure sets up a process for the review and authorization of contracts/agreements entered into on behalf of Central Michigan University. Problems have arisen in the past when employees have entered into contracts on behalf of the University and did not fully understand the implications of the contract's terms and conditions, and did not have the authority to agree to a contract. This process is intended to provide review assistance to protect the University's interests prior to a contract/agreement being signed. It is also intended to help University employees, including those with contracting authority, make decisions that they may not be comfortable making alone, and to clarify the responsibilities of the various persons involved in negotiating, reviewing and signing contracts/agreements. If this process is adhered to, and if individuals only sign contracts/agreements for which they are authorized, then they will not be held personally liable for the contract agreement as they will be acting within the scope of their authorized responsibility as a University employee.

This contract review process assumes that the necessary university officials have approved the *project* covered by the contract. It is the responsibility of the originating department to obtain the necessary approvals to move forward with the project before commitments have been made. The review described here is intended to occur after the approval of the *project* has been obtained, and focuses on the written documents that will contain the terms and conditions of the contract.

DEFINITIONS:

Board of Trustees policy specifically addresses the issue of authorization to enter into contracts on behalf of Central Michigan University. The Board retains the right of approval for any contract exceeding \$1,000,000 and delegates contracting authority to the President for amounts up to \$1,000,000. The President may sign contracts up to \$1,000,000. Vice presidents may sign contracts up to \$500,000, and they may delegate authority to other University employees to sign contracts up to \$250,000. The president or a vice president must specifically delegate authority for a University employee to enter into contracts for Central Michigan University. For full Board policy, see <https://www.cmich.edu/bot/Documents/Board%20Policy%20Manual/12-21r.pdf>. Procedures for Granting Contracting Authority may be found in a separate policy https://www.cmich.edu/office_president/general_counsel/Documents/p03007.pdf. Contracting & Purchasing Services maintains a web page that lists who is authorized to enter into contracts on behalf of the University.

A contract is **any** agreement between the University and another party, which is enforceable at law, whether or not it is titled "Contract." A contract includes any agreement made on behalf of the University in which legally enforceable commitments are made by or to the University. Other terms that are sometimes used include agreement, letter of agreement, letter of understanding, letter of engagement, memo of understanding, consortium operating

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agreement, etc. It includes open-ended agreements which require the use of a specific vendor whenever a particular product or service is obtained (sometimes called a “requirements contract”), or which set forth the terms which will apply if one party later decides to acquire the product or services of the other party. It may also include verbal agreements, although the university discourages using verbal agreements.

The Originating Department is usually the person or unit that wants to obtain or needs to provide the product or service and will most likely be involved in carrying out the contract.

POLICY:

All contracts entered into by the university require review before they are signed and are to follow one of the three procedures identified below.

Only Central Michigan University or Central Michigan University Board of Trustees is to be the contracting entity. Individuals, departments, units, colleges, centers, divisions, etc. are not separate legal entities and may not contract in their own name.

CONTRACT REVIEW PROCEDURES:

All contracts entered into by the university must be reviewed through one of the following three procedures.

A. Most contracts already have a university unit designated to conduct a formal review, and those reviews may continue. The following contracts already have designated unit(s) who typically has the responsibility to handle them. For all contracts listed on the chart and processed by the noted unit, the originating department does not need to complete Attachment A, unless requested by the unit processing it.

The units listed below **must** be involved with any contracts of the listed types before the contract is executed, although they may not be the sole units involved. For many of these contracts, other units must also be consulted or review the project and its terms.

Contract/Agreement Type	Must Be Processed Through Unit
Purchase of equipment, supplies and services	Contracting & Purchasing Services
Maintenance, service agreements	Contracting & Purchasing Services
Plane, car, bus, rental, lease and/or charters	Contracting & Purchasing Services
Professional services (> \$5,000; external auditors, consulting)	Contracting & Purchasing Services
Property or equipment leases to or from CMU	Contracting & Purchasing Services
Utilities	Facilities Management, Contracting & Purchasing Services
Construction/Engineering/Architects	Facilities Management, Contracting & Purchasing Services
Employment	Human Resources, Faculty Personnel Services
Independent Contractor	Human Resources, Contracting & Purchasing Services, ORGS
Employee Insurance and Fringe Benefits	Human Resources
Insurance (property, liability, etc.)	Risk Management
Lease of Buildings and Land	Contracting & Purchasing Services, General Counsel
Purchase/Sale/Donation of Real Property	Contracting & Purchasing Services, Advancement, General Counsel

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Plays, Concerts, etc.	University Events
Grants, Sponsored Projects and Research Contracts	ORGS
Internship/Affiliation	Academic Affairs
Licensing and sponsorship agreements	University Communications, General Counsel, ORGS
Buyouts/settlement agreements	Human Resources, Faculty Personnel Services, General Counsel
Easements	General Counsel
Intellectual Property Licenses	General Counsel, ORGS
Gift Instruments, other than real property	Advancement, General Counsel
Confidentiality and Non Disclosure Agreements	ORGS, OIT
Information Technology Hardware, Software, and Services	OIT

B. Other contracts may use a standard form that has already been reviewed and approved. These standard contracts do not require a subsequent review. Standard contracts usually are agreements in which the same terms are used in many separate agreements. Examples include Residence Life’s eviction notices, occupancy agreements, athletic game contracts and guarantees, underwriting agreements, articulation agreements, standard form MOUs or MOAs for specific purposes such as consultants for program review, etc. They also include standard appointment forms for ProfEd tutors, advisors, teachers of courses, mentors, MSA 685 instructors.

If a standard form is altered, it is then subject to the contract review procedures in C below. However, terms like price, dates of contract, description of services to be provided under the contract, do not require review.

If an originating department expects to enter many contracts that will be very similar, it is encouraged to obtain approval of a standard contract.

C. All contracts not covered by Sections A or B above must go through the following contract review procedures.

This is an interactive process and will likely require discussions, revisions and ongoing reviews. Therefore, sufficient time should be allowed for the reviewer and originating department to finalize the contract review. The review procedure must occur before a commitment is made to a particular vendor and/or a vendor begins work. A flowchart showing the following process is available at <https://www.cmich.edu/fas/fsr/cps/Pages/Contract-Review-Process.aspx>.

1. If a contract is to be entered into on behalf of Central Michigan University, obtain a complete copy of the contract, including all attachments and exhibits. If you are drafting the contract, assistance is available. See Guidelines below.
2. The contract is reviewed by the originating department and the Originating Department Checklist is completed and signed. Refer to Attachment A. <https://www.cmich.edu/fas/fsr/cps/Pages/Contract-Review-Process.aspx>.
3. The contract and checklist are to be forwarded to one of the contract reviewers on Attachment C. <https://www.cmich.edu/fas/fsr/cps/Pages/Contract-Review-Process.aspx>. For acquisitions processed through Contracting & Purchasing Services, the Director of Contracting & Purchasing Services will be the contract reviewer. Any of the individuals on Attachment C are authorized to review contracts;

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however, it is strongly recommended that someone from outside the originating department serve as contract reviewer.

4. Legal counsel **must review** a contract when it or a related resolution is being submitted to the Board of Trustees for action; and/or there are indemnification, warranty or guaranty provisions that the contract reviewer or the University representative signing the contract does not clearly understand. Please allow one week to ten days for the contract reviewer to review the contract. Where immediate action is required, please communicate this to the contract reviewer.
5. The contract reviewer reviews the contract and completes and signs the Contract Reviewer Checklist, Attachment B <https://www.cmich.edu/fas/fst/cps/Pages/Contract-Review-Process.aspx> and returns the contract and comments to the originating department.
6. Primary responsibility for incorporating needed changes rests with the originating department.
7. At least two original contracts and all attachments along with Originating Department and Contract Reviewer Checklists are forwarded to the appropriate division person who has contract authority as delegated by the Board of Trustees. This person then signs both original contracts and returns them and the two checklists to the originating department.
8. The originating department obtains the signature of the other party or parties to the contract, shares a fully executed original with the other party or parties, and sends one fully executed original to Contracting & Purchasing Services for central filing.

GUIDELINES:

These Guidelines apply to all contracts, whether the review is conducted under process A, B, or C in the Procedures.

1. If the originating department itself drafts the contract, it should seek assistance from Contracting & Purchasing Services, General Counsel, or one of the contract reviewers listed on Attachment C. In situations where a conflict later arises, a contract may be construed against the party that drafted it, so the involvement of one of these offices is strongly encouraged. The originating department should write down the substance of the agreement (what tasks will the University perform? What tasks will the other party perform?), and then set up a meeting with someone from Contracting & Purchasing Services or the Office of General Counsel. Early consultation is advised.
2. Although verbal contracts and agreements are sometimes enforceable, they are discouraged. Only persons with contracting authority may enter into a verbal contract on behalf of the University; other persons who make such agreements may be personally liable and in violation of University policy.
3. An originating department should always consult a contract reviewer before assuring/intimating to a party that CMU is going to contract with them. Obtaining favorable terms and condition language from the party after that point is made much more difficult.
4. In addition, where negotiations of important terms of the contract will take place (e.g. deliverables by the party, obligations of CMU and cost), Contracting & Purchasing Services should be consulted before a final decision has been made to execute a contract with a specific party. After this point, much negotiating power has been lost.

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5. Promises that the University will keep certain information confidential may be made only under limited circumstances. The conditions for promising confidentiality are set out in Michigan law. In some cases, only the President may authorize the promise of confidentiality. For research projects, the Vice President for Research and Dean of Graduate Studies may sign confidentiality agreements. For technology related non-disclosures, the Chief Technology Officer may sign the non-disclosure. In all cases, the promise of confidentiality must be in writing and executed before the contract is signed.
6. Some contracts involve the creation of intellectual property – material that may be subject to copyright, trade secrets, trademark or patent protection. In these situations, it is essential that ownership of the intellectual property be agreed upon in the contract, before the property is created. Originating Departments should consider early on whether any intellectual property may be involved in a particular contract and, if so, must consult with ORGS or General Counsel about provisions to include in the contract.
7. It is important that heads of all units involved in a project be aware of the contract before it is signed. For example, the dean of the college must approve contracts for projects within his/her college. For those contracts requiring the signature of the president, a senior officer must recommend its signing, usually by initialing the contract.
8. Parties to a contract expect that all will go well between them, and generally they do. However, every contract must anticipate the possibility that the relationship of the parties may go awry. Contracts must adequately protect the University should something go wrong.

Central Michigan University reserves the right to make exceptions, modify or eliminate this policy. This document supersedes all previous policies, procedures and directives relative to this subject.