

IDAHO STATE UNIVERSITY
MANUAL OF ADMINISTRATIVE POLICIES AND PROCEDURES

Contract Administration

MAPP 01.C.1

POLICY INFORMATION

Section Title: General Administration

Subject: Contract Administration

Responsible Executive: General Counsel

Sponsoring Organization: Office of the General Counsel

Dates: Issued: August 17, 2009 Revised: _____ Annual Review: August 17, 2010

I. PURPOSE AND SCOPE

- A. This policy clarifies and consolidates prior directives from the President's office and the Board of Trustees. Centralized contract administration is in the University's best financial management interest, as a means of avoiding unplanned and unauthorized charges and to manage appropriately the University's risk.

- B. This policy sets forth a uniform requirement for Office of the General Counsel review of University agreements, thereby providing a means to:
 - 1. ensure that the University's contractual arrangements are legally acceptable; and
 - 2. monitor the University's inventory of outstanding legal commitments.

- C. This policy is designed to:
 - 1. enable the University to achieve better uniformity in its contracting practices;
 - 2. alert trained professionals of potential business and legal concerns that require attention; and
 - 3. clarify the University's limited delegation of signature authority for any document that binds the University legally under contract.

II. POLICY STATEMENT

A. In General

1. This policy applies across all University departments and operations.
2. For this policy's purposes, the University presumes that a contract exists anytime a written document creates a legally-binding obligation to do or not to do any particular thing. This presumption applies if the document either obligates the University, or instead makes any party obligated to the University.
3. Any contract reviewed and authorized before this policy's adoption remains in full force and effect. Any contract not signed as of this policy's adoption is void and of no effect unless it is reviewed and authorized as set forth under this policy. Any contract's modification or extension made after this policy's adoption is subject to review and authorization under this policy.
4. This policy specifies each University official who has authority to sign any document that binds legally the University under contract. Correspondingly, any authority to sign a University agreement may be subject additionally to contract-amount or subject-matter limitations.
5. Any individual who signs any contract in violation of this policy is subject to discipline or termination under the Faculty and Staff Handbook, unless the Office of the General Counsel in writing has confirmed otherwise.
6. Each department or other division of the University must submit each binding document to the Office of the General Counsel for prior review (see section II.D). The Office of the General Counsel's review is not considered to be complete until the University has completed each implementation step described further below.

B. Entity Name

1. Under no circumstance is the University or the State of Idaho bound to any agreement that is entered into in any name other than "*Idaho State University.*"
2. No University department, division, or employee has authority to enter into any agreement that binds the University by naming solely that department, division, or employee as a party to the agreement.
3. Contact the Office of the General Counsel to confirm applicability to this policy if a proposed agreement does not name the University as a party, but instead names:

- a. an associated entity such as the Idaho State University Foundation;
 - b. an organization to which the University or a University employee holds membership;
 - c. a specific ISU department or division; or
 - d. an individual University employee.
- C. The policy applies to any legally-binding and documented commitment into which the University enters, and includes any contract amendment, modification, extension, or renewal. This policy applies irrespective of a document's title. Contract names or types may include (without limitation):
1. memorandum of understanding (also known as memorandum of agreement) or binding letter of intent;
 2. affiliation agreement;
 3. sponsored program document (non-standard contracts, grants, consortia, etc.);
 4. intellectual property transaction (nondisclosure agreement, license, assignment, material transfer agreement);
 5. any purchase order or equipment acquisition that varies from the University's standard provisions;
 6. professional service or consulting agreement;
 7. lease or other real property or facilities-related transaction;
 8. agreement to which the University grants or obtains a time-limited right of access to a particular resource;
 9. liability release/waiver;
 10. inter-agency or inter-institutional agreement;
 11. legal settlement;
 12. software license/maintenance/development agreement;
 13. regulatory filing;
 14. speaker/performer engagement having non-standard provisions or payment amount exceeding \$3,000;

15. facilities access agreements;
16. vending/supply agreement;
17. product sponsorship agreement;
18. common carrier agreement (*e.g.*, courier, transportation, telecommunications);
19. lodging/accommodation agreement;
20. educational testing or testing preparation agreement;
21. nonstandard employment agreement.

D. Review

1. Primary Reviewers. In order to bind the University, a contract's initiator must obtain prior review – documented via an appropriate “sign-off” review form available on the Office of General Counsel's Website – from the following departments and individuals:
 - a. Office of the General Counsel
 - b. Business Officer (or other senior financial administrator – “SFA”) assigned to the University department or division that has direct budgetary responsibility or benefit arising from the agreement
 - c. Academic/Administrative supervisor whose department has direct operational responsibility or benefit arising from the agreement
 - d. (as applicable) Purchasing Department administrator who has direct responsibility for any purchase required under the agreement
 - e. (as applicable) Information Technology administrator who has direct systems-related responsibility for any requirement or benefit arising from the agreement
2. Special Review – Contract Amount and Subject Matter Limitations. A contract's initiator must obtain similarly-documented review and approval from the departments and individuals specified below, as determined by the agreement's contract and subject matter:
 - a. Vice President for Finance and Administration – for any transaction that requires the University to pay any annual or one-time amount that exceeds \$150,000.

- b. Vice President for Research – on all agreements primarily related to sponsored programs, patent rights or other commercial technology transfer;
 - c. Vice President or Provost (if not previously designated above) whose department has direct operational responsibility or benefit arising from the agreement – for any transaction that permits only the President’s signature, including:
 - i. negotiated dispute resolution settlement that does not exceed \$25,000;
 - ii. agreement that an external funding agency or applicable statute requires signature by the President; and
 - iii. agreement granting right in University intellectual property (but II.D.2.b supersedes this subsection if primarily a sponsored program agreement where funding agency does not require President's signature).
 - d. Idaho Board of Education only – for any agreement that requires the University to pay \$250,000 or more.
 - e. Purchasing Services – which has signature authority independently of the above prior review procedure – for most agreements in which the University purchases goods or equipment.
 - f. State of Idaho Department of Administration, Division of Public Works – for any agreement granting a real property lease interest to the University.
 - g. Vice President for Finance and Administration, the President, and in most cases, the State Board of Education – for any real property purchase, exchange, sale, or similar transaction.
 - h. Any other University designee, at the discretion of the responsible Vice President or Provost or the Vice President for Finance and Administration.
- E. The Office of the General Counsel – on a case-by-case basis – has authority to determine whether any specifically-identified agreement type does not apply to this policy’s requirements. Typical circumstances may include, without limitation:
- 1. routine purchase orders and/or requisitions administered by the Purchasing Department or the automated procurement system; and
 - 2. funding instruments that Vice President for Research (or designee) determines to be only trivial variations from what the Office of General Counsel has reviewed and approved under this MAPP.

F. The Idaho Department of Public Works has primary authority to enter into specified construction-related contracts on behalf of the University. Unless the Associate Vice President of Facilities Services expressly determines otherwise, no University employee or University-sponsored organization has authority to engage any party to provide any facilities planning or construction-related service.

III. RESPONSIBILITIES:

Before providing any approval signature corresponding to any responsibility step set forth below, each applicable office/officer must confirm that each necessary preliminary signature appears on the University’s Contract Review and Approval Form.

Office/Officer	Responsibilities
Requestor	<ul style="list-style-type: none"> ▪ Forward to Office of the General Counsel either a contract draft request or the other party’s draft agreement; ▪ Describe to the Office of the General Counsel the agreement’s business objectives; ▪ Determine whether the other party is represented by counsel, and if so, request that counsel’s contact information to facilitate contact between the parties attorneys; ▪ Support Office of General Counsel’s negotiation if other party has counsel, or if other party has no counsel negotiate agreement with Office of General Counsel support and facilitate signatures and document transmittals with other party.
General Counsel	<ul style="list-style-type: none"> ▪ Draft or review agreement; ▪ Determine agreement goals and any need for regulatory approval; ▪ Confirm identities of needed reviewers and signatory; ▪ Confirm whether other party has counsel; ▪ Negotiate contract if other party has counsel, or support negotiation otherwise, ▪ Draft executive summary if possible for reviewers; ▪ Modify agreement as necessary per reviewer comments, updating executive summary if possible; and ▪ Forward signature version (and executive summary if possible) to authorized signatory.

