

## Standard Practice Guide Policies

### External Entity Contracts for Central Administration Services or Resources

601.32

**Applies to:** All Departments and Units of the University

#### I. Policy

##### A. General Policy

University cooperation and coordination of efforts with affiliates or other external groups can further the interests of the University. Groups or affiliates form in multiple ways, including corporations, partnerships, consortiums, associations or limited liability companies ("External Entities"). These groups or affiliates have their own legal existence and may or may not be under the University's legal control. University involvement with External Entities can provide new or unique opportunities for faculty, staff or students, contribute to the University's innovative culture and programs, and increase the University's influence academically and institutionally. A clearer structure is needed for the interaction between and University and External Entities when the cooperation and coordination of efforts contemplates either (a) persons on the University payroll providing general business operations and staffing support under the direction and control of the External Entity or (b) use of the financial services of the University's Agency Fund. (See <http://www.finance.umich.edu/> (<http://www.finance.umich.edu/finops/accounting/chartfields/fund> for explanation of Agency Fund scope.)

The University may enter into contracts to supply business operations and staffing under the direction and control of External Entities when the contracts facilitate the mutual achievement of educational, research and public services purposes and goals and is consistent with the University's mission. The University may provide certain financial services for External Entities through its Agency Fund when the University has contracted to supply services as above and the use of the Agency fund (1) facilitates the terms of the contract or (2) assists Faculty, Staff or Students with University-aligned projects and/or goals.

Even though contractual relationships may be mutually beneficial, the University must consider the fiscal, human resource, information technology, risk management, facilities/space management, budgetary, and tax impact. Of course, the University must also ensure compliance with federal, state, local and University regulations and policies and treasury related aspects of the relationship. Contracts must also provide clear descriptions of the responsibilities of the External Entity to the University.

To ensure that the relationship and contract is in the best interest of the University as a whole, a draft contract must be reviewed by the appropriate campus and University administrative units prior to ratification and signature. SPG Sections III ("Agreement terms to be evaluated for cost and applicability") and V ("Resources") provide guidance to the executive officer(s) responsible for providing the oversight and coordination with the external entity on appropriate units to consult.

Many potential beneficial relationships are not complex and may not require extensive pre-contract analysis or consultations. However, particularly when the relationship contemplates University employees providing staffing for the External Entity's business functions or contemplates University participation in the External Entity's governance, multiple decision areas interact in complex ways. The Offices of General Counsel, Finance and Human Resources should be consulted early in the process to evaluate and understand the consequences of these complex interactions.

The initial term of the contract should be no more than 5 years, although a shorter term is preferred to allow earlier evaluation of the success of the relationship. Prior to any extension, contracts will be formally reviewed for both mission relatedness and success in adhering to the current contract's obligations. Requests for extension should be submitted, following the same process as for the initial review, 90 days prior to the end-date of the contract in order to allow adequate time for review. If either party chooses not to extend the contract, it will notify the other as may be required under the contract. If the University decides not to extend a contract, the designated executive officer will notify the other executive officers with contract related responsibilities.

##### B. Exceptions

This Standard Practice Guide is limited to only those functions outlined above. Related issues not governed by it include:

1. Money held in the Agency Fund for payment for purposes such as tax withholding, flow-through financial aid (including third party student loans), Escheats, Advanced Enrollment deposits (prepaid tuition) and Student Organizations' balances which are managed centrally.

2. Assignment Agreements under Title V of the Intergovernmental Personnel Act of 1970 (5 U.S.C. 3371-3375).
3. Other situations as may be approved by the president or designee from time to time.

## II. Roles and Responsibilities

### A. Mission

**Designated Executive Officer:** Oversight, coordination and evaluation of the mission relatedness of the external entity shall be under the supervision of the executive officer with the duties and functions described in Regents Bylaws Chapter II that is most related to the external entity. The designated executive officer may delegate day to day oversight of the External Entity to a dean, director or other appropriate staff and may designate the budgeting unit for the External Entity's revenues and expenditures. The designated executive officer shall also be responsible for coordinating, obtaining and documenting the counsel from other executive officer areas responsible for providing services required by the External Entity.

**President:** The president may designate one or more supporting executive officers where the mission of the External Entity is closely entwined with another executive officer's area.

**Supporting executive officer:** A designated supporting executive officer may delegate day to day oversight of the External Entity's operations applicable to the supporting executive officer's responsibilities to a dean, director or other appropriate staff. A designated supporting executive officer shall also be responsible for coordinating, obtaining and documenting the counsel from other executive officer areas responsible for providing services required by the External Entity as that counsel may apply to the supporting executive officer's responsibilities.

### B. Financial

**Executive Vice President and Chief Financial Officer:** Approval of and the costs for use of University personnel, infrastructure or space shall be obtained from the executive vice president and chief financial officer or designee. Funding for the costs may come from either the External Entity or other funds as may be identified by the designated executive officer. Further, when the University supplies employees who are then under the direction and control of an External Entity (i.e. leased employees) the executive vice president and chief financial officer shall be the University's designated senior executive officer when required for statutory reporting purposes. See Michigan Professional Employer Organization Regulatory Act, MCL 338.3721, et seq.

## III. Agreement Terms to be Evaluated for Cost and Applicability

In developing any contract with an External Entity, the designated executive officer must consider each of the following items and either include within the contract the item or provide a separate discussion for the other University signatories as to why the item was unnecessary or inapplicable.

For consideration when use will be depository and payment services only (Agency Fund):

- (1) information sharing and documentation as may be needed to evaluate mission alignment of the External Entity with the University's mission;
- (2) recognition that a positive cash balance must be maintained at all times and that generally no interest earnings are paid on deposits;
- (3) exit arrangements; and
- (4) any other special concerns related to the particular External Entity's operations or relationships with the University.

Additional Considerations when business operations and staffing involved:

- (1) indemnification of University for damages arising out of External Entity activities;
- (2) insurance coverage;
- (3) use of University space;
- (4) use/support of university procurement operations;
- (5) use/support of Human Resources;
- (6) use/support of Office of General Counsel;
- (7) use/support of the Tax Compliance and Planning Office
- (8) use/support of University accounting and payment systems;
- (9) use/support of University's Agency Fund;
- (10) (for leased employees) the specific Human Resources contact;
- (11) terms of employment for employees assigned to External Entity, including RIF rights and vacation payout if a transfer to a University position outside of the External Entity;

- (12) fringe benefit reimbursement and rate;
- (13) access by University to obtain detailed financial or other data to evaluate the University's risk at any time;
- (14) financial ability of External Entity to meet regularly anticipated obligations;
- (15) applicability of University SPGs and other policies;
- (16) conflict of interest interactions with other University operations;
- (17) intellectual property ownership;
- (18) state, federal regulatory requirements and related costs that may exceed existing practice or environment;
- (19) information security requirements;
- (20) exit arrangements; and
- (21) any other special concerns related to the particular External Entity's operations or relationships with the University.

#### IV. Procedure

1. The president may identify a supporting executive officer for External Entity contracts either individually or by category.
2. All contracts with an external entity shall be signed by the designated executive officer or his or her designee. Prior to the applicable executive officer or his or her designee signing the contract, each will have undertaken and documented the investigation and inquiry required by SPG 601.24 for the multiple terms and conditions identified in Section III, above.
3. When the External Entity contract involves supply of business operations and staffing under the direction and control of the External Entity, the contract shall be signed by the executive vice president and chief financial officer or designee after obtaining the consultation and advice of the designated executive officer. When the External Entity contract involves solely serving as a cash repository for an External Entity through the University's Agency Fund, the contract may be signed by the Controller or designee acting under the authority and direction of the executive vice president and chief financial officer.
4. Contracts solely for use of the Agency Fund shall be retained by the Controller with a copy provided to the designated executive officer, if requested. All other contracts shall be forwarded to Procurement Services with a copy provided to the designated executive officer or designee. A copy of any contract allowing for use of the Agency Fund shall be provided to the Controller.
5. Accounting of salaries for employees leased to External Entities that are not under the University's legal control shall be through the Agency Fund and coordinated with Human Resources employee records. No other salaries may be expensed in the Agency Fund.

#### V. Resources

Contracting with external entities requires specialized professional expertise. University departments or divisions interested in developing or organizing an affiliate to further an aspect of the University's mission are strongly urged to make early contact with the professional staff that can assist in your analysis and effort.

1. Contact the Office of General Counsel (734-764-0304) to assist in evaluating the outcomes from differing relationship structures.
2. Contact the University Human Resources Office (734-763-1284) to assist in evaluating the human resource implications.
3. Contact the Tax Compliance and Planning Office (734-763-3282) to assist in evaluating the financial implications (e.g. compliance, use/support of university procurement operations, insurance coverage, etc.).

#### File Attachments

Printable PDF of SPG 601x32 (<http://spg.umich.edu/sites/default/files/601x32.pdf>)

**SPG Number:** 601.32  
**Applies To:** All Departments and Units of the University

**Date Issued:** March 31, 2013  
**Owner:** President

**Next Review Date:** March 31, 2015

**Hard copies of this document are considered uncontrolled. If you have a printed version, please refer to the University SPG website ([spg.umich.edu](http://spg.umich.edu)) for the official, most recent version.**

© 2018 The Regents of the University of Michigan