



Policy Name:	Contract Policy (Delegation of Authority)
Effective Date:	September 20, 2013 (Board of Regents)
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Approving Authority:	Board of Regents
Responsible Office:	Finance and Administration
Category:	Financial

**Purpose**

Policy with regard to authority to execute contracts and approve expenditures and commitments of University resources.

**Introduction**

The Board of Regents (“Board”) of Northwest Missouri State University (the “University”) has granted the President and certain other officers of the University the authority to execute certain contracts and approve certain expenditures and commitments of University resources that have been approved by the Board as part of the University’s budget. The Board will fulfill its fiduciary duty by reviewing the proposed budget prior to annually adopting the same, assuring that internal and independent audits are performed annually, and reviewing the audit results. If any changes are thought necessary by the Board, the President will be so advised. The Board considers such contracts and expenditures entered into and approved by the President and such other designated officers consistent with the resolution of a majority of the voting members of the Board at a duly called meeting of the Board.

This procedure defines the general parameters for the approval of expenditures and commitments of University resources, and designates who, within the University, is authorized to sign contracts on behalf of the University, including procedures by which certain University contracts might be entered into.

**University Property**

The Board has not delegated its authority regarding the purchase or sale of University property (all real property matters require Board approval) or the lease of real property for the University’s use when the lease is for a term longer than one year or the rental over the entire term exceeds \$300,000 regardless of the source of funding.

**Purchase Authority**

- A. Expenditures up to \$300,000. The Board delegates to the President, the Provost, or the Vice President of Finance and Administration and Administration, the ability to execute contracts and approve expenditures up to \$300,000 over the entire term of the expenditures, so long as the purchase will be budgeted within the one

fiscal year and the authorizing official has the funds, is satisfied with the terms and conditions, and is confident that the division has the ability to fulfill the obligations assumed. This authority may be delegated on these or more limited terms, in writing or by position description, to persons reporting directly to the President, Provost or Vice President of Finance and Administration. All expenditures over \$25,000 and up to \$300,000 require dual authorization and thus, must be approved by two of the three administrators or his/her designee. All expenditures outside of the approved total fiscal year budget will be brought to the finance committee and then the Board of Regents for approval.

- B. Expenditures over \$300,000. Any expenditure over \$300,000 must be executed or approved by the President, who will require a written rationale in support of the expenditure. Any expenditure over \$1,000,000 must be brought before the finance committee and if approved, before the full Board of Regents. Before approving expenditures over \$300,000 or any other expenditure that has been delegated by the Board and exceeds the approval authority of the Provost, Vice President of Finance and Administration, the President will require evidence that the proposed expenditure is a result of sound business judgment, is prudent, and University policies and procedures have been followed. All expenditures over \$25,000 and over \$300,000 require dual authorization and thus, must be approved by two of the three administrators or his/her designee. All expenditures outside of the approved total fiscal year budget will be brought to the finance committee and then the Board of Regents for approval.
- C. Multi-year contracts with annual costs that do not exceed \$ 100,000. The Board delegates to the President, the Provost, or the Vice President of Finance and Administration the ability to execute multi-year contracts with a term not greater than 10 years to the extent that the University's annual costs associated with performance of the contracts will not exceed \$ 100,000 per year. All multi-year contracts executed by the President, the Provost, or the Vice President of Finance and Administration shall be presented to the Board as FYIs. Any multi-year contract that requires the University to incur annual costs that exceed \$ 100,000 per year must be approved by the Board.
- D. Multi-year grants with project costs that do not exceed \$500,000. The Board delegates to the President, the Provost, or the Vice President of Finance and Administration the ability to execute multi-year grants with a term not greater than 5 years to the extent that the University's total costs associated with performance of the grant will not exceed \$500,000 over the life of the grant cycle. All multi-year contracts executed by the President, the Provost, or the Vice President of Finance and Administration shall be presented to the Board as FYIs. Any multi-year grant that requires the University to incur costs that exceed \$500,000 over the life of the grant cycle or exceed five years must be approved by the Board.

#### **University Contract Defined**

For the purposes of this procedure, a "University contract" is defined as an agreement between two (2) or more parties, one of which is the University or any of its subunits, intended to have legal effect. There must be a common understanding among the parties as to the essential terms, there must be mutual obligations, and there must be "legal

considerations,” meaning that something of value is exchanged. The term “University contract,” as defined in this procedure, does not include internal agreements between different units within the University.

Examples of University contracts include, but are not limited to:

- agreements for the purchase or rental of goods or services
- nondisclosure agreements
- agreements that set terms for acceptance of gifts
- a sale, lease, or donation of University goods or services
- liability waivers
- settlement of disputes
- licenses
- memoranda/letters of understanding or cooperation
- contracts with hotels, convention centers or other facilities which require a written agreement
- instructional agreements
- assignment of the right of a person, group, or agency to use the University’s name, logo or resources
- construction contracts and related change orders
- grants and sponsored programs proposals and awards
- etc.

The above list is not all-inclusive. Some contracts may be oral; others must be written to be enforceable. An agreement may be a binding contract even though one party provides something of value to the other party at no charge. There must be a University interest at stake. While acting in the scope of your employment, if you are entering into an agreement which requires legal considerations or a commitment of University resources, it is best to presume that you are negotiating a “University contract.”

### **Administrative Review**

Persons wishing to enter into contract negotiations such as those described above, must begin with these Procedures to determine what initial actions need to be taken. Further, any additional policies and procedures regarding contract review and execution established by the University from time to time must be adhered to.

University contracts, prior to the execution thereof, shall be approved as to legal form and validity by the University’s legal counsel, to the extent required by applicable University policies and procedures. Such approval shall not be required with respect to individual contracts or extensions or renewals thereof if the form has prior approval by the University’s legal counsel as a standard and contains no substantive changes, deletions or additions other than those pertaining solely to the description of the project, the amount involved, and the term of the contract or extension; provided, however, such form contracts may be sent to the University’s legal counsel for contract control purposes.

More specifically, the party initiating the contract for the University is responsible for reading the contract entirely and determining that:

- the contract language accurately reflects the current state of negotiations;
- the contract meets programmatic and University mission requirements;
- the contract is in the best interests of the University;
- he/she can ensure compliance with the obligations it places on the University;
- the contract is sufficiently clear and consistent;
- the contract is signed by person(s) with authority;
- a conflict of interest does not exist;
- funds have been allocated.

After being satisfied with the form and content of the contract, the initiating employee must submit the contract to the relevant office for administrative review. The Attorney General's Office has issued instructions mandating that certain "prohibited clauses" may not be included in any contracts into which a state agency enters. The University's legal counsel will review each contract to ensure that:

- it does not contain any of the prohibited clauses;
- it is consistent with federal and/or state laws;
- it is consistent with the University's rules and regulations;
- risk management concerns have been reasonably addressed; and
- it is consistent with any predecessor documents.

The University's legal counsel shall determine what other institutional reviews are necessary prior to submission of the contract for signature and will coordinate obtaining the appropriate reviews.

### **Authorizing Signatures**

Authority for contract negotiations and signature approval should include persons in the department that has the responsibility for performance of any part of the agreement. As a general rule, only the President, the Provost, and Vice President for Finance and Administration have the authority to contract for the University. Delegation of authority to these persons or others will be reviewed by the University President and the University's legal counsel. Delegation of authority is required to be set out in position descriptions or in writing signed by the University President with a copy to be submitted to the University's legal counsel, where appropriate. Anyone else who enters into a contract that purports to bind the University or its subunits is acting without authority and could be held personally liable for the contract.

### **Record Retention**

An original of all fully executed contracts shall be retained by the University in accordance with relevant University policies for record retention. Further, a photocopy of all fully executed contracts shall be forwarded to the University's legal counsel, where appropriate.