

**Policy 3210**  
**Contracting for External Consultants and Other Professional Services**

<b>Responsible Office</b>	Procurement	<b>Effective Date</b>	
<b>Responsible Official</b>	Chief Procurement Officer	<b>Last Revision</b>	10/21/05

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**Scope**

This policy is directed toward the engagement of External Consultants. It is applicable to such varied providers of professional services as independent public accounting firms engaged to perform audits of the University, management consultants, and visiting speakers or lecturers at academic or other University events.

This policy does not apply to the engagement of attorneys to perform any legal services; only the General Counsel is authorized to retain attorneys to perform legal services on behalf of the University, and any department that wishes to obtain such services must first contact the Office of the General Counsel which will select and engage outside counsel, if appropriate.

Engagements for the services of architects, contractors, engineers and others hired to work on specific construction, renovation or alternation activities are not within the scope of this policy. Such engagements are governed by specific Facilities Office policies. However, other service agreements initiated by the Facilities Office that are not specifically associated with construction, renovation or alteration activities are governed by the terms of this policy.

This policy is also not applicable to subcontracts, subgrants or other agreements that are issued when Yale has been awarded a grant or contract and a substantive portion of the programmatic work will be performed by an investigator(s) at another institution. Departments should contact the Offices of Grant and Contract Administration (Central or School of Medicine, as appropriate) for procedures applicable to subcontractors funded by sponsored research awards.

**Policy Statement**

External Consultants should be retained by the University in only those instances in which certain skills are required to conduct University business and the University's faculty and staff are not able or available to provide the necessary service. All consulting agreements must contain specific information and provisions as set forth in the policy and an authorized official must approve all such agreements prior to the commencement of work.

Consultants must be selected in accordance with the University's competitive bidding and selection criteria pursuant to which the consulting fees must be appropriate for the services rendered and the consultant's qualifications. Payments to consultants must comply with all applicable requirements governing grants and contracts, IRS regulations, conflict of interest policies and other relevant internal and external policy directives as described in this policy. See Policy [3415](#), Payments to Individuals Who Are Neither Citizens Nor Permanent

Residents of the United States, for regulations governing the engagement of individuals who are neither citizens of the U.S. nor permanent residents (green card holders).

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## Reason for the Policy

This policy sets forth guidelines for the engagement of External Consultants and professional service providers by the University. Its purpose is to protect the University's business interests by and through the execution and approval of comprehensive consulting agreements, observance of institutional bidding and selection criteria and compliance with all relevant regulations and policy requirements.

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## Definitions

### External Consultants and/or Professional Service Providers

Individuals or organizations who provide professional advice and other services to the University for a contractual fee. For the purpose of this policy, consultants and other similar external service providers are hereinafter referred to collectively as "consultants".

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## Policy Sections

### 3210.1 Appropriate Engagement of External Consultants

External Consultants normally possess specialized skills, knowledge or credentials that are not readily available among the University's faculty and staff. For example, External Consultants may be retained to provide specialized services for business process modernization, computer systems development, strategic planning and other management initiatives. External Consultants may also be engaged to provide professional services in connection with the University's capital, clinical, research and other academic and administrative programs.

While this policy is directed primarily toward the engagement of External Consultants, it is also applicable to such varied providers of professional services as independent public accounting firms engaged to perform audits of the University, visiting speakers or lecturers at academic or other University events.

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### 3210.2 The Consulting Agreement

The University has developed a [Standard Professional Services Agreement](#) which may be used by department administrators for routine consulting arrangements. While this form is most suitable for limited consulting agreements it may be used for larger agreements if all relevant information is included in the attachments to the standard agreement.

Formal consulting agreements are required for all individual consulting agreements which require payments in excess of \$5,000 during any one fiscal year. The agreement must include the following information:

1. an adequate description of the project, the nature of the services to be rendered, place of work, equipment to be provided, and purpose to be accomplished;
2. the specific work products that must be produced by the consultant and the schedule for their production;
3. the payment terms and methods;
4. the term of agreement;
5. insurance provisions;

6. terms of travel expense reimbursement (see Policy [3301](#) [Section 1F] Traveling on University Business, for further guidance in this area); and,
7. other representations as appropriate and defined in the University's Standard Professional Services Agreement.

All agreements must be signed by the External Consultant and approved by the authorized University representative(s) as defined in Section 3210.3 of this policy before the consulting work begins.

Consulting service agreements must comply with selection procedures described in the Procedure Section accompanying this policy. Toward this end, consultant fees must be appropriate for the services rendered and the consultant's qualifications, taking into consideration the prevailing charges for similar circumstances and services. Competitive bids or a Single/Sole Source Justification Form is required for agreements with total anticipated payments in excess of \$5,000.

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### **3210.3 Required Approvals**

The appropriate University officials must approve consulting agreements before services are initiated. Agreements may not be binding on the University unless the required approvals are obtained. The amounts listed below for the purposes of determining required approvals represent the total aggregate payments required by, or anticipated from, an individual consulting arrangement. Agreements funded by grants and contracts, as well as those for tax, audit and construction services, require alternate or additional approvals as described in this policy. All consulting agreements that are not on standard or previously approved forms must be reviewed by the Office of the General Counsel. Consulting agreements that are on standard or previously approved forms **without modification** need not be reviewed by Office of the General Counsel, irrespective of the dollar amount of the agreement.

#### **\$5,000 or less**

This policy does not require formal written agreements for individual consulting arrangements with total payments of \$5,000 or less during any one fiscal year. However, all invoices for consulting agreements within this dollar threshold should clearly state the services provided and must be approved by the department administrator or designee with appropriate decision-making authority.

#### **More than \$5,000 but less than or equal to \$25,000**

Agreements must be approved by the Dean, Chair or Major Department Head.

#### **More than \$25,000 but less than or equal to \$100,000**

Agreements must be initially approved by the Dean, Chair or Major Department Head. Agreements funded by grants and contracts must receive final approval from the Director of the Office of Grant and Contract Administration (Central or School of Medicine, as appropriate). Agreements funded by non-grant and contract funds must receive final approval from the Controller.

#### **More than \$100,000**

Agreements must be initially approved by the Dean, Chair or Major Department Head. Agreements must receive final approval from the Controller. The respective Office of Grant and Contract Administration (Central or School of Medicine) must review agreements that are funded by grants and contracts before they are forwarded to the Controller for final approval. For large and/or complex agreements, schools and departments should consult the Controller and the General Counsel's Office at the conceptual phase of the agreement.

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### **3210.4 Services Requiring Alternate or Additional Approvals**

#### **Construction, Renovation and Alteration Projects**

Only the Facilities Office (central and science areas) or Facilities Development and Operations Office (School of Medicine) are authorized to procure and manage architectural, general contracting,

engineering, and other services for construction, renovation and alternation projects. Other departments may not contract directly for such services. Capital projects with total budgets greater than \$100,000 are administered according to the Program Manual for Capital Budgets.

### **Safety**

Only the Safety Office may hire consultants regarding biological, chemical or radiation safety issues.

### **Legal and Tax**

Legal services provided by external attorneys must be arranged through the General Counsel. Departments may not obtain legal services directly from external attorneys without prior written approval from the General Counsel. The Associate Vice President for Finance, the University's Tax Manager or the General Counsel must retain tax services provided by external public accountants.

### **Auditing**

The Vice President for Finance and Administration or the Associate Vice President for Finance must retain external public accountants who perform audits of the University or its specific subdivisions.

### **Intellectual Property**

The Office of Cooperative research must approve all agreements that provide for the creation or transfer of intellectual property rights that may be owned by the University. [Check Corporation vote to see if others are allowed to approve agreements]

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#### **3210.5 Processing Payments to Consultants**

It is the responsibility of department administrators to determine whether the consultant qualifies as either an independent contractor or a University employee in accordance with Policy [3210](#) and its accompanying procedures and guides. Please refer to [3210 GD.01](#) Employee Vs Independent Contractors. External Consultants shall not be paid through the Payroll Office unless their services satisfy the criteria of an employee as defined by that policy. External Consultants who qualify as independent contractors must be paid through Accounts Payable. The Vendor Compliance Unit will collect and retain W-9 forms for External Consultants.

Purchase orders are required for consulting agreements with total anticipated payments in excess of \$25,000. All invoices from external attorneys must be approved by the General Counsel.

For information regarding the reimbursement of travel expenses incurred by consultants please refer to Policy [3301](#), Traveling on University Business.

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#### **3210.6 Other Policy Provisions**

##### **Conflicts of Interest**

Department administrators should review Policy 2405 as well as those policies contained in the Faculty Handbook when engaging a consultant who has a separate relationship with the University or a member of its faculty or staff.

##### **Intellectual Property**

All External Consultants must agree in advance that intellectual property developed as a result of a consulting arrangement with the University will be the exclusive property of the University. All consulting agreements must, therefore, include a specific provision to that effect.

##### **Faculty, Staff, Postdoctoral Fellows**

Consulting fees are not normally paid to University faculty, staff or postdoctoral fellows. (See Exceptions to Policy for further guidance.)

**Federal Employees**

Federal funds, including those recovered as facility and administrative costs, may not be used to pay consulting or other professional fees for an individual who is employed full time by the Federal Government.

**Grants & Contracts**

If the consulting services are to be charged to a grant or contract, the allowability of this expense should be verified with the appropriate Office of Grant and Contract Administration (Central or School of Medicine).

**Special Situations/Exceptions**

Exceptions relating to the payment of consulting fees to employees require the approval of the Associate Vice President for Administration (for staff) or the Provost (for faculty and postdoctoral fellows).

All other exceptions to policy require approval by the Controller for Finance and Administration.

**Related Information**

Policy [3415](#): Payments to Individuals Who Are Neither Citizens Nor Permanent Residents of the United States

[Faculty Handbook](#)

**Contacts**

Subject	Contact	Phone
Consulting and subcontracting agreements funded by grants and contracts.	Offices of Grant and Contract Administration, Central / School of Medicine	432-2460 /785-4689
Contractual work involving intellectual property.	Office of Cooperative Research	432-7240
Classification of individuals as independent contractors or employees	University Tax Department and the University Accounts Payable Office	432-5421 /432-5394
Engagement of Non-resident aliens	Office of Foreign Students and Scholars	432-2305
Interpretation of policy	Office of the Controller	432-5524
Non-standard agreements	Office of the General Counsel	432-4949
Architectural, engineering, general contracting and other services related to construction, renovation or alteration activities	Office of Facilities - Contract	432-4021

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## **Roles and Responsibilities**

### **Accounts Payable Office**

For those departments not serviced by Business Support Centers, the Accounts Payable Office shall review supporting documentation and process invoices for consulting contracts with total payments up to \$25,000 (b/c you must have a PO for a consulting agreement greater than \$25,000).

For all departments, the Accounts Payable Office will process invoices against purchase orders. It shall also perform quality assurance reviews of consulting payments processed by Business Support Centers.

### **Business Support Centers**

Business Support Centers shall review supporting documentation and process invoices for consulting contracts with total payments up to \$5,000 in lieu of certain services provided by the Accounts Payable and Purchasing Offices.

### **Office of Cooperative Research**

The Office of Cooperative research must approve agreements that provide for the creation or transfer of intellectual property rights that may be owned by Yale.

### **Dean, Chair, Major Department Head**

The Dean, Chair or Major Department Head must approve all agreements with total aggregate payments of more than \$5,000.

### **Department Administrators**

It shall be the responsibility of Department Administrators to:

- Determine whether a consultant qualifies as an independent contractor or University employee in accordance with Policy [3210](#);
- Consult with the appropriate offices and University personnel for guidance regarding consulting agreements;
- Review and approve all invoices and monitor total payments in accordance with contractual terms; and,
- Complete purchase requisitions, competitive bids or single/sole source justification forms if required by this policy.

### **Facilities Office and Facilities Development and Operations Office**

The Facilities Office (central and science areas) or Facilities Development and Operations Office (School of Medicine) shall manage and procure services for construction, renovation and alteration projects.

### **Office of the General Counsel**

It shall be the responsibility of the Office of the General Counsel to:

- Retain attorneys to perform legal services on behalf of the University;
- Retain certain tax services provided by external public accountants;
- Review all consulting agreements that are not on standard or previously approved forms, irrespective of the dollar amount; and,
- Provide legal advice to school/department administrators at the conceptual phase of large and/or complex agreements.

### **Offices of Grant and Contract Administration (Central and School of Medicine)**

It shall be the responsibility of Offices of Grant and Contract Administration (Central and School of Medicine) to:

- Assist departments in the verification of the allowability of consulting services charged to a grant or contract; and,
- Review agreements valued at more than \$100,000 that are funded by grants and contracts before they are forwarded to the Controller for final approval.

The Directors of Grant and Contract Administration must approve all consulting agreements funded by grants or contracts with payments of more than \$25,000 but less than or equal to \$100,000.

#### **Provost**

The Provost must approve all exceptions relating to the payment of consulting fees to faculty and postdoctoral fellows.

#### **Purchasing Department**

It shall be the responsibility of the Purchasing Department to:

- Review the documentation relating to agreements with total payments in excess of \$25,000;
- Obtain approval from the Controller or the Directors of the Offices of Grant and Contract Administration, as required; and,
- Issue all purchase orders irrespective of the dollar amount.

#### **University Tax Manager**

Either the University Tax Manager, the Associate Vice President for Finance or the General Counsel must retain tax services provided by external public accountants.

#### **Vendor Compliance Unit**

It shall be the responsibility of the Vendor Compliance Unit to collect and file [W-9 forms](#) for External Consultants.

#### **Controller**

It shall be the responsibility of the Controller to:

- Approve agreements valued at more than \$25,000;
- Approve all other exceptions to this policy.

#### **Vice President for Finance and Administration**

Retain external public accountants who perform audits of the University or its specific subdivisions

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### **Forms and Exhibits**

[3210.GD.01](#) Employee Vs Independent Contractors

[3210.GD.02](#) Required Documentation and Approvals for Consulting and Other Professional Services

[3205.FR.03](#) Single/Sole Source

[3205.FR.06](#) IRS Form W-9

[3210.FR.01](#) Yale University Standard Professional Services Agreement

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### **Revision History**

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The official version of this information will only be maintained in an on-line web format. Any and all printed copies of this material are dated as of the print date. Please make certain to review the material on-line prior to placing reliance on a dated printed version.

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