

10 THINGS YOU SHOULD KNOW ABOUT CONTRACTING OF WORKS BY COMPANIES OR OTHER ENTITIES



1. CAN A RESEARCHER CARRY OUT A SCIENTIFIC, TECHNICAL OR ARTISTIC WORK ON BEHALF OF A THIRD PARTY?

✓ **YES**, according to the provisions contained in **article 83** of the *LOU* (Organic Law 6/2001 of Universities, passed on 21 December):

*[...] University Departments and Research Institutes and their teaching staff [...], are entitled to enter into contracts with **individuals, Universities and private or public entities** to perform scientific, technical or artistic works as well as to develop specialization training or specific training activities.*

✓ According to Royal Decree 1930/1984, modified by Royal Decree 1450/1989, for the performance of these works

researchers are granted compatibility:

➤ whenever the contract **has been authorized by means of the procedures stated in the University's Bylaws** (http://otri.umh.es/files/2011/08/flujograma_contratos-y-convenio.pdf)

researchers are not granted compatibility:

- whenever the work does not not attain the scientific level demandable to a university professor;
- whenever the performance of the work jeopardises teaching performance or entails actions unbecoming to a university professor;
- whenever the work is exclusively attributed to a specific group of professionals and the professor does not hold the necessary qualification;
- whenever the obligations undertaken in the contract call for a continued work relation

2. HOW DO THESE CONTRACTS BENEFIT THE RESEARCHER?

✓ THEY CONTRIBUTE TO THE UNIVERSITY'S TRANSFER FUNCTION

Together with teaching and research, transfer is one of the university's functions; these three missions define universities as institutions **committed to social and financial development** which contribute to fostering the business network and improving living standards in our society.

Thanks to all the contracts signed under article 83, researchers contribute to converting the knowledge generated with public funds at the university into social and financial benefits, transforming it into new products or services.

✓ THEY ARE ACKNOWLEDGED WHEN APPRAISING RESEARCH ACTIVITY AND TECHNOLOGICAL TRANSFER

Activities carried out within the framework of article 83 are included in the annual calculations of PATT index (evaluation of technological transfer activities) according to the criteria included in the proceedings passed by the Board of Governors of UMH for that purpose.

✓ COMPLEMENTARY FEES

- As a consideration for the participation in contracts under article 83, researchers may receive complementary fees at the expense of the amount contracted with the third party.
- Moreover, in R+D contracts where results are generated the authors or inventors will be entitled to receive royalty fees as long as the exploitation of results is verified.

3. WHICH ARE THE HIRING MODELS AVAILABLE?

✓ According to UMH's internal regulations, **two hiring models** can govern the activities carried out within article 83 of the *LOU*. The choice will depend on the characteristics of the work hired by the third party:

A. SERVICES PROVISION

This model is used when the following criteria are met:

monetary consideration under
€12,000

+

maximum term of
contract: 12 months

+

no need to expressly regulate
ownership of results,
publications or parties
responsibilities

✓ This hiring model is mainly used for technical and isolated works such as essays, technical reports, court reports and expert appraisals.

B. CONTRACTS AND AGREEMENTS

This hiring model is used in any other case.



4. MOST FREQUENTLY USED TYPES OF CONTRACTS

➤ CONTRACT FOR ASSESSMENT AND TECHNICAL ASSISTANCE

This contract consists on the hiring of a consultancy service, the issuance of an opinion or diagnosis by a researcher or a research team specializing in the matter the contracting third party is interested in. **No new knowledge is expected to be created.**

➤ TECHNOLOGICAL SUPPORT CONTRACT

In this kind of contract, the university's resources are used to apply already existing scientific knowledge to the resolution of a practical need presented by the contracting third party. **No new knowledge is expected to be created.**

➤ R&D&i CONTRACT

This contract entails the performance of activities that will generate **new knowledge** or solve a **scientific or technological uncertainty** on which the contracting third party has an interest.



5. WHY IS A TECHNICAL APPENDIX NECESSARY IN THE CONTRACT?

A technical report describing the scope of the work to be carried out must be appended to the contract. This Appendix is **an integral part of the contract** and it must therefore be drafted as carefully as its clauses, for it **is binding** for the signatories.

It is essential for the Appendix to include a clear and detailed specification of the actions to be carried out in order to fulfil the goal of the contract. The contract precedents, its targets, work plan and foreseen work schedule will be described in as much detail as possible.

Vague descriptions must be **avoided** at all times, since they are not favourable to any of the parties' interests.



6. IS IT POSSIBLE TO PUBLISH THE RESULTS OBTAINED IN WORKS CARRIED OUT FOR COMPANIES?

All contracts are governed by the principle of free will of the parties, hence the publication of results is negotiable.

Notwithstanding this, companies usually request that all reports, either partial or final, and results are classified as CONFIDENTIAL and set up a procedure to request authorization to publish them (notification of the intention to publish, decision deadline, silence as an implied consent).

Such CONFIDENTIALITY requirement must be respected by all participants in the work and will remain in force after the contract has been terminated.



7. SPECIAL CHARACTERISTICS OF PUBLIC ADMINISTRATION (PA) CONTRACTING

The PA sometimes needs to hire third parties in order to comply with its institutional objectives. This kind of hiring is subject to specific regulations based upon the need to control public spending, guarantee equal opportunities for all citizens and achieve the fruitful conclusion of the contract.

Some of the most relevant administrative contracts are:

- **Minor contracts** awarded by the PA are under €18,000 (VAT excluded), last no longer than one year and are unextendable. The Administration will only have to approve the budget.
- **Bids** are PA contracts where the allocated sum is over the abovementioned amount for which a file must be created. This file must include a justification of the need for the contract as well as the administrative conditions sheet set to govern it and a statement on the existence of funds to be awarded to the contract.

Whenever UMH is to sign one of these contracts, the professor in charge must previously fill out an **engagement document** stating the details of the requested activity, such as the *aim of the contract, awarding entity, term for completion, budget, payment method, technical specifications and work team*.

8. WHO CAN PARTICIPATE IN A CONTRACT'S WORK TEAM?

The following are allowed to participate in the execution of a work:

- UMH Teaching and Research Staff: civil servants or hired personnel
- UMH Research Staff whose research contracts allow them to
- Training Research Staff linked to UMH
- Staff hired by charge to the contracts' budget in order to carry out scientific, technical and auxiliary works
- Temporary and external collaborators

The following will be able to participate with **prior authorization** from their entities:

- ✓ Teaching and Research Staff from other Universities: civil servants or hired personnel
- ✓ Researchers from other organizations or public and private entities
- ✓ Temporary collaborators and experts: civil servants from other public administrations
- ✓ Management and Services Staff from UMH or other universities

However, anybody who wishes to act as head of the work team must be linked to UMH from the beginning until the end of the work.

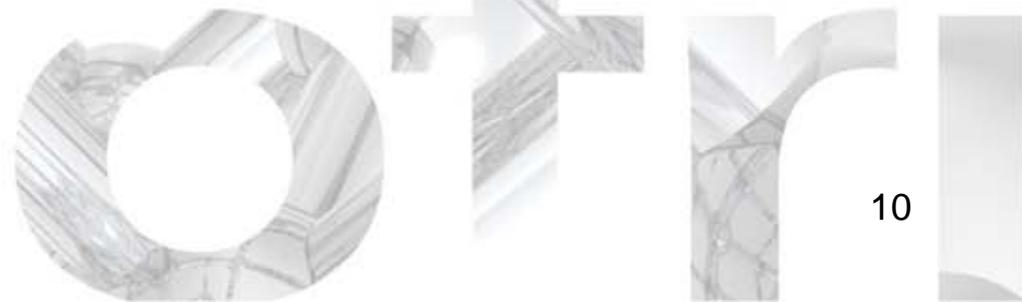
9. IS IT POSSIBLE TO RECEIVE COMPLEMENTARY PAYMENTS FOR PARTICIPATION IN A CONTRACT?

YES. The possibility of receiving complementary payments for participation in contracts pursuant to article 83 of the *LOU* is **legally acknowledged** (Royal Decree 1930/1984, passed on October 10 and modified by Royal Decree 1450/1989 of November 24 http://otri.umh.es/files/2010/07/rd1930-1984_modrd-1450-1989.pdf)

The maximum annual amount to be received by a professor at Universidad Miguel Hernández chargeable to the contracts signed under article 83 of the *LOU* is equivalent to the remuneration of a University Professor holding the position of Rector with 14 acknowledged triennia, 6 positive evaluations for Teaching Accomplishments and 6 more for Research Activity, increased by 50%.

The maximum amount for year **2012** in UMH is **€139,639.62**.

This sum will be updated according to the provisions on teaching staff retributions set forth in the State Budget Law on a yearly basis.



10. ITEMS TO BE TAKEN INTO ACCOUNT WHEN PREPARING A CONTRACT'S BUDGET (I)

Whenever the budget for a contract is prepared, contract enforcement costs and the university's general expenses must be taken into account as well as the corresponding taxes to be paid.

A. Enforcement costs:

- ✓ Personnel costs. This item will cover the staff needs for the activity (newly hired personnel, training research staff, complementary payments to the participating teaching and research staff, research staff & administration and services staff, if necessary)
- ✓ Inventoriable materials: the cost of all equipment to be acquired or the cost of using the already available equipment.
- ✓ Consumables. Cost of laboratory and office consumables plus the cost of low useful life appliances.
- ✓ Trips and allowances. This item will include transport expenses and allowances for the trips made to develop the activity described in the contract.
- ✓ Other expenses. Specific expenses not included in the previous items (patent requests, external services...)

10. ITEMS TO BE TAKEN INTO ACCOUNT WHEN PREPARING A CONTRACT'S BUDGET (II)

B. University's general expenses:

Among the general expenses applied to each contract by the university are those which are very difficult to calculate such as telephone, water, electricity and gas services, amortization and maintenance of buildings, common auxiliary services, management services and others.

General expenses applicable to each type of research contract are set forth in articles 17 and 20 of the *Rules for scientific, technical and artistic contracting*.

http://otri.umh.es/files/2011/07/reglamento-contratacion_revision-13072011.pdf

C. Applicable taxes:

On a general basis, Value Added Tax (VAT) will be applied.

The **budget** calculated as per the previous guidelines **must be differentiated** from **the amount to be requested to the company/institution signing** the contract, which will be set by the market. In any event, the **price of the contract must never be lower than the enforcement costs, general costs and taxes** arising from the development of the work.

CONCLUSIONS (I)

- University researchers may, as stated in article 83 of the *LOU*, carry out scientific, technical or artistic works on behalf of a third party through the signature of the corresponding contract.
- The hiring modality will depend on the characteristics of the work to be performed. It is recommended to contact OTRI in order to decide which type of contract is most suitable.
- Contracts must include a Schedule with a technical report describing the work to be carried out. This annex must use clear and specific terms and it will be a part of the contract which will bind the signing parties.
- Publication of results depends on the terms agreed on between the parties in the contract, although companies usually request that they remain confidential.
- Minor contracts and bids are the most frequent hiring models requested to the University by the Public Administration. In such cases, the head professor must justify his/her participation by means of a commitment document including the main data on the requested activity.



CONCLUSIONS (II)

- Researchers are entitled to receive complementary payments for their participation in contracts signed by virtue of article 83 of the *LOU* within a yearly limit, which in UMH is set at €139,639.62 for the year 2012.
- When the budget for a contract is drafted, contract enforcement costs must also be taken into account (staff, inventariables, consumables, trips and allowances, other expenses), as well as the university's general expenses and the corresponding applicable taxes.

OTRI will give you the support you need along all the stages of the process, from the negotiation of the contract until its signature.

