

# The University of Texas at El Paso



## CONTRACT MANAGEMENT HANDBOOK

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# CHAPTER 1

## INTRODUCTION

### 1.1 Purpose

The purpose of this Contract Management Handbook (Handbook) is to offer contract managers, purchasing personnel and other administrators at University of Texas institutions recommendations on documenting existing contract management processes and practices in connection with the procurement of goods/services.

*This Handbook does not govern real estate transaction contracts (even if the transaction is a lease under which an Institution provides services in exchange for compensation), sponsorship agreements under which Institutions receive compensation in exchange for recognition of the sponsor, sponsored research contracts or other intellectual property agreements where Institutions convey an interest in intellectual property. Construction contracts are governed by separate statutory requirements and are also not addressed in this Handbook. However, this Handbook may provide helpful information useful in connection with contracts that are not governed by the Handbook.*

Use of this Handbook does not relieve Institutions and contractors of their responsibility to comply with Applicable Laws and University Rules related to specific programs and funding sources.

For purposes of this Handbook, contract management includes the coordination and administration of four core processes:

- Planning;
- Procurement of goods or services (including complying with HUB laws and policies);
- Contract Formation (including scope of work, specification of contract price or rate and other relevant terms and conditions); and
- Contract Administration.

The nature and level of risk associated with each of these contract management elements vary depending on the type of contract and the business relationship between the Institution and contractor. It is the responsibility of the chief business officer of each Institution to assign responsibilities, assure appropriate training and oversight, and monitor the processes so that each procurement achieves best value for the Institution.

Fully implemented contract management requires coordinating and administering the four core processes.

The contract manager or lead for the contract management team assigned to any particular contract is responsible for assuring that all necessary and appropriate disciplines are engaged and their work with respect to the contract coordinated to assure compliance with this Handbook, including meeting legal contract requirements. Various types of contracts are subject to different statutory standards, practices, processes, and strategies for successful implementation. The suggestions, comments, techniques, examples and recommendations included in this Handbook are not appropriate for every type of contract.

This Handbook:

- *Summarizes certain mandatory statutory, regulatory and policy compliance requirements related to Institution contracting activities that are evidenced by Handbook references to the applicable statute, regulation, or policy.*

- Provides practical suggestions and best practices related to Institution contracting activities which are encouraged but not mandatory. Taking into consideration the complexity of the contract on which the Institution is working, Institutions should exercise reasonable business judgment when applying practical suggestions and best practices. Recognizing that the needs of each Institution and the requirements of each contract are different, the information in this Handbook is intended to be applied *flexibly, not mechanically*. This Handbook provides a framework for making contracting decisions that are in the best interest of the Institution.
- Provides a *Contract Management Best Practices Matrix* attached as [APPENDIX 1](#) that includes a summary of best practices designed to help Institutions determine where a contract management program currently stands in relation to generally accepted contract management best practices. This matrix offers a number of best practices in several key contract management areas and may be used to improve practices and to implement the best contract management program possible. The matrix is intended to assist Institutions with organizing contract management programs and leveraging technology, metrics, training and lessons learned for the purpose of minimizing risks throughout the overall supply chain. The matrix also includes a reference section that points to the applicable Chapters of this Handbook related to each contract management component.
- Describes the duties of the contract management team, including how to solicit and select a contractor, develop and negotiate a contract, and monitor contractor and subcontractor performance.
- Supplements (but does not replace) Applicable Laws and University Rules. Each Institution is independently responsible for developing sound business policies and procedures in accordance with Applicable Laws and University Rules.
- Discusses many general legal principles; however, these general principles include many exceptions. This Handbook is not intended to be a manual on the law of contracts or constitute legal advice. Contract managers should consult with the Institution's legal office with regard to any legal questions that arise with respect to contracts.
- Includes model contract provisions and indicates whether each provision is essential or recommended.
- Addresses the permitted extent of contract changes that may be made before a new competitive solicitation may be needed.
- Suggests time frames for the solicitation, evaluation, negotiation and awarding of a major contract.
- Establishes the procedure for attempting to determine why a single response was received in reply to a procurement solicitation.

This Handbook does not constitute specific legal advice on any particular issue that may arise. Feel free to consult with appropriate legal advisors as necessary.

### **Where can I go for more information?**

#### **[APPENDIX 1 – Contract Management Best Practices Matrix](#)**

## 1.2 Definitions

**Addendum:** An addition, change, or supplement to a solicitation issued prior to the opening date.

**Advertise:** A public announcement of the intention to purchase goods/services.

**Amend or Amended:** Status change to an RFP, ITB, RFI, RFQ or contract that indicates a modification to that document.

**Amendment:** Written addition or change to a contract, including modifications, renewals and extensions.

**Applicable Laws:** All applicable federal, state or local, laws, statutes, regulations, ordinances and orders.

**Assignment:** Transfer of contractual rights from one party to another party.

**Best Value:** Factors to be considered in determining best value in making certain purchases of goods/services (ref. Texas Education Code, [§§51.9335](#)).

**Best Value Invitation to Bid (ITB):** Procurement process used when the requirements are clearly defined, negotiations are not necessary and price is the primary determining factor for selection (also known as best value Invitation to Bid or ITB). The mandatory evaluation criteria that must be used to evaluate bids are specified by the Best Value Statutes.

**Best Value Statutes:** The laws that authorize Institutions to use the specified best value procurement procedures for goods/services, but not professional services. (ref. Texas Education Code, [§§ 51.9335](#)).

**Bid:** An offer to contract with the state, submitted in response to an ITB.

**Bidder:** An individual or entity that submits a bid. The term includes anyone acting on behalf of the individual or other entity that submits a bid, such as agents, employees and representatives (see Proposer and Respondent).

**Biennium:** The two (2) year period in which the Texas Legislature appropriates funds. The biennium begins on September 1st of odd numbered years.

**Board of Regents:** The Board of Regents of The University of Texas System.

**Bond:** Note or other form of evidence of obligation issued in temporary or definitive form, including a note issued in anticipation of the issuance of a bond and renewal note.

**Business Entity:** An entity (other than a governmental entity or state agency) through which business is conducted with an Institution, regardless of whether the entity is a for-profit or nonprofit entity.

**Certificate of Filing:** The disclosure acknowledgement issued by the Texas Ethics Commission to the filing Business Entity.

**Competitive Sealed Proposals:** Process of advertising a request for proposal (RFP), the evaluation of submitted proposals and awarding of the contract.

**Consultant:** A person that provides or proposes to provide a consulting service.

**Consulting Service:** Practice of studying or advising a state agency under a contract that

does not involve the traditional employer/employee relationship (ref. *Texas Government Code*, [§2254.021](#) Definitions).

**Contract:** An agreement (including a purchase order) where a contractor provides goods/services to an Institution and the Institution pays for such goods/services in accordance with the established price, terms and conditions, as well as an agreement under which a contractor is given an opportunity to conduct a business enterprise on an Institution's premises in exchange for compensation to the Institution (i.e., auxiliary enterprise contracts).

**Contract Administration:** This generally refers to the processes that occur after a contract is signed and is explained in detail in [Chapter 7](#).

**Contract Advisory Team:** The team created to assist state agencies in improving contract management practices (ref. *Texas Government Code, Chapter 2262* Statewide Contract Management, Subchapter C Contract Advisory Team).

**Contract Management:** The entire contracting process from planning through contract administration, including contract close-out.

**Contract Manager:** A person who is employed by an Institution and has significant contract management duties for the Institution.

**Contractor (or Vendor):** A business entity or individual that has a contract to provide goods/services to an Institution.

**Controlling Interest:** (1) an ownership interest or participating interest in a Business Entity by virtue of units, percentage, shares, stock or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a Business Entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has 4 or fewer officers, or service as one of the 4 officers most highly compensated by a Business Entity that has more than 4 officers.

**Deliverable:** A unit or increment of work required by a contract, including such items as goods, services, reports, or documents.

**Electronic State Business Daily (ESBD):** The electronic marketplace where State of Texas bid opportunities are posted (ref. *Texas Government Code*, [§2155.083](#) State Business Daily; Notice Regarding Procurements). Pursuant to *Texas Government Code*, [§2155.083\(n\)](#), IHEs to which *Texas Education Code*, [§§ 51.9335](#) applies is not subject to [§2155.083](#).

**Emergency:** A purchase made when an unforeseen and/or a sudden unexpected occurrence creates a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

**Exclusive Acquisition:** Purchase of goods/services that exceed the authorized direct procurement dollar threshold (typically \$15,000 for Institutions) from a single vendor, without soliciting competitive offers or proposals. The term includes proprietary/sole source purchases.

**Executive Sponsor:** A high-level individual with primary responsibility for implementation and operation of the project. In some instances, the executive sponsor may be the executive head of the Institution. In other instances, the executive sponsor may be the division or program director with overall project responsibility.

**Financial Advisors or Service Providers:** Persons or business entities who act as a financial advisor, financial consultant, money or investment manager, or broker.

**Goods:** Supplies, material, or equipment, including a transportable article of trade or commerce that can be bartered or sold. Goods do not include construction services or real property.

**Group Purchasing Organization (GPO):** A purchasing program established by (1) a state agency that is authorized by law to procure goods/services for other state agencies, such as the Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts and the Texas Department of Information Resources, or any successor agencies, respectively; or (2) a group purchasing organization the University utilizes in accordance with the Board of Regents of The University of Texas System GPO accreditation process; or (3) the UT System Supply Chain Alliance.

**Handbook:** The University of Texas at El Paso Contract Management Handbook.

**Historically Underutilized Business (HUB):** A minority-owned, woman-owned or certain disabled veteran-owned businesses as defined by [Texas Government Code, Title 10, Subtitle D, Chapter 2161](#).

**Institutions of Higher Education:** Institutions of higher education as defined by [Texas Education Code, §61.003\(8\)](#).

**Institution:** UT System and the institutions comprising UT System as listed in [Regents' Rule 40601](#).

**Interested Party:** (1) a person who has a Controlling Interest in a Business Entity with whom an Institution contracts; or (2) a person who actively participates in facilitating the contract or negotiating the terms of the contract with the Institution, including a broker, intermediary, adviser, or attorney for the Business Entity.

**Intermediary:** A person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the Business Entity who:

- (1) Receives compensation from the Business Entity for the person's participation;
- (2) Communicates directly with the Institution on behalf of the Business Entity regarding the contract; and
- (3) Is not an employee of the Business Entity.

**Negotiations:** A consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. In a contractual sense, negotiation means the "dealings conducted between two or more parties for the purpose of reaching an understanding."

**Payment Bond:** A bond executed in connection with a contract which secures the payment requirements of contractor.

**Performance Bond:** A surety bond that provides assurance of a contractor's performance of a certain contract. The amount for the performance bond is based on the value of the contract.

**Pre-proposal Conference:** A meeting chaired by Institution personnel that is designed to help potential bidders/proposers/respondents understand the requirements of a solicitation. Also known as a pre-bid conference.

**Professional Services:** Services directly related to professional practices as defined by the Professional Services Procurement Act ([Texas Government Code, §2254.002](#)). These include services within the scope of the practice of: accounting; architecture; optometry; medicine; land surveying; and professional engineering. Services provided by professionals outside the scope of their profession (for example, management consulting



services provided by accounting firms) are not considered professional services. *Contracted services provided by professionals that fall outside their scope of practice are governed by the Best Value Statutes applicable to the purchase of goods/services.*

**Proposal:** An executed offer submitted by a respondent in response to a Request for Proposals (RFP) and intended to be used as a basis to negotiate a contract award.

**Proposer:** An entity submitting a proposal in response to a solicitation. The term includes anyone acting on behalf of the individual or other entity that submits a proposal, such as agents, employees and representatives (see Respondent).

**Proprietary Purchase:** (see Exclusive Acquisition)

**Purchasing Office:** The office designated to purchase goods/services above the direct procurement dollar threshold for an Institution.

**Regents' Rules:** The *Rules and Regulations* of the Board of Regents of The University of Texas System.

**Renewal:** Extension of the term of an existing contract for an additional time period in accordance with the terms and conditions of the original or amended contract.

**Request for Information (RFI):** A general invitation to contractors requesting information for a potential future competitive solicitation. The RFI is not a competitive solicitation and a contract may not be awarded as the result of an RFI. An RFI is typically used as a research and information gathering tool for preparation of a competitive solicitation.

**Request for Proposal (RFP):** A solicitation requesting submittal of a proposal in response to the required specifications and SOW and usually includes some form of a cost proposal. The RFP process allows for negotiations between a respondent and the Institution. The mandatory evaluation criteria that must be used to evaluate proposals are specified by the Best Value Statutes.

**Request for Qualifications (RFQ):** A solicitation requesting submittal of qualifications or specialized expertise in response to the scope of services required. No pricing is solicited with an RFQ.

**Responsive:** A respondent or proposal that complies with all material aspects of the solicitation, including submission of all required documents.

**Respondent:** An entity submitting a proposal in response to a solicitation. The term includes anyone acting on behalf of the individual or other entity that submits a proposal, such as agents, employees and representatives (see Proposer).

**Responsible:** A respondent that is capable of fully performing and delivering goods/services in accordance with the contract requirements. The Institution may include past performance, financial capabilities and business management as criteria for determining if a respondent is capable of satisfying the contract requirements.

**Scope of Work (SOW):** An accurate, complete, detailed, and concise description of the work to be performed by the contractor.

**Service:** The furnishing of skilled or unskilled labor by a contractor which may not include the delivery of a tangible end product. In some cases, services and goods may be combined (such as film processing). In these instances, Institutions should determine whether labor or goods is the primary factor. In the case of film processing, the labor to process the film is the primary factor, therefore film processing is considered a service.

**Sole Source:** (see Exclusive Acquisition)

**Solicitation:** A document requesting submittal of bids, proposals, quotes or qualifications for goods/services in accordance with the advertised specifications.

**Specification:** Any description of the physical or functional characteristics or of the nature of goods/services to be purchased. It may include a description of any requirements for inspecting, testing, or preparing goods/services for delivery.

**State:** The State of Texas.

**State Agency:** An agency of the State of Texas as defined in [Texas Government Code, §2056.001](#) (excluding Institutions).

**Statute:** A law enacted by a legislature.

**Sub-recipient:** A non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a recipient of other federal awards directly from a federal awarding agency.

**Surety:** A person or entity providing a bond to a contractor to indemnify the Institution against all direct and consequential damages suffered by failure of contractor to perform the contract and to pay all lawful claims of subcontractors, materials vendors and laborers as applicable.

**University Rules:** The Regents' Rules at <http://www.utsystem.edu/board-of-regents/rules>; the policies of UT System at <http://www.utsystem.edu/board-of-regents/policy-library>; and the Institutional rules, regulations and policies of the applicable Institutions.

**UT System:** The University of Texas System.

**Vendor (or Contractor):** A business entity or individual that has a contract to provide goods/services to an Institution.

### **1.3 Acronyms**

**BAFO:** Best and Final Offer

**CPA:** State of Texas Comptroller of Public Accounts

**DIR:** State of Texas Department of Information Resources

**EIR:** Electronic and Information Resources

**ESBD:** Electronic State Business Daily

**GPO:** Group Purchasing Organization

**HSP:** HUB Subcontracting Plan

**HUB:** Historically Underutilized Business

**ITB:** Best Value Invitation to Bid

**IHE:** Institution of Higher Education

**IR:** Information Resources

**LBB:** Texas Legislative Budget Board

**OGC:** The University of Texas System Office of General Counsel

**RFI:** Request for Information

**RFP:** Request for Proposal

**RFQ:** Request for Qualifications

**SAO:** State of Texas Auditor's Office

**SOW:** Scope of Work

**TAC:** Texas Administrative Code

**TPSS:** Texas Procurement and Support Services Division of CPA

**UTEP:** The University of Texas at El Paso

## **1.4 Training for Purchasing Personnel and Contract Managers**

Institutions must train officers and employees authorized to execute contracts for the Institution or to exercise discretion in awarding contracts, including training in ethics, selection of appropriate procurement methods, and information resources purchasing technologies (ref. Section 51.9337(b)(5), *Texas Education Code*).

Institutions must also comply with purchasing personnel training requirements set out in UTS156 Purchaser Training and Certification. Institutions will also comply with local policies and procedures related to training.

In addition, Institutions are encouraged to assure that contract managers receive training that covers topics related to:

- (1) Fair and objective selection and negotiation with the most qualified contractor;
- (2) Establishing prices that are cost-effective and that reflect the cost of providing the service;
- (3) Inclusion of provisions in a contract that hold the contractor accountable for results;
- (4) Monitoring and enforcing a contract;
- (5) Making payments consistent with the contract;
- (6) Compliance with any requirements or goals contained in the contract management guide; and
- (7) Use and application of advanced sourcing strategies, techniques, and tools.

### **Where can I go for more information?**

[\*Texas Education Code §51.9337\(b\)\(5\)\*](#)  
[UTS156 Purchaser Training and Certification Policy](#)

## **1.5 Ethics Standards and Policies**

Institution officers and employees are responsible for maintaining the high ethical standards required for our stewardship of public monies. All Institution officers and employees should pursue a course of conduct that does not create a conflict of interest.

Institution purchasing personnel must adhere to the highest level of professionalism in discharging their official duties. The nature of the procurement function makes it critical that everyone in the purchasing and contracting process remain independent and free from the perception of impropriety. Any erosion of public trust or any shadow of impropriety is detrimental to the integrity of the purchasing process. Clear, established guidelines and rules provide credibility for a purchasing program. Such guidelines are designed to prevent current and potential vendors from influencing Institution officers or employees in discharging their official duties. In addition, these guidelines will help prevent Institution officers' and employees' independent judgment from being compromised.

With these principles in mind and in accordance with state law, Institution officers and employees will adhere to the following policies and procedures, as well as Applicable Laws and University Rules.

### **1.5.1 Institution Ethics Policy**

Institution officers and employees may not have a direct or indirect interest, including financial and other interests, engage in a business transaction or professional activity, or incur any obligation of any nature, that is in substantial conflict with the proper discharge of the officer's or employee's duties in the public interest.

### **1.5.2 Standards of Conduct**

An Institution officer or employee will not:

- Accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows, or should know, is being offered with the intent to influence the officer's or employee's official conduct;
- Accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
- Accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of their official duties;
- Make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or
- Intentionally or knowingly solicit, accept or agree to accept any benefit for having exercised the officer's or employee's official powers or performed their official duties in favor of another.

An Institution may not use appropriated money to compensate a state employee who violates a standard of conduct.

### 1.5.3 Prohibition of Economic Benefit

In accordance with the Texas Constitution, an officer or employee of the state may not, directly or indirectly, profit by or have a pecuniary interest in the preparation, printing, duplication, or sale of a publication or other printed material issued by a department or agency of the executive branch. A person who violates this Section may be dismissed from Institution employment.

#### Where can I go for more information?

[Regents' Rule 30104 Conflict of Interest, Conflict of Commitment, and Outside Activities](#)

[UTS159 Purchasing Policy](#)

[UTS180 Conflicts of Interest, Conflicts of Commitment, and Outside Activities Policy](#)

[UT System Ethics Home Page](#)

## **1.6 Conflict of Interest**

To avoid conflicts of interest, UTEP requires all potential contractors bidding or proposing to provide goods or services in response to a competitive procurement to disclose, in their responses to solicitations, any actual or potential conflicts of interest in their proposed provision of goods/services or other performance under any contracts. To help ensure debarred Respondents or Respondents with debarred principals are not awarded contracts, Solicitation documents must require Respondents to indicate whether the Respondent or any of its principals (i.e. owner, proprietor, sole or majority shareholder, director, president, managing partner, etc.) have been debarred.

The Institution should also require respondents to:

- Represent and warrant that their provision of services or other performance under the contract will not constitute an actual or potential conflict of interest.
- Disclose any proposed personnel who are related to any current or former employees of the Institution.
- Warrant that they have not given, nor intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to an officer or employee of Institution in connection with the solicitation.

Contractors should not be allowed to assign any portion of the contract or their performance, to others, for example, subcontractors, without the prior written consent of the Institution. Contractors should remain responsible for the performance of the contract notwithstanding any such assignment or subcontract. This ensures that the evaluated and selected entity will actually be responsible for performance and that proposed transactions may be reviewed for compliance with the conflict of interest and related party provisions.

### **1.6.1 Financial Advisors**

When soliciting and contracting for the services of financial advisors, Institutions will comply with Texas Government Code, Chapter 2263, regarding conflict of interest and related party provisions applicable to those advisors.

Financial advisors or service providers must disclose in writing to the administrative head of the Institution and SAO the following:

- any relationship the financial advisor or service provider has with any party to a transaction with the Institution, other than a relationship necessary to the investment or funds management services that the financial advisor or service provider performs for the Institution, if a reasonable person could expect the relationship to diminish the financial advisor's or service provider's independence of judgment in the performance of the person's responsibilities to the Institution; and
- all direct or indirect pecuniary interests the financial advisor or service provider has in any party to a transaction with the Institution, if the transaction is connected with any financial device or service the financial advisor or service provider provides to the entity or member, in connection with the management or investment of Institution funds.

The statute further provides that financial advisors or service providers:

- will disclose a relationship (described above), without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship;

- will file an annual statement with the administrative head of the governmental entity and with SAO disclosing the relationships outlined above;

If no relationship existed during the disclosure period, the annual statement will state this fact affirmatively. In addition, and the annual statement will be filed no later than April 15th (for the previous calendar year period) on a form prescribed by the entity.

## **1.6.2 Purchasing Personnel Nepotism Disclosure**

Before awarding a contract with a value of at least \$1 million (major contract) for the purchase of goods or services, University employees (purchasing personnel) who, in connection with that major contract, make decisions or recommendations regarding (A) preparation of a solicitation, (B) evaluation of a bid or proposal, (C) determination of contractor to be awarded the contract, or (D) contract terms or conditions, must complete the State Auditor's "Disclosure Statement for Purchasing Personnel" form posted at <https://www.sao.texas.gov/Forms/Nepotism/> to disclose in writing to the University's President, or the President's delegate, any known relationships (within the third degree by consanguinity or the second degree by affinity) the employee has with (i) a contractor employee or partner, major stockholder or other owner, or (ii) a paid consultant of contractor under a contract with a value exceeding \$25,000. A new or amended Disclosure Statement must be filed whenever there is new information to report.

### **Where can I go for more information?**

[Texas Education Code §51.923](#)

[Texas Government Code, Chapter 551](#)

[Texas Government Code, Chapter 573](#)

[Texas Government Code, Subchapter A, Chapter 2262](#)

[Texas Government Code, Chapter 2263](#)

[UT System Ethics Home Page](#)



## 1.7 Ethics Requirements from Senate Bill 20

The passage of Senate Bill 20 in the 84th Legislature (SB 20) has established a number of provisions related to ethics and purchasing. A *Summary of 2015 Procurement and Contracting Legislation* is attached as [APPENDIX 2](#).

SB 20 creates a new *Texas Government Code*, Chapter 2261, Subchapter F. In connections with ethics, Chapter 2261 requires that:

- Each Institution officer or employee who is involved in procurement or in contract management for the Institution will disclose to the Institution any potential conflict of interest specified by state law or Institution policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods/services from a private vendor by the Institution.
- Institutions may not enter into a contract for the purchase of goods/services with a private vendor with whom any of the following employees or officials have a financial interest:
  - the governing official, executive director, general counsel, chief procurement officer, or procurement director of the agency; or
  - a family member related to an employee or official described above within the second degree of affinity or consanguinity.
- An Institution employee or official has a financial interest in a private vendor if the employee or official:
  - owns or controls, directly or indirectly, an ownership interest of at least one percent in the person, including the right to share in profits, proceeds, or capital gains; or
  - could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.
- A financial interest prohibited by this Section does not include a retirement plan, a blind trust, insurance coverage, or an ownership interest of less than one percent in a corporation.

Best value purchasing authority held by institutions of higher education in *Texas Education Code*, §§51.9335, 73.115 and 74.008 is conditional on satisfying the requirements of new §51.9337 (see [Section 2.2](#) of this Handbook). Of these requirements, some relate to ethics. The ethics-related requirements the Board of Regents must adopt are:

- A code of ethics for the Institution's officers and employees, including provisions governing officers and employees authorized to execute contracts for the Institution or to exercise discretion in awarding contracts, including
  - general standards of conduct and a statement that each officer or employee is expected to obey all federal, state, and local laws and is subject to disciplinary action for a violation of those laws;
  - policies governing conflicts of interest, conflicts of commitment, and outside activities, ensuring that the primary responsibility of officers and employees is to accomplish the duties and responsibilities assigned to that position;
  - a conflict of interest policy that prohibits employees from having a direct or indirect financial or other interest, engaging in a business transaction or professional

activity, or incurring any obligation that is in substantial conflict with the proper discharge of the employee's duties related to the public interest;

- a conflict of commitment policy that prohibits an employee's activities outside the Institution from interfering with the employee's duties and responsibilities to the Institution;
  - a policy governing an officer's or employee's outside activities, including compensated employment and board service, that clearly delineates the nature and amount of permissible outside activities and that includes processes for disclosing the outside activities and for obtaining and documenting Institutional approval to perform the activities;
  - a policy that prohibits an officer or employee from acting as an agent for another person in the negotiation of the terms of an agreement relating to the provision of money, services, or property to the Institution;
  - a policy governing the use of Institutional resources; and
  - a policy providing for the regular training of officers and employees on the code of ethics and policies discussed therein.
- policies for the internal investigation of suspected defalcation, misappropriation, and other fiscal irregularities and an Institution or system-wide compliance program designed to promote ethical behavior and ensure compliance with all applicable policies, laws, and rules governing higher education, including research and health care to the extent applicable.
  - training for officers and employees authorized to execute contracts for the Institution or to exercise discretion in awarding contracts, including training in ethics, selection of appropriate procurement methods, and information resources purchasing technologies.

Finally, *Texas Government Code*, Chapter 572, includes a revolving door provision for Institution officers and employees involved in procurement. Under *Texas Government Code*, Section 572.069, a former state officer or employee of a state agency who, during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation, may not accept employment from that vendor or service provider before the second (2<sup>nd</sup>) anniversary of the date the officer's or employee's service or employment with the state agency ceased.

### **Where can I go for more information?**

[Senate Bill 20 - 84<sup>th</sup> Legislature](#)

[Texas Education Code §51.9335](#)

[Texas Education Code §51.9337](#)

[Texas Government Code, Chapter 2261, Subchapter F](#)

[Texas Government Code, Chapter 572](#)

[Texas Government Code §572.069](#)

[Regents' Rule 30104 Conflict of Interest, Conflict of Commitment, and Outside Activities](#)

[UTS159 Purchasing Policy](#)

[UTS180 Conflicts of Interest, Conflicts of Commitment, and Outside Activities Policy](#)

[UT System Ethics Home Page](#)

[APPENDIX 2 - Summary of 2015 Procurement and Contracting Legislation](#)

## 1.8 Disclosure of Interested Parties

Institutions must comply with the “Disclosure of Interested Parties” requirements mandated by Section 2252.908, *Government Code*, as implemented by the Texas Ethics Commission. Briefly stated, Institutions may not execute a contract for goods or services exceeding \$1 million unless the Business Entity presents the Institution with a signed form disclosing interested parties to the contract. Business Entities may be unaware of these requirements and successful implementation may require some outreach and education by the Institution so that the contracting process can be successfully navigated and large contracts executed timely.

Specific Disclosure requirements include:

- Before a UT institution may execute certain contracts exceeding \$1 million, the Business Entity with which a UT institution is contracting must submit FORM 1295 to the Institution at the same time the Business Entity submits the signed contract to the Institution. *Note that “Business Entity” is defined as an entity (other than a governmental entity or state agency) through which business is conducted, regardless of whether the entity is for-profit or non-profit.*
- This requirement applies to contracts [including contract amendments, renewals and extensions] that:
  - ✓ Require action or vote by the Board of Regents before the contract may be signed, or
  - ✓ Have a value of at least \$1 million (Institutions should value each contract as described by Rule 10501, Section 3.1.1), not including (1) sponsored research contracts; (2) interagency contracts; or (3) contracts related to health and human services if the value cannot be determined at the time the contract is executed and any qualified vendor is eligible for the contract.

### 1.8.1 Automated Disclosure Process

The Texas Ethics Commission provides an automated electronic disclosure process that both the Business Entity and the Institution must use to comply with the Disclosure requirements. Access to the electronic disclosure process is posted at <https://www.ethics.state.tx.us/filinginfo/1295/>, which currently contains a link to FORM 1295 and other related information.

### 1.8.2 Current Disclosure Process

Step #1 – Business Entity completes FORM 1295 in electronic format on the Texas Ethics Commission website.

Step #2 – Upon receipt of a completed Disclosure, Texas Ethics Commission issues a Certification of Filing to Business Entity and Business Entity downloads, signs and notarizes FORM 1295.

Step #3 – When Business Entity submits the signed and notarized FORM 1295 to Institution with the signed contract, Business Entity also submits the Certificate of Filing.

Step #4 – Not later than the 30th day after the date the contract has been signed by all parties, Institution must notify the Texas Ethics Commission (in electronic format) of the receipt of (1) FORM 1295, and (2) the Certification of Filing.

Step #5 – Not later than the 7th business day after receipt of notice from Institution, Texas Ethics Commission makes the Disclosure available to the public by posting the Disclosure on its web site.

## 1.8.3 Contents of Disclosure

FORM 1295 requires Business Entity to provide the following information:

1. Name of Business Entity;
2. Address of Business Entity place of business;
3. Name of Institution;
4. Identification number used by Institution to identify the contract;
5. Description of goods or services provided under the contract;
6. Name, address and nature of interested parties (Controlling Interest and/or Intermediary);
7. If none, a representation that there are no Interested Parties;
8. Signature of authorized representative of Business Entity; and
9. Acknowledgement by a Notary Public.

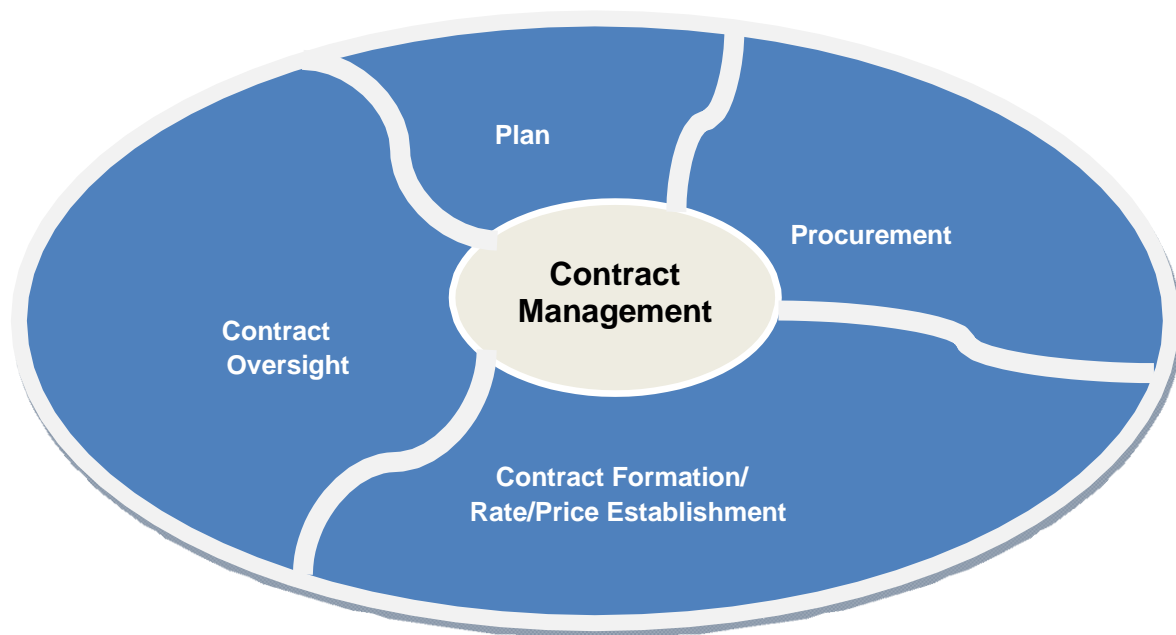
### Where can I go for more information?

[Texas Government Code, Section 2252.908 \("Disclosure of Interested Parties" Statute\)](#)  
[Texas Administration Code, Title 1, Sections 46.1 through 46.5 \("Disclosure of Interested Parties" Regulations\)](#)

## CHAPTER 2 PLANNING

The first step in contract management is planning. Planning is crucial to the successful outcome of any procurement. With proper planning, Institutions are more likely to successfully achieve contracting objectives. Planning assists Institutions in determining and documenting need, preparing the SOW, choosing the appropriate procurement type, soliciting for responses, negotiating the terms of the responses, drafting the contract, administrating and overseeing the contract, and monitoring the contractor. If the procurement cannot be handled simply through the development of a straight-forward ITB and purchase order, these steps can be complex and there are many opportunities for error to be introduced into the process. Proper planning will reduce or eliminate the risk of error.

During the planning phase each of the following elements of contract management will be considered:



**Plan** – Identify contracting objectives and contracting strategy.

**Procurement** – Fairly and objectively select the most qualified contractor(s).

**Contract Formation/Rate/Price Establishment** – Ensure the contract contains provisions that hold contractor(s) accountable for producing desired results, including all relevant terms and conditions as well as establishing processes that are cost-effective and aligned with the cost of providing the goods/services.

**Contract Oversight** – Monitor and enforce the terms of the contract.

The level of risk associated with each of these elements varies depending on the type of business relationship between the Institution and the contractor. For example, the nature and extent of contract monitoring will vary considerably between fee for service and cost reimbursement types of relationships.

Contract planning includes several preliminary steps, including development of a contract management team, developing a communication plan, determining the procurement method, developing the specifications and SOW for the goods/services, assessing contracting risk and developing a cost estimate.

## **2.1 Contract Management Team**

For purchases requiring competitive procurement, each contract management initiative should include a stakeholder, an evaluation committee/program staff, contract management staff, Purchasing Office staff, and HUB office staff to assist in the contract management process, as applicable.

The extent and degree of executive sponsorship and participation should be directly related to the level of risk associated with the procurement. For some contracts, written approval of the executive sponsor should be obtained.

The contract manager should be experienced with the proposed type and size of contract.

Certified purchasers will be familiar with this Handbook, even though the purchaser may not be the designated contract manager. Purchasing personnel will review all procurements above the competitive threshold to ensure that Applicable Laws and University Rules relating to procurement processes are followed and that the procurement method is appropriate.

The HUB office will review contracts that may exceed \$100,000 in value to ensure compliance with HUB laws and regulations.

The program staff will provide input as to the technical requirements and serve as the subject matter experts for the procurement. Often, program staff may be tasked with primary contract administration and any reporting or other necessary actions following contract formation.

If the Institution lacks internal resources or expertise for a particular procurement, the Institution may contract for development of the SOW as necessary and appropriate.

### **2.1.1 Contract Risk Assessment**

The contract manager will initiate the contract risk assessment process on procurements above the competitive threshold and determine the appropriate level of risk analysis for the procurement. The contract risk assessment process includes: 1) risk identification, 2) risk analysis, 3) risk evaluation, 4) risk mitigation and contingency planning and 5) risk monitoring. Contract risks are as varied as the types of contracts. Risk categories common to contract management include product risk, process risk, business continuity risk, financial risk and schedule risk.

Risk determination is based on subjective experience. Several factors that may be useful in identifying the level of risk may include:

- Whether vendor will create, receive from or on behalf of Institution, or have access to, the Institution's records or record systems which will require compliance with UTS165 Information Resources Use and Security Policy;
- Whether vendor will provide electronic and information resources which will require compliance with UTS150 Access by Persons with Disabilities to Electronic and Information Resources Procured or Developed by The University of Texas System Administration and The University of Texas System Institutions;
- The complexity and subject matter of the procurement;
- The dollar amount of the procurement, and whether the procurement will result in a major contract;
- The anticipated payment methodology;
- The experience the Institution staff have with the type of procurement;
- Whether the results of the procurement will impact the public or only impact the Institution;
- Time constraints or the expected duration of the procurement; and
- The type, availability or experience of staff resources required to implement the objectives of the procurement.

A low risk contract, such as routine purchases of goods/services, does not typically require the significant participation or sponsorship of Institution executive management.

Risk assessment is an ongoing process. For complex, long-term contracts, risk should be reviewed and re-evaluated by the contract manager on a continual basis until the contract is fully performed, final payment is made, and the contract is closed-out.

### **Where can I go for more information?**

[Texas Education Code §51.9337\(b\)\(3\) and \(d\)](#)

[Texas Government Code, Section 2261.256](#)

[UTS150 Access by Persons with Disabilities to Electronic and Information Resources Procured or Developed by The University of Texas System Administration and The University of Texas System Institutions](#)

[UTS165 Information Resources Use and Security Policy](#)

[Chapter 7 - Contract Administration](#)

[APPENDIX 3 – Sample Contract Management System Contract Record](#)

## 2.2 Determining Procurement Method

The Best Value Statutes authorize Institutions to acquire goods/services (not professional services by the method that provides the best value to the Institution). Section 51.9337, *Texas Education Code*, provides that an Institution may not exercise the best value procurement authority for goods and services granted by the Best Value Statutes, unless the Board of Regents promulgates policies covering:

- Code of Ethics for officers and employees related to executing contracts or awarding contracts (ref. Section 51.9337(b)(1) and (c));
- Policies for internal investigation of suspected fiscal irregularities (ref. Section 51.9337(b)(2) and (c));
- Compliance program to promote ethical behavior and compliance with applicable laws, rules and policies (ref. Section 51.9337(b)(2));
- Contract management handbook covering contracting policies, contract review and risk analysis (ref. Section 51.9337(b)(3) and (d));
- Contracting delegation guidelines (ref. Section 51.9337(b)(4), (e) and (f));
- Training for officers and employees authorized to execute contracts or exercise discretion in awarding contracts (ref. Section 51.9337(b)(5)); and
- Internal audit protocols (ref. Section 51.9337(b)(6), (g), (h), (i) and (j)).

An Institution's chief auditor must annually assess whether the Institution has adopted rules and policies required by Section 51.9337, *Education Code*, and report the finding to the State Auditor. If the State Auditor determines that the Institution has not adopted rules and policies required by Section 51.9337, the State Auditor shall report that failure to the Legislature and to the Board of Regents and work with the Institution to develop a remediation plan. Failure by the Institution to comply with the remediation plan within the time specified by the State Auditor will result in a finding that the Institution is noncompliant. That finding will be reported to the Legislature and CPA.

An Institution that is not in compliance with Section 51.9337, *Education Code*, is subject to the laws governing the acquisition of goods and services by other state agencies, including Subtitle D, Title 10, *Government Code* and Chapter 2254, *Government Code*.

Always, keep best value considerations in mind when selecting the procurement method. The lowest cost is not necessarily the best value for all procurements. For example, a commodity or service of higher quality, such as a longer life span, may be a better value and investment for the Institution, even if the initial cost is more. Institutions should think strategically when considering their procurement needs. Do not make the mistake of purchasing for the immediate needs without considering these questions:

"What is the desired outcome of the procurement?"

"What is the best way to achieve this outcome?"

For example, in connection with the purchase of a heating and air conditioning unit, consider the total cost of ownership. Average life span, electricity consumption, maintenance record and parts availability are just a few considerations when analyzing total cost of ownership. Additional considerations include qualifications and availability of the service technicians and the vendor's performance history.

In addition to the requirements of Applicable Laws, note that University Rules require Institutions to follow certain procedures in connection with certain procurements. A *Summary of UT Procurement Guidelines* is attached as [APPENDIX 4](#).



### Where can I go for more information?

[Texas Education Code §51.9335 \(Institutions except MD Anderson\)](#)

[Texas Education Code §51.9337](#)

[Texas Government Code, Chapter 2254](#)

[APPENDIX 4 – Summary of UT Procurement Guidelines](#)

## 2.2.1 Calculating Contract Value

Pursuant to Rule 10501, Section 3.1.1, contract value means the total cost or monetary value of the contract, including all potential contract extensions or renewals whether automatic or by operation of additional documentation. In addition, Rule 10501 specifies that *any contract with unspecified cost or monetary value and a term of greater than four (4) years, is presumed to have a total value of greater than \$1 million.*

The contract value calculation will include the value for the original term and all renewal terms (whether automatic or by operation of additional documentation).

Value estimates will be based on best business practices, state fiscal standards, Applicable Laws and University Rules.

Procurements of similar goods/services and resulting contracts with a particular vendor will generally be aggregated together to determine contract value for purposes of Rule 10501.

### Where can I go for more information?

[Regents' Rule 10501, Section 3.1.1](#)

## 2.2.2 Dollar Thresholds for Direct and Competitive Procurement

Purchasing personnel and program staff will first refer to any Applicable Laws or University Rules that may direct the use of a specific procurement method. If Applicable Laws or University Rules do not direct a specific method, purchasing personnel and program staff will use the following contract value thresholds to determine whether direct/spot market, informal or formal procurement methods should be used:

Estimated Spend	Procurement Activities
<\$15,000	No competitive procurement required.
\$15,000 to \$50,000	Informal quotes from three or more potential vendors are required (Institutions may allow end users to secure these quotes directly). Two (2) HUB quotes must be obtained from HUSB, if available.
>\$50,000	Formal procurement by the Institution directly or via another state agency or a GPO. The Institution's Purchasing Office, not program staff, must take lead responsibility for conducting or overseeing the procurement, unless the procurement is led by the UT System Supply Chain Alliance.

**NOTE:** A large purchase may not be divided into small lot purchases to meet the contract value thresholds prescribed by this Section.

## 2.2.3 Competitive Procurement Exemptions

In limited circumstances, some purchases may not require competitive procurement processes and exclusive acquisition may be authorized. An exemption from competitive procurement processes does not exempt the purchase from HUB requirements if the value of the purchase is \$100,000 or more.

**2.2.3.1 Emergency Purchases** – Emergencies occur as the result of *unforeseeable* circumstances that suddenly and unexpectedly cause an Institution to need goods/services (for example, the issuance of a court order, new legislation or a natural disaster). Delay or negligence on the part of the Institution does not qualify as an emergency.

If an *unforeseen* situation arises in which compliance with normal procurement practice (including, normally Applicable Laws and University Rules) is impracticable or contrary to the public interest, an emergency purchase may be warranted to prevent a hazard to life, health, safety, welfare, property or to avoid undue additional cost to the Institution.

*Notwithstanding the immediate nature of an emergency purchase, all procurements conducted as emergencies should be made as competitively as possible under the circumstances.*

*In addition, emergency purchases should not exceed the scope or duration of the emergency.*

Institutions must comply with University Rules regarding determination, authorization and documentation of emergency purchases, including a written exclusive acquisition justification and a written best value justification.

**2.2.3.2 Exclusive Acquisitions (also known as Sole Source or Proprietary Purchases)** – University Rules establish requirements applicable to purchases of goods/services that exceed the authorized direct (sometimes called spot market or open market) procurement dollar threshold (typically \$15,000) from a single vendor, without soliciting offers or proposals from other vendors. These purchases are sometimes called exclusive acquisitions or sole source or proprietary purchases.

University Rules establish policies and procedures applicable to exclusive acquisitions. As always, Institutions must acquire all goods/services in a manner designed to achieve and document best value to the Institution. If exclusive acquisitions are made in excess of the competitive threshold, Institutions must be careful to demonstrate the achievement of best value, despite the exclusive acquisition approach.

With this in mind, an exclusive acquisition justification form (for internal use only) for an exclusive acquisition should clearly:

- Describe how the purchased goods/services would be used;
- Explain why the distinctive characteristics of the goods/services or distinctive conditions of purchase are necessary to accomplish the objectives of the Institution;
- Explain why these characteristics or conditions require that the goods/services be obtained only from the exclusive source;
- Name other sources and alternative goods/services that have been considered and evaluated, and explain individually why the other identified sources and products/services would not meet the requirements of the Institution; and

NOTE: *In doing this, be careful to focus on the unique or specialized nature of the goods/services to be procured. If there is, in fact, an alternative that would meet the Institution's requirements, exclusive acquisition may not be justified, even if the alternative source received lower evaluation scores.*

- Confirm that the Institution signatories do not have a conflict of interest in connection with the procurement.

After all appropriate approvals and signatures, the exclusive acquisition justification form should be retained in the procurement file.

All exclusive acquisitions must comply with Applicable Laws and University Rules.

A sample *Exclusive Acquisition Justification Form* is attached as [APPENDIX 5](#).

### Where can I go for more information?

[Texas Education Code §51.9335 \(higher education, generally \[including UTMB\]\)](#)

[Texas Government Code §2155.067](#)

[Texas Government Code §2155.063](#)

[APPENDIX 5 – Sample Exclusive Acquisition Justification](#)

**2.2.3.3 Purchases from Persons with Disabilities** – Applicable Laws (including the Best Value Statutes) require Institutions to comply with Applicable Laws related to the Purchases from Persons with Disabilities program.

The Purchases from Persons with Disabilities program (1) furthers the state's policy of encouraging and assisting persons with disabilities to achieve maximum personal independence by engaging in useful productive employment activities; and (2) provides state agencies, departments, and institutions and political subdivisions of the state with a method for achieving conformity with requirements of nondiscrimination and affirmative action in employment matters related to persons with disabilities.

Subject to certain exceptions, Applicable Laws require Institutions to purchase, on a non-competitive basis, the products made and services performed by persons with disabilities, which have been approved by the state agency pursuant to Applicable Laws.

Institutions must report any exceptions taken.

### Where can I go for more information?

[Texas Education Code §51.9335 \(Institutions except MD Anderson\)](#)

[Texas Government Code §§2155.069, 2155.138 and 2155.441](#)

[Texas Administrative Code, Title 40, Part 20, Chapter 806](#)

[Texas Human Resources Code §§122.008, 122.0095, 122.016 and 122.029 \(ref. also entire Chapter 122\)](#)

**2.2.3.4 Group Purchasing** – Institutions will comply with the following clarifications/modifications related to the procurement of goods/services through GPOs (and as used in this handbook, “GPO” includes state agencies performing GPO functions):

- **Use of GPOs.** When total spend under a contract is anticipated to exceed \$50,000 (requiring a formal procurement under [Section 2.2.2](#)), Institutions may use a contract procured by a GPO only if the GPO uses sourcing processes accredited by UT System as meeting minimum procurement standards. GPOs presently accredited by UT System are listed on the [UT System Office of Business Affairs Website](#).

In using any contract procured by an external GPO, Institutions should remember that UT System policies apply to these procurements. The specifics of how policy compliance should be handled in practice will require the exercise of sound business judgment. When an external GPO has a national focus, the GPO is unlikely to require proposers to comply with specifications that are unique to UT System or the State of Texas. For example, when an Institution conducts a procurement in house, it may require proposers to commit to very specific insurance coverage recommended by the Institution’s risk management activity. The external GPO, however, may not have required proposers to do so. In that case, the Institution should use good business judgment to decide whether it would be appropriate to impose these requirements, after the fact, on the proposer to which the external GPO has made its contract award.

- **Comparison of Multiple Contract Awards.**
  - If the Institution proposes to use a contract procured by a UT System-accredited GPO other than the UT System Supply Chain Alliance or Vizient, and the contract is based on a scope of work, and the GPO has made a multiple award, the Institution must obtain a minimum of three valid proposals (or two, if there are only two vendors in the category) from contracted vendors in order to identify “best value.” If the purchase is for anything other than a scope of work based project, multiple quotes are not required.
  - If the Institution proposes to use a contract procured by Vizient, the Institution will obtain a minimum of three valid proposals (or two, if there are only two vendors in the category) from contracted vendors, in order to identify “best value,” *but only if the spend is anticipated to exceed the applicable spend threshold shown below and is a Scope of Work based project.*

➤ \$2.5 million for UTEP

If the Institution proposes to use a contract procured by the [UT System Supply Chain Alliance](#), the Institution generally does not need to obtain and compare proposals from multiple contracted vendors, in order to identify “best value,” because in most cases the UT System Supply Chain Alliance makes a contract award to only a single vendor for particular goods/services. If the Alliance does make a dual contract award, any requirement to compare bids from both vendors will be specified in the Alliance’s contract launch brief.

- **Exclusive Acquisition Justification for Single Awards.**
  - When a UT System-accredited GPO is used for a procurement, and an award has been made to only a single vendor in a given category,

it is not necessary to justify the purchase as an exclusive acquisition, because it is presumed that the GPO conducted a competitive procurement.

- **Review of Certain Purchases under GPO Contracts.**

- If the Institution proposes to use a contract procured by a UT System-authorized GPO, and total contract spend is anticipated to exceed the applicable spend threshold below, a summary of the contract must be submitted, on the prescribed form, to the UT System Executive Vice Chancellor for Business Affairs (via [lloyd@utsystem.edu](mailto:lloyd@utsystem.edu)), who will forward the summary to the UT System Deputy Chancellor, the General Counsel to the Board of Regents, and the UT System Chief Audit Executive. If no member of that committee, within two business days, raises a question about the contract or asks that it be submitted to the entire Board of Regents for review and approval, no further Board review or approval of the contract will be required:

- \$2.5 million for UTEP

- **Use of DIR-Procured Contracts.** DIR adopted regulations (1 Texas Administrative Code 212) clarifying that the restrictions in Texas Government Code Chapter 2157 do not apply to institutions of higher education. Under those regulations, Institutions do not need to comply with restrictions governing other state agencies in connection with Chapter 2157 commodity item purchases and statements of work.

**2.2.3.5 Direct Purchases** – Unless Applicable Laws or University Rules direct the use of a specific procurement method, University Rules authorize direct purchases (sometimes called spot market or open market purchases) for goods/services with a contract value of less than \$15,000 (see [Section 2.2.2](#)). The direct purchase method does not require an informal or formal competitive process. Direct purchases may be directed to a single vendor without the need for competition.

**Where can I go for more information?**

[Texas Government Code §§ 2157.068 and 2157.0685](#)  
[Regents' Rule 10501 Delegation to Act on Behalf of the Board](#)  
[APPENDIX 2 – Summary of 2015 Procurement and Contracting Legislation](#)

## 2.2.4 Informal Competitive Offers

The informal competitive offers method requires a minimum of three (3) informal written quotes. Of the three (3) or more written quotes, at least two (2) quotes must be from HUBs, when available. If an Institution is unable to locate two HUB vendors, the Institution should make a written notation in the procurement file of all HUB listings and resources the Institution used in an attempt to locate two HUBs. For more information regarding HUB requirements, see [Section 3.1](#) of this Handbook.

In addition to the three (3) informal quotes, Institutions should also attempt to obtain an offer from the last vendor who held the contract, as may be applicable and appropriate.

The Best Value Statutes specify the mandatory criteria that Institutions must use to evaluate the offers and determine best value to the Institution. When using the informal

competitive offers method, Institutions must prepare a best value justification and retain the justification in the procurement file.

### Where can I go for more information?

[Texas Education Code §51.9335](#)

## 2.2.5 Formal Competitive Procurements

If a formal procurement method is appropriate, the type of formal procurement method used will be a significant factor in the contract planning process. Each formal procurement process has unique features. For example, some methods permit negotiation with respondents and some do not. In addition, the procurement lead time for some methods is longer than for others.

**2.2.5.1 Best Value Invitation to Bid (ITB)** – The best value competitive sealed bid method uses the ITB solicitation document. The ITB is generally used when the requirements for the goods/services are clearly defined, negotiations are not necessary, and price is the primary evaluation criterion (for example > 50 percent) for selection.

The Best Value Statutes specify the mandatory criteria that Institutions must use to evaluate responses to ITBs and determine best value to the Institution.

**2.2.5.2 Request for Qualifications (RFQ)** – An RFQ is generally used to procure professional services.

An Institution may not select a provider of professional services or a group or association of providers or award a contract for the professional services on the basis of competitive bids, but must *generally* make the selection and award on the basis of demonstrated competence and qualifications to perform the services for a fair and reasonable price.

However, the procurement of architectural, engineering, or land surveying services is an exception to the general rule. For architectural, engineering and land surveying services, an Institution shall:

- first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications (*no consideration of price at this point*); and
- then attempt to negotiate with that provider a contract at a fair and reasonable price.

If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the Institution shall:

- formally end negotiations with that provider;
- select the next most highly qualified provider; and
- attempt to negotiate a contract with that provider at a fair and reasonable price.

The Institution must continue this process to select and negotiate with providers until a contract is awarded.

*When preparing an RFQ, please use the OGC RFQ templates posted at the [Contracts and Contracting Resources Website](#).*

**2.2.5.3 Request for Proposal (RFP)** – An RFP is generally used when best value competitive sealed bidding is not practicable or advantageous. For example, an RFP may be used when price is not the primary evaluation criterion and factors *other than price receive significant weight* (for example >50%). An RFP may also be used when subjective (rather than objective) criteria for the goods/services are used. *One of the key differences between the ITB and the RFP formal solicitation methods is that negotiations are allowed under the RFP method, but not under the ITB. The RFP method permits Institutions to enter into discussions with respondents and solicit best and final offers.*

The Best Value Statutes specify the mandatory criteria that Institutions must use to evaluate responses to RFPs and determine best value to the Institution.

*NOTE: When making procurements under the Best Value Statutes, Institutions are not subject to the Texas Government Code, Chapter 2254, Subchapter B, requirements related to the procurement of consulting services and Institutions will follow the Best Value Statutes applicable to goods/services.*

*When preparing an RFP, please use the OGC RFP templates posted at [Contracts and Contracting Resources Website](#).*

### Where can I go for more information?

[Texas Government Code, Chapter 2254, Subchapter A, Professional Services OGC Contracting and Procurement Practice Group Resource Pages](#)

## 2.2.6 Request for Information

*If the Institution does not have sufficient information with which to develop the solicitation, the Institution may issue an RFI to gather the necessary data.*

An RFI is *not* a competitive procurement solicitation and a contract may *not* be awarded based on an RFI.

An RFI is used primarily as a planning tool to gather information to be used to prepare a complete and accurate competitive procurement solicitation (including the specifications, the SOW and other sections of the solicitation) when the Institution does not have the necessary data. RFI's are used to identify industry standards, best practices, potential performance measures, and cost or price structures. RFI's may also be used to gauge the level of interest of prospective vendors. An RFI usually includes a description of the program objectives and a general description of the proposed SOW.

Institutions may not use an RFI to award a contract, but may use the information developed from RFI responses to develop a formal competitive procurement solicitation. Institutions are not required to incorporate any of the information provided by RFI respondents; however, the hope is that RFI respondents will provide information useful in the solicitation development process.

If Applicable Laws and University Rules do not direct a specific formal procurement method, the following chart may provide assistance in selecting the most appropriate method.

### Formal Procurement Methods

Procurement Method	Use When	Advantages	Disadvantages
<b>Best Value ITB</b>	<p>Requirements for goods/services must be clearly defined.</p> <p>Goods/services are available from more than one source.</p> <p>Strong competition for the goods/services exists.</p>	<p>Award is made to the bidder offering the best value to the Institution.</p> <p>Evaluation and award process are simpler.</p>	<p>Price is the primary evaluation criterion (&gt; 50%); <u>however</u>, all criteria mandated by the Best Value Statutes must be considered.</p> <p>Does not permit negotiations.</p> <p>Does not encourage innovation.</p>
<b>RFQ</b> [Required by Applicable Laws for professional services.]	<p>Selection is made based on qualifications of the professional in accordance with Subchapter A, Chapter 2254, Texas Government Code</p>	<p>Emphasizes the competency of the proposed contractors.</p>	<p>Contractor is selected before price is negotiated.</p>
<b>RFP</b>	<p>When factors other than price are evaluated.</p> <p>Ability to negotiate is desirable.</p> <p>Vendor is expected to provide innovative ideas.</p>	<p>Permits consideration of factors other than price.</p> <p>Encourages innovations and allows customized proposals suggesting different approaches to the same business need.</p> <p>Permits negotiation with respondents to obtain the best value for the Institution.</p>	<p>Lead times for procurement are greater than for an ITB.</p> <p>Evaluations are more complex and subjective than for an ITB.</p>

**Where can I go for more information?**

*Texas Education Code §51.9335 (Institutions except MD Anderson)*  
*Texas Government Code, Chapter 2254, Subchapter A, Professional Services*



## **2.3 Planning for Contract Content**

Clearly identifying general contract objectives, assumptions, and constraints is an important step in the contracting process. This step may seem obvious, but when a contract fails, it often fails because expectations were not met and there was not a true meeting of the minds. A clear understanding of the contract objectives is essential to success. Sometimes a contract will be part of a larger organizational project. Institutions must carefully consider how the objectives, assumptions and constraints integrate into the larger organizational project. Program staff are encouraged to identify and document potential integration risks so that a strategy for mitigating or managing those risks may be developed, as practicable.

### **2.3.1 Needs Assessment**

The purpose of the needs assessment is to ensure the contract management team plans for the correct contract objective. A clear definition provided by program staff of the contract objectives and purpose will assist in the development of the SOW, preparing the solicitation, negotiating and drafting contracting documents, and verifying the performance of the contractor. The SOW, as such, is developed by the end user, with assistance from the Purchasing Office. This assessment should incorporate the initial needs assessment conducted by program staff when the determination was made to contract out for the service.

If the contract purpose is to implement, change or support an Institution's statutory duties, it is useful for program staff to identify Applicable Laws, University Rules and business processes that will be impacted by the contract. If business processes are not documented, it is often useful to document the business processes. After the legal requirements and business processes are clearly identified the Institution can assess how these duties or processes will be changed or impacted. Formal solicitations will be reviewed by the contract management team, and OGC (when requested by UTEP) to review concerns or risks identified by the assessment so that the changes and risks can be managed or mitigated in the contract documents.

The success of many contracts is dependent upon how well business requirements are documented, communicated and understood by the contractor. Do not assume that the contractor understands the business of the Institution. Detailed Institution business processes are frequently incorporated into the SOW in a contract, so Institution program staff plays a key role in planning and developing the SOW and during contract administration (including acceptance of deliverables and contract close-out).

### **2.3.2 Well Formed Procurement Objectives and Purpose**

A well-formed statement of the procurement objectives should provide a general understanding of what will be accomplished by the contractor. Well-formed objectives will help guide the procurement and contracting process focused and on track.

### **2.3.3 Technique**

Defining the procurement objectives, assumptions, and constraints may sound simple and straightforward, but this definition process can be complex. Institutions may find that individuals on the contract management team hold different views as to the procurement's objectives. The following questions are intended to assist the team in clarifying and harmonizing potential divergent objectives and interests. Answering the following three questions will aid program staff in defining and refining the procurement objective:

- What goods/ services does the Institution/program specifically need?
- What will fulfilling this need accomplish for the Institution/program?
- How will the Institution/program know when the need has been met?

Each procurement is different. The description of the objective, assumptions and constraints will vary. A good measure of the quality of the SOW is whether the procurement objectives, assumptions and constraints make sense and are readily understandable to an individual that is not familiar with the procurement.

### **2.3.4 Research**

The contract management team may assist program staff in contacting and interviewing people within the Institution and at other IHEs who have developed solicitations, drafted contracts and engaged in contract administration for similar procurements, as needed. For significant and high-risk procurements, document the strengths, weaknesses, problems and the lessons learned in the interviews. The Internet may be used to search for copies of solicitations, contracts and oversight documents or products used by others, review websites for useful information, and check with trade associations and professional organizations to identify industry practices, methods, standards and rules that will deliver the goods or perform the services.

Another approach to identifying information regarding the availability, features or measures for the purchase of goods/services is to publish an RFI. Potential contractors may respond to the RFI with information that will assist the Institution during the contract management process.

### **2.3.5 Business Model**

If applicable, a business model should represent a high-level view of how a proposed significant or high-risk business transaction is expected to work. The business model may include plans relating to a contract strategy, contract administration (including the contractor performance monitoring approach), as well as financial assumptions and limitations. The business model, based on the needs and desired objectives of the program, should be reflected in the SOW.

### **2.3.6 Cost Estimates**

During the planning stage of the procurement, program staff will develop an estimated cost of goods/services. The cost estimate will assist program staff and purchasing personnel in determining which type of procurement method to use. Even if limited by budget restraints, an estimated cost will provide an idea of the range and duration of services that the Institution can include in the SOW.

Program staff or purchasing personnel should contact someone within the Institution who has knowledge in the subject area to assist with the cost estimate. However, if unable to find anyone with knowledge in the subject area, the Institution may choose to contact several contractors to obtain pricing information. In obtaining price estimates from potential contractors, great care should be taken to avoid sharing information that would provide any contractor with a competitive advantage.

## 2.3.7 Procurement Lead Time

The table below is provided to assist Institutions and program staff in the planning process.

TASK	SUGGESTED LEAD TIME FROM CONTRACT START DATE	EXAMPLE
Begin Preparation of Solicitation – Program staff works with Purchasing Office to develop SOW and contract language	120 to 180 days	March 1
Submit final solicitation with required approvals to the Purchasing Office	90 to 150 days	April 1
Advertise and Issue Solicitation	75 to 120 days	May 1
Receipt of Responses	90 days	June 1
Evaluation of Responses	30 days	July 1
*Contract Negotiation ( <i>if allowed</i> ) and Formation	30 to 60 days	August 1
Contract Execution – all signatures are obtained	15-days	August 15
Performance Begins (generally the effective date)	0 days	September 1

\*the time required for contract negotiation and formation may vary widely

To complete procurement, contract formation and execution in a timely manner, program staff should plan as far ahead as possible for their business needs, contact purchasing personnel to assist in early planning with respect to an anticipated procurement, and be committed to timely completion of contract management team tasks.

The lead times above are shown as ranges and are suggestions only. Actual lead times will vary depending on the specific requirements of the Institution and the complexity of the procurement. Less complex procurements may be accomplished in less time, while more complex procurements may require more time. Contact the Institution Purchasing Office to ascertain more specific lead time requirements. Keep the following points in mind with regard to lead time:

- During preparation of the solicitation is where the planning and research discussed earlier pays off. Some Institution employees are more adept at writing SOWs and solicitation documents. Using experienced employees for these tasks will reduce the time required to prepare the SOW and solicitation. If possible, the Purchasing Office should provide program staff with templates to assist in preparation of solicitations. A link to sample solicitation documents is included in this Handbook. However, Institutions should modify the templates to meet the Institution's needs and requirements.
- The time required for the Purchasing Office to finalize and publish the solicitation can

vary depending on how well the SOW and the solicitation are written by the program staff. The Purchasing Office will take steps necessary to assure the development of a complete solicitation with a reasonably acceptable SOW. Purchasing personnel will also assure that the process allows for necessary competition, and complies with Applicable Laws and University Rules.

- A **30-day** solicitation period is typical for most RFPs. ITBs usually require a **14 to 21-day** solicitation period. That time may be reduced or increased, at the discretion of the Institution, depending on the complexity of the procurement and the requirements for the response. For example, if the procurement (including the SOW) is unusual or complex and requires respondents to submit significant documentation and/or complicated pricing, additional time for the solicitation period should be allowed. In addition, if the procurement is unusual or complex, the Institution may receive requests from respondents for an extension of the submittal deadline.
- Evaluation of the proposals may take more or less time, depending on the size of the evaluation team and the complexity of the solicitation. The evaluation period could also increase if oral presentations, discussions or best and final offers are utilized.
- Contract negotiation and formation timeframes will vary significantly depending on the complexity of the procurement and the cooperation and responsiveness of the proposer.
- The contract execution timeframe may also differ significantly between a purchase order and a contract. Depending on the signature requirements of the Institution and contractor, the contract execution lead time may need to be adjusted.

## 2.3.8 Technology Contracts

Many of the IR projects initiated by Institutions involve procurement of technology-related goods/services. Technology-based procurement projects present a unique level of complexity that requires specific contract management practices, processes, and strategies.

**2.3.8.1 Project Management Practices** – As required by *Texas Government Code*, Chapter 2054, Subchapter G, Institutions must manage IR projects based on project management practices that are consistent with DIR guidelines set forth in *Texas Administrative Code*, Title 1, Chapter 216, Subchapter C. DIR guidelines require Institutions to:

1. implement, approve, and publish an operating procedure that communicates an Institution-wide approach for project management practices that at a minimum will:
  - identify components and general use of project management practices, citing sources of reusable components adopted from a state agency or another institution of higher education that satisfy requirements specified under 1 TAC §216.21; and
  - be approved by the president or chancellor of the Institution or designee.
2. manage IR projects based on project management practices that meet the following criteria:
  - include a method for delivery of IR projects that solve business problems;

- include a method for governing application of project management practices;
  - be documented, repeatable, and include a single reference source (e.g., handbook, guide, repository) that communicates how to effectively apply use of the project management practices components;
  - include a project classification method developed by DIR, the Institution, or another source that:
    - Distinguishes and categorizes projects according to level of complexity and risk (e.g., technology, size, budget, time to deliver); and
    - Defines how to use the project classification method to establish, scale, and execute the appropriate level of processes;
  - include a method to periodically review, assess, monitor, and measure the impact of project management practices on the Institution's ability to achieve its core mission;
  - accommodate use of other practices and methods that intersect with application of project management practices; and
  - be reviewed and updated at least annually to help ensure continuous process improvement.
3. identify and adopt one or more standards as a basis for project management practices to meet project requirements in a minimum of the following knowledge areas:
- integration management;
  - scope management;
  - schedule management;
  - cost management;
  - quality management;
  - resources management;
  - communications management;
  - risk management;
  - procurement (acquisition) management; and
  - stakeholder management

**2.3.8.2 Texas Project Delivery Framework** – Institutions must comply with the Texas Project Delivery Framework (Framework) set forth in *Texas Government Code*, Chapter 2054, Subchapter J, when procuring either of the following types of technology contracts:

- a major IR project, as defined in *Texas Government Code* §2054.003(10) to mean:
  - any IR technology project whose development costs exceed \$1 million and that:
    - requires one year or longer to reach operations status;
    - involves more than one state agency; or
    - substantially alters work methods of state agency personnel or the delivery of services to clients; and
  - any IR technology project designated by the legislature in the General Appropriations Act as a major IR project; or
- a major contract, defined by *Texas Government Code* §2054.301(b), to mean a contract that has a value of at least \$1 million under which a vendor will perform or manage an outsourced function or process.

If necessary, Institutions may contact the Chief Information Officer on the applicability of Framework requirements to a specific major contract. Institutions may refer to [this page](#) on the DIR website for detailed information regarding the Framework, including guidance and tools.

#### **2.3.8.3 Special Procurement Considerations for Technology Contracts –**

Institutions must comply with the following specific legal and regulatory requirements for technology contracts:

4. Please be aware that temporary information technology (IT) staffing services and certain IT goods (e.g., printer paper) may be available through TIBH Industries. If so, Texas law may require an Institution to procure such services or goods from TIBH Industries. For more information, please see [Section 2.2.3.3](#) of this Handbook.
5. Other best practices and legal requirements applicable to the procurement of IT are set forth in the “Software Procurement Issues” guide available as one of the training presentations available from the UT OGC Contracting and Procurement Practice Group Resource Pages.
6. If a Contractor, including its subcontractors, officers, or employees, will have access to a state computer system or database, then Section 2054.5192, Texas Government Code requires the Contractor and its subcontractors, officers, or employees to complete a cybersecurity training program certified under Section 2054.519, Texas Government Code and selected by the University. DIR has determined that access for the purpose of this requirement is defined as "any person who has been given an account to access any state (or local) information system." The cybersecurity training program must be completed by Contractor and its subcontractors, officers, or employees during the term and any renewal period of the contract. Additionally, the Contractor shall verify completion of the program to the University. The person who oversees contract management for the University shall (1) report the contractor's completion to the Texas Department of Information Resources and (2) periodically review University contracts to ensure compliance with these requirements. For more information, see the Texas Department of Information Resources' [Statewide Cybersecurity Awareness Training Website](#) on this requirement.

7. Before procuring IR technologies under an interagency contract with another state agency or IHE, an Institution needs to ensure that it has complied with specific legal requirements which may require the Institution to first conduct an RFP or ITB for those technologies. These legal requirements are set forth in Section 2054.119, *Texas Government Code*, and 1 TAC Chapter 204. Such requirements are addressed in more detail in the “Software Procurement Issues” guide identified in the preceding paragraph.
8. When procuring EIR, Institutions are required to ensure compliance with state EIR accessibility requirements set forth in Title 1, Section 206.70 and Chapter 213, Subchapter C of the *Texas Administrative Code*. For more information, see OGC Bulletin 2006-1 for procured EIR (including outsourcing) on OGC’s Contracting & Procurement Practice Group website. (Please note that when procuring EIR, Institutions must require the vendor to provide applicable accessibility information, as set forth in 1 TAC §213.38(b)).
9. If purchasing or leasing computer equipment (defined to include desktop or notebook computers, as well as computer monitors or other display devices that do not contain a tuner), then pursuant to Section 361.965, *Texas Health and Safety Code*:
  - (1) Institutions must require each prospective respondent that offers to sell or lease computer equipment to certify the respondent's compliance with the Computer Equipment Recycling Program set forth in Chapter 361, Subchapter Y, *Texas Health and Safety Code* (a prospective respondent's failure to provide the certification renders that respondent ineligible to participate in the procurement process);
  - (2) in considering responses to solicitations for computer equipment, Institutions must, in addition to any other preferences provided under Texas law, give special preference to a manufacturer that has a program to recycle the computer equipment of other manufacturers, including collection events and manufacturer initiatives to accept computer equipment labeled with another manufacturer's brand; and
  - (3) Institutions must require contractors from which Institutions buy or lease computer equipment to include the following state Computer Equipment Recycling Program Certification in the contract between the contractor and the Institution:

**State of Texas Computer Equipment Recycling Program Certification.** Pursuant to Section 361.965, *Texas Health and Safety Code*, Contractor certifies that it is in full compliance with the *State of Texas Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act* set forth in Chapter 361, Subchapter 7, *Texas Health and Safety Code*, and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in Title 30, Chapter 328, Subchapter I, *Texas Administrative Code*. Contractor acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

10. Similar requirements apply if Institutions purchase or lease covered television equipment, which is defined as the following equipment marketed to and intended for consumers: (a) a direct view or projection television with a viewable screen of nine inches or larger whose display technology is based on cathode ray tube, plasma, liquid crystal, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light-emitting diode, or similar technology; or (b) a display device that is peripheral to a computer that contains a television tuner.

Specifically, pursuant to Section 361.991, *Texas Health and Safety Code*:

(1) Institutions must require each respondent offering to sell or lease covered television equipment to certify the respondent's compliance with the Television Equipment Recycling Program set forth in Chapter 361, Subchapter Z, *Texas Health and Safety Code*, before the Institution may accept the respondent's proposal;

(2) In considering proposals for television equipment, Institutions must, in addition to any other preferences provided under Texas law, give special preference to a television manufacturer that (1) through its recovery plan collects more than its market share allocation; or (2) provides collection sites or recycling events in any county located in a council of governments region in which there are fewer than six permanent collection sites open at least twice each month; and

(3) Institutions must require a contractor selling or leasing covered television equipment to agree to include the following state Television Equipment Recycling Program Certification in its contract with the Institution:

**State of Texas Television Equipment Recycling Program Certification.** Pursuant to Section 361.991, *Texas Health and Safety Code*, Contractor certifies that it is full compliance with the Television Equipment Recycling Program set forth in Chapter 361, Subchapter Z, *Texas Health and Safety Code*, and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in 30 TAC Chapter 328, Subchapter J. Contractor acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

11. Critical Infrastructure. As required by Chapter 2274, Texas Government Code (enacted by SB 2116, 87th Texas Legislature, Regular Session (2021), University must include a Contractor Certification Relating to Critical Infrastructure provision in an agreement under which the Contractor will be granted direct or remote access to or control of critical infrastructure in the State of Texas, excluding access specifically allowed by the University for product warranty and support purposes. For these purposes, "critical infrastructure" means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility, and "cybersecurity" means the measures taken to protect a computer, computer network, computer system, or other technology infrastructure against unauthorized use or access.

Such a provision requires the Contractor to certify that:



- (1) it is neither owned by nor is the majority of stock or other ownership interest of the Contractor held or controlled by (i) individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2274.0103 of the Texas Government Code (a “designated country”) or (ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country, and
  - (2) it is not headquartered in China, Iran, North Korea, Russia, or a designated country. Contractor understands that the prohibitions set forth in the preceding sentence apply regardless of whether (1) Contractor’s or its parent company’s securities are publicly traded or (2) Contractor or its parent company is listed on a public stock exchange as either (a) a Chinese, Iranian, North Korean, or Russian company or (b) a company of a designated country.
12. Cloud Computing. Cloud Computing Section 2054.0593 of the Texas Government Code (enacted by SB 475, 87th Texas Legislature, Regular Session (2021) requires the Texas Department of Information Resources (DIR) to establish and implement a state risk and authorization management program to provide a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services that process the data of Texas state agencies. DIR by rule is to prescribe (1) the categories and characteristics of cloud computing services subject to the state risk and authorization management program and (2) the requirements for certification through the program of vendors that provide cloud computing services. DIR shall evaluate vendors to determine whether a vendor qualifies for a certification issued by DIR reflecting compliance with program requirements. University must ensure that each contract for cloud computing services that it enters into or renews on or after January 1, 2022, complies with Section 2054.0593. As a result, University must require a contractor to comply with the requirements of such a state risk and authorization management program and maintain program compliance and certification throughout the term of a cloud computing services contract. University may not enter into or renew a contract to purchase cloud computing services that are subject to the state risk and authorization management program unless the contractor demonstrates compliance with program requirements. The University of Texas at Arlington Page 77 Contract Management Handbook (11-15-2022) Lastly, contracts related to cloud computing services or processing of University data may also be subject to DIR’s Tx-RAMP review and certification process per Senate Bill 475. The Office of Information Security (ISO) will review the tools, products, or services being requested and determine the level of certification required, if any.

As required by Section 2054.130, *Texas Government Code*, Institutions must permanently remove data from data processing equipment before disposing of or otherwise transferring the equipment to a person who is not a state agency or other agent of the state. This requirement applies only to equipment that will not be owned by the state after the disposal or other transfer. To comply with this requirement, Institutions should follow (1) DIR’s *Security Controls Standards Catalog* [<https://dir.texas.gov/resource-library-item/security-control-standards-catalog>] established under 1 TAC 202.76; and (2) UTS165 Information Resources Use and Security Policy.

Both the DIR *Security Controls Standards Catalog* and UTS165 set forth requirements for the removal of data from data processing equipment that exceed the requirements of Section 2054.130, *Texas Government Code*.

### **Where can I go for more information?**

[Texas Government Code, Chapter 2262](#)  
[Texas Government Code, Chapter 2262, Subchapter C Contract Advisory Team](#)  
[Texas Government Code, §§ 2262.001\(5\) and 2262.002\(a\)](#)  
[Texas Government Code, Chapter 2054, Subchapter G](#)  
[Texas Government Code, Chapter 2054, Subchapter J](#)  
[Texas Government Code §2054.003\(10\)](#)  
[Texas Government Code §2054.301\(b\)](#)  
[Texas Government Code §2054.130](#)  
[Texas Administrative Code, Title 1, Chapter 216, Subchapter C](#)  
[Texas Administrative Code, Title 1, §216.21](#)  
[Texas Administrative Code, Title 1, §206.70](#)  
[Texas Administrative Code, Title 1, Chapter 213, Subchapter C](#)  
[Texas Administrative Code, Title 1, §213.38\(b\)](#)  
[Texas Administrative Code, Title 30, Chapter 328, Subchapter I](#)  
[Texas Administrative Code, 30, Chapter 328, Subchapter J](#)  
[Texas Administrative Code, Title 1, §202.76](#)  
[Texas Health and Safety Code §361.965](#)  
[Texas Health and Safety Code, Chapter 361, Subchapter Y](#)  
[Texas Health and Safety Code §361.991](#)  
[Texas Health and Safety Code, Chapter 361, Subchapter Z](#)  
[Texas Department of Information Resources – Project Delivery Framework web page](#)  
[Texas Department of Information Resources – Security Control Standards Catalog](#)  
[UTS150 Access by Persons with Disabilities to Electronic and Information Resources Procured or Developed by The University of Texas System Administration and The University of Texas System Institutions](#)  
[UTS165 Information Resources Use and Security Policy](#)  
[OGC Contracting and Procurement Practice Group \(CPPG\) Resource Pages](#)

## **2.3.9 Exempt from Contract Advisory Team**

Institutions are exempt from statutes related to contract advisory team review of procurement solicitations and contracts.

### **Where can I go for more information?**

[Texas Government Code, Chapter 2262.002](#)  
[Texas Government Code, Chapter 2262, Subchapter C Contract Advisory Team](#)

## **2.4 Information Security; Access to Electronic and Information Resources**

Contracts of any kind (including purchase orders, memoranda of understanding, letters of agreement or other legally binding agreements) that involve current or future third-party access to, or creation of, Institution information resources or data, must comply with UTS165 Information Resources Use and Security Policy (see *link below*).

In addition, contracts of any kind that relate to electronic and information resources must comply with UTS150 Access by Persons with Disabilities to Electronic and Information Resources Procured or Developed by The University of Texas System Administration and The University of Texas System Institutions.

Lastly, contracts related to cloud computing services or processing of University data may also be subject to DIR's Tx-RAMP review and certification process per Senate Bill 475. The Office of Information Security (ISO) will review the tools, products, or services being requested and determine the level of certification required, if any.

### **Where can I go for more information?**

[UTS150 Access by Persons with Disabilities to Electronic and Information Resources Procured or Developed by The University of Texas System Administration and The University of Texas System Institutions](#)  
[UTS165 Information Resources Use and Security Policy](#)  
[Appendix 13 – Sample Contract Terms](#)  
[Section 6.6 – Contract Terms](#)

## 2.5 Record Retention

The Institution follows the approved [Records Retention Schedule](#) as per the Texas Library and Archive Commission.

### **Where can I go for more information?**

[Texas Government Code §441.1855](#)

[Texas Government Code, Chapter 441](#)

## CHAPTER 3

# PREPARING THE SOLICITATION

For procurements above the competitive threshold (see [Section 2.2.2](#) of this Handbook), after the Institution completes the procurement planning activities, the preparation of the solicitation document(s) will be coordinated.

- Before attempting to draft a solicitation, purchasing personnel will review Applicable Laws and University Rules to identify each applicable requirement.
- In addition, before Institution employees involved in the procurement begin work, the signed non-disclosure statements and conflict of interest statements from those employees will be obtained. A *Sample Non-Disclosure Statement* is attached as [APPENDIX 6](#).

**Where can I go for more information?**

[APPENDIX 6 – Sample Non-Disclosure Statement](#)

### **3.1 Historically Underutilized Business (HUB) Requirements**

HUB requirements are an integral part of the procurement process and are intended to promote full and equal business opportunity for all businesses. Institutions considering entering into a contract with an expected value of \$100,000 or more, will determine whether subcontracting opportunities are probable under the proposed contract before publishing the solicitation and before entering into the contract.

Institutions are required to make a good faith effort to utilize HUBs in state contracts in accordance with the goals specified in the *2009 State of Texas Historically Underutilized Business Disparity Study*. These goals may be achieved directly by contracting with HUBs or indirectly through subcontracting opportunities in accordance with Chapter 2161, Subchapter F, *Texas Government Code*, and 34 TAC Chapter 20, Subchapter B.

If subcontracting opportunities are probable and the contract value may be \$100,000 or more, the solicitation documents will state that subcontracting is probable and require respondents to submit an HSP.

For all contracts where subcontracting is probable and the anticipated value of the contract is \$100,000 or more, each respondent is required to complete HUB subcontracting forms and return the completed forms with the response to the solicitation, or the solicitation will be considered non-responsive as provided in 34 TAC §20.12(28)

Note that for all contracts where subcontracting is not probable, but the respondent intends to subcontract, the respondent is required to complete the HUB subcontracting forms and return the completed forms with the response to the solicitation, or the solicitation will be considered non-responsive as provided in 34 TAC §20.12(28).

Specific HUB procedures are detailed in Rule 20701 Use of Historically Underutilized Businesses, UTS137 Historically Underutilized Business (HUB) Program and the HUB Subcontracting Plan documents posted at <http://www.utsystem.edu/offices/historically-underutilized-business/hub-forms>.

#### **Where can I go for more information?**

[Texas Government Code, Chapter 2161, Subchapter F](#)  
[Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter B](#)  
[Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter B, Rule §20.12\(28\)](#)  
[Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter B, Rule §20.14](#)  
[The State of Texas Disparity Study 2009 at Texas Comptroller website](#)  
[Regents' Rule 20701 Use of Historically Underutilized Businesses](#)  
[UTS137 Historically Underutilized Business \(HUB\) Program](#)  
[HUB Forms at The University of Texas System HUB Office website](#)  
[The University of Texas System HUB Office website](#)

## **3.2 Contract Term**

A reasonable contract term compliant with Applicable Laws and University Rules should be included in the solicitation. Individual business needs may inform the decision regarding length of contract term. Contract terms exceeding five (5) years, including renewal periods, should be justified based on compelling business needs.

See [Section 6.6](#) of this Handbook for a list of provisions that should be included in a contract that results from the solicitation, including essential provisions as well as recommended provisions.

**Where can I go for more information?**

**[Chapter 6 – Contract Formation](#)**

### **3.3 Background Information**

Subject to Applicable Laws and University Rules, the solicitation will provide potential respondents with all appropriate background information to assist respondents' understanding of the procurement.

The solicitation will detail any relevant background data and work previously performed on which the anticipated SOW will build. Previously performed work may be made available to respondents during the solicitation phase of the procurement, via the Open Records request process. The solicitation will also specify that the data or work is provided for information purposes only and respondents are responsible for verifying the accuracy of the information to the extent necessary to respond to the solicitation and perform the SOW.

In some solicitations, it may be important to describe existing business processes. If the existing process will change as a result of the contract, then it may be important to also describe that modified process.

In addition, it is recommended that all Institutions include the following group purchase provision in every solicitation:

#### **Group Purchase Authority**

Texas law authorizes institutions of higher education (defined by Section 61.003, Education Code) to use the group purchasing procurement method (ref. Sections 51.9335, 73.115, and 74.008, Education Code). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Proposer under this RFP. In particular, Proposer should note that University is part of The University of Texas System ("UT System"), which is comprised of fourteen institutions described at <http://www.utsystem.edu/institutions>. UT System institutions routinely evaluate whether a contract resulting from a procurement conducted by one of the institutions might be suitable for use by another, and if so, this could give rise to additional purchase volumes. As a result, in submitting its proposal in response to this RFP, Proposer should consider proposing pricing and other commercial terms that take into account such higher volumes and other expanded opportunities that could result from the eventual inclusion of other institutions in the purchase contemplated by this RFP.



### **3.4 Proposal Submission Requirements**

The solicitation should include one section listing all of the required information that respondents must submit with their proposal. This will assist respondents to confirm that all required documentation is submitted. Additionally, any recommended or required proposal formats should be specified in this section, such as page number limitations, size of paper, number of hard copies, and number of electronic storage copies.

## 3.5 Evaluation of Proposals

### 3.5.1 Criteria

The solicitation will advise respondents how proposals will be evaluated.

The Best Value Statutes require Institutions to use the following mandatory evaluation criteria to evaluate proposals for goods/services:

- Threshold Criteria Not Scored:
  - Ability of University to comply with laws regarding HUBs; and
  - Ability of University to comply with laws regarding purchases from persons with disabilities.
  
- Scored Criteria:
  - Cost of goods/services;
  - Reputation of respondent and of respondent's goods/services (“Reputation Criterion”);
  - Quality of respondent's goods/services;
  - Extent to which the goods/services meet the University's needs;
  - Respondent's past relationship with the University;
  - Total long-term cost to the University of acquiring respondent's goods/services;
  - Use of material in construction or repair to real property that is not proprietary to a single vendor *unless* the Institution provides written justification in the solicitation for use of the unique material specified [*applies only when the Institution specifies in the solicitation material to be used in construction or repair of real property in the solicitation*]; and
  - *Any other relevant factors that a private business entity would consider in selecting a contractor* (“Other Relevant Factors Criterion”).

In connection with the Reputation Criterion, CPA administers a Vendor Performance Tracking System for use by all state agencies. Best practice indicates that Institutions should use the CPA Vendor Performance Tracking System to evaluate past vendor performance for the state.

Under the Other Relevant Factors Criterion, Institutions should include additional evaluation criteria that reflect the essential qualities or performance requirements necessary to achieve the objectives of the contract. In addition, Institutions should include a criterion that permits evaluations of any of respondent's exceptions to the contract terms and conditions required by the solicitation.

The language within the solicitation will determine the evaluation criteria and the determinations the evaluation team will make when evaluating proposals, so the evaluation criteria should not be unduly restrictive. Criteria not included in the solicitation may not be used in evaluation of proposals, ranking of proposals or selection of a contractor.

The criteria should allow the evaluation team to fairly evaluate the proposals. The criteria may take a variety of sources of information into consideration such as respondent's written response, oral presentation, past performance and references relevant to the contract. To ensure fairness in evaluation, the evaluation criteria should reflect only those requirements specified in the solicitation.

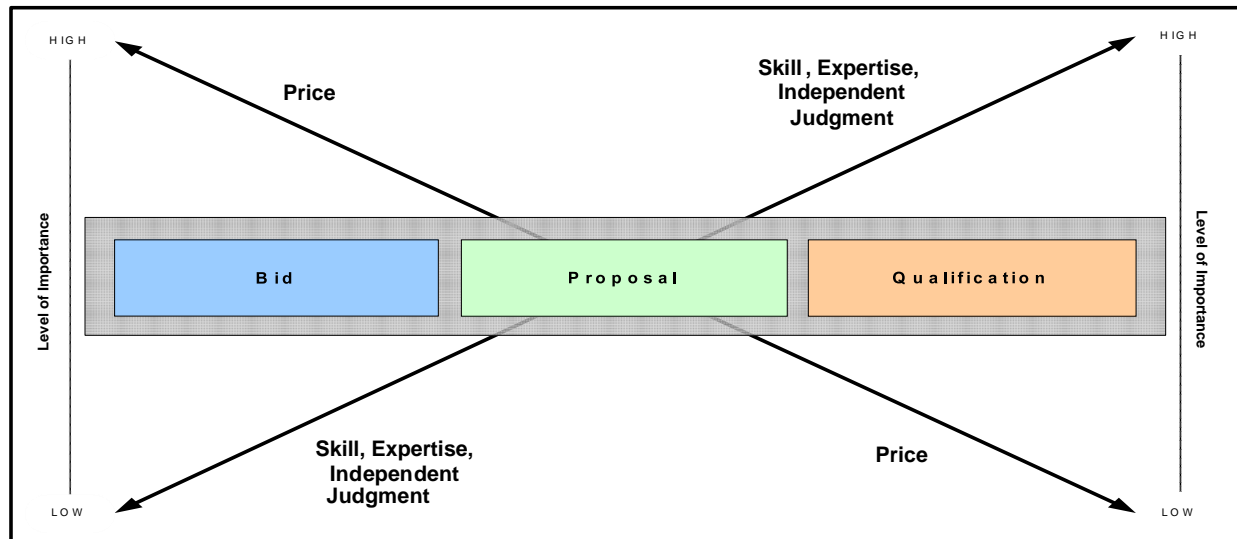
#### **Where can I go for more information?**

[Texas Education Code, §51.9335 \(higher education, generally \[including UTMB\]\)](#)  
[CPA Vendor Performance Tracking System web page at Texas Comptroller website](#)

### 3.5.2 Scoring Weight

There are several schools of thought on how much information to provide respondents regarding the evaluation criteria. At a minimum, the solicitation will identify the criteria. Institution policy may require that the solicitation include the scoring weight assigned to each criterion. Some Institutions may prefer to give more detailed information as to how each criterion is broken down into smaller units or they may include a copy of the evaluation scoring sheets with the solicitation. These approaches are also acceptable options.

When establishing the scoring weight of each criterion, cost may be the most significant criterion. However, there are solicitations in which the skills and experience of contractor or other factors may be more important than cost. For example, if a trainer needs a specific set of skills, the Institution may be willing to pay more for those skills. When establishing the scoring weight, consider the importance of each criterion to the overall project. The criteria deemed most important by the Institution should be weighted higher than the other criteria. The following diagram demonstrates the relationship of the evaluation criteria and the level of importance.



### 3.5.3 Requests for Information

Consider the information and other submissions that the Institution requests in connection with each evaluation criterion. Request that the proposals contain all information necessary to effectively evaluate each criterion. Specific sections of the requested proposal may be designed to directly relate to each criterion.

Ensure that the solicitation requests information with which to evaluate each criterion. For example:

Evaluation Criteria	Solicitation Requirement	Submission Requirement
Contractor Qualifications	Licensed Accountant.	Copy of License.
Contractor Experience	Minimum of five (5) projects of similar size and scope.	Detailed information regarding size, dollar amount and scope of project for each individual project and any additional information necessary to evaluate contractor experience.
Financial Capability	Financially capable of handling a project of this size and scope.	Copy of latest financial statements, including balance sheets, Dunn and Bradstreet report, etc.
Proposed Services	Service delivery strategy for how proposed services will be performed.	Plan should include the number of staff resources and experience level, implementation strategy, reporting requirements, response times, etc.

Conversely, all information requested by the solicitation should relate to one of the criteria to be evaluated. Information that does not relate to at least one of the evaluation criteria may not be considered.

## **3.6 Solicitation Requirements**

The solicitation will notify respondents of all requirements and clearly state the consequence of failing to meet these requirements (for example, reduction in evaluation score or disqualification).

Consider carefully any requirements that may disqualify a proposal. For example, the HSP is required by Applicable Laws and University Rules; Institutions have no choice but to disqualify respondent if respondent does not submit the HSP or if the respondent's HSP does not demonstrate that respondent used a good faith effort to prepare the plan. However, if respondent fails to submit a copy of a license, for example, that failure may or may not be a valid business reason for disqualification and respondents can be given the opportunity to cure technical deficiencies in some proposal requirements.

### **3.6.1 Contractor Qualifications**

The solicitation should specify the minimum qualifications required for contractor. Typically, in an RFP, contractor qualifications are less stringent than in an ITB where price is the primary criterion. At a minimum, the solicitation should require that contractor have a specified level of experience in providing the type of goods/services solicited.

### **3.6.2 Posting Security**

Institutions must advise respondents in the solicitation if respondents will be required to post security and, if so, what forms of security are acceptable (e.g., third party bond, irrevocable letter of credit or cashier's check). When considering whether or not to require security, remember that the cost of the security is typically passed on to the Institution by respondents.

Bonds are one form of security. The three most common forms of bonding are solicitation response bonds or deposits, performance bonds and payment bonds. Some bonds are required by statute for specific types of contracts. For example, some contracts with auxiliary enterprises require bonds.

#### **Where can I go for more information?**

[Texas Government Code, Chapter 2252 Contracts with Governmental Entity, Subchapter C Private Auxiliary Enterprise Providing Services to State Agencies or Institutions of Higher Education](#)  
[Texas Government Code, Chapter 2253 Public Work Performance and Payment Bonds](#)

### **3.6.3 Monitoring and Oversight**

It is important to develop effective contract monitoring strategies appropriate for each contract to be procured. The methods used to monitor contractor performance should be outlined in the solicitation because those methods will become important contract terms. The SOW should set specific deadlines for completion of tasks and a schedule for submittal of deliverables, required meetings, presentations or other activities. Monitoring strategies ensure contractor performs as specified in the SOW.

Monitoring is usually the responsibility of program staff and should be balanced and adequate to meet the Institution's needs, but limited in type, scope and frequency sufficient to achieve the desired result, without unnecessarily increasing costs. Overly restrictive monitoring may interfere with contractor's ability to perform the work and may unnecessarily and inadvertently increase costs for the Institution.

Further discussion of contract monitoring and oversight is covered in Chapter 7.

### Where can I go for more information?

#### Chapter 7 – Contract Administration

### 3.6.4 Scope of Work

The Scope of Work is very important as it forms the basic framework for the resulting contract. The needs assessment discussed in Chapter 2 is the foundation for the SOW. The SOW is a detailed description of what is required for contractor to satisfactorily perform the work. The SOW should provide a clear and thorough description of the goods/services to be procured. If appropriate, describe the relevant environment where the goods/services will be used.

The success or failure of a contract can often be linked to the adequacy or inadequacy of the planning, analysis and thoroughness of the SOW. Time spent planning, analyzing, and drafting the SOW will ultimately save time, resources, and money and improve the quality of the goods/services procured.

It is important that the SOW:

- Be clearly defined;
- Be unbiased and non-discriminatory so that all potential respondents have a level playing field;
- Encourage innovative solutions to the requirements described, if appropriate;
- Allow for free and open competition to the maximum extent reasonably possible; and
- Secure the best value goods/services for the Institution.

**3.6.4.1 Organization** – One way to organize the SOW is to divide each of the procurement objectives into logical parts, such as phases. Phases may include (1) planning, development, implementation, operation, and management or (2) planning, equipment installation, testing, operation and maintenance. The specific phases should support the subject matter and purpose of the contract. Phases may be further divided into smaller segments of work.

**3.6.4.2 Define Institution's Role** – The contract, not the SOW, should clearly define the role the Institution will play in the work to be performed and any specific contributions or resources the Institution will provide.

The contract (not the SOW) should also define the roles of Institution staff that will administer the contract and monitor contractor's progress.

**3.6.4.3 Specification Types** – Specifications are the primary means of communication between an Institution and a vendor. A specification is a description of the goods/services an Institution seeks to procure. A specification also describes goods/services that must be proposed to be considered for an award. Specifications should include deliverables. Each deliverable should include the following elements:

- Description of the work.
- Standard for performance.
- Test condition, method or procedure to verify that the deliverable meets with the standard.
- Method or process to monitor and/or ensure quality of the deliverable.

- Acceptance process for each deliverable.
- Compensation structure that is consistent with the type and value of work performed.
- Contractual remedy, if appropriate.

Specifications control quality of the goods/services, the suitability of the goods/services for the business purpose, and the method of evaluation used in determining best value and in making a contract award.

#### **3.6.4.4 Characteristics of Effective Specifications –**

**SIMPLE:** Avoid unnecessary detail and complexity, but be complete enough to ensure that goods/services procured will satisfy the intended purpose.

**CLEAR:** Use terminology that is understandable to the Institution and potential respondents. Use correct spelling and appropriate sentence structure to eliminate confusion. Avoid legalese and jargon when possible.

**ACCURATE:** Use measuring units that are compatible with industry standards. All quantities and packing requirements should be clearly identified.

**COMPETITIVE:** Identify at least three (3) commercially available brands, makes, or models (whenever possible) that will satisfy the intended purpose. Avoid unneeded “extra” features that could reduce or eliminate competition and increase cost.

**FLEXIBLE:** Avoid inflexible or narrow specifications which prevent the acceptance of a response that could offer greater performance for fewer dollars. Whenever possible, use approximate values for dimensions, weight, speed, etc., if the approximations will satisfy the intended purpose.

#### **3.6.4.5 Performance-Based, Design and Mixed Specifications –**

Performance-based specifications focus on outcomes or results of the required goods/services rather than how the goods/services are produced. Conversely, design specifications outline exactly how contractor must make the goods or perform the services. Performance-based specifications allow respondents to bring their own expertise, creativity and resources to the procurement process without restricting respondents to predetermined methods or detailed processes. This may allow respondents to provide the goods/services at lower cost. Performance-based specifications also shift some risk to contractor. For example, if an Institution utilizes a design specification for a unit of laboratory equipment and the equipment ultimately does not satisfy the business need for which it was procured, then the results may be the fault of the Institution’s specifications. However, if the Institution used performance-based specifications, the unit must perform in accordance with the specifications. If the equipment does not perform, then contractor may be at fault.

Performance-based specifications may permit respondents maximum flexibility when satisfying the requirements of a solicitation. Design specifications may limit respondent’s flexibility.

Mixed specifications include both performance-based specifications and design specifications. Consider the purchase of media and advertising services:

- **Performance-Based Specification:** Contractor shall provide Institution media services which shall increase applicants by a minimum of 3 percent

in the next fiscal year. Out-of-state applicants shall increase a minimum of 10 percent. These figures will be measured based on the Institution's prior year applications data-base.

- **Design Specifications:** Contractor shall conduct at least seven (7) media campaigns during the fiscal year. Three of these campaigns must be directed to out-of-state applicants.
- **Mixed Specifications:** Contractor shall provide Institution media services which shall include a minimum of seven media campaigns during the fiscal year. Media services shall result in a minimum increase in applicants of 3 percent in the next fiscal year based on the Institution's prior year applications data-base.

Performance-based specifications focus on results. Design specifications focus on resources. If the Institution uses design specifications only, contractor may provide all seven campaigns, but the desired result of increased applicants may or may not occur.

As with all performance measures, Institutions must ensure that performance specifications are reasonable and measurable. Note that performance-based specifications clearly outline how the results will be measured. While performance-based specifications are sometimes preferable, the expertise required to conduct the contract planning, procurement and management may be different than the expertise needed for design specifications.

Design specifications are appropriate for simple purchases of goods such as paper, pens, furniture, and services such as temporary staff. Usually these purchases are accomplished by defining specific quantities and specifications for the goods/services, such as price per unit as well as requirements for the time, place and manner for delivery and acceptance.

Institutions may include performance incentives in contract terms. Incentives may be used for superior performance that exceeds contract goals. In the prior example, if Institution applicants increased by 5 percent, the contract may provide a pre-established monetary incentive for increases above the required 3 percent.

It is not always beneficial to use performance-based specifications. Consider the following examples of when to use performance and design specifications:

- **New installation, entire system provided by one vendor:** Consider using performance-based specifications to allow the contractor to provide the system that provides best value to the Institution.
- **New installation of multiple system components provided by various vendors:** Consider using design specifications to ensure that all of the components (for example, HVAC controls, chillers and boilers) that must work together will work together.
- **Expansion of an existing installation:** Consider using design specifications because the new equipment must connect and integrate with the existing system.

**3.6.4.6 Quantify Goods/Services** – Quantify the volume, amount, and frequency required for goods/services to meet specifications.

**3.6.4.7 Standards for Goods/Services** – The SOW should identify the quality of



goods/services required for acceptable performance. For example: All dusting must be performed so as to ensure cleanliness of surfaces, as determined through inspection by the contract administrator.

**3.6.4.8 Established Industry Standards** – If established industry standards (international, national, state, local) are available, those standards may be used to define the contract performance requirements. Examples of national and international standards include American National Standards Institute (ANSI), American Society for Testing and Materials (ASTM) and International Organization for Standardization (ISO). Using established standards provides consistency in measuring acceptability, quality or accuracy of contractor's performance.

Contracts will often incorporate by reference "standards" maintained by entities representing particular industries such as Generally Accepted Accounting Principles (GAAP), Institute of Electrical and Electronic Engineers (IEEE) or ISO. If a standard is incorporated by reference, consider specifically identifying by number the standards of performance that relate to each activity, task, work product or deliverable. Simply referring to "industry standards" is usually inadequate.

**Warranty Standards** – An express warranty is a standard that is expressly included in the contract language to establish a performance standard for the work. The contract does not generally need to use the words "warrant" or "guarantee" to create an express warranty. Neither does contractor need to have the specific intention to make a warranty. A simple affirmation of the value of the goods/services or a statement merely purporting to be contractor's opinion or commendation of the goods/services does not create a warranty.

Unless disclaimed, excluded or modified by the language of the contract, warranties or standards may be implied in a contract by a statute or by case law. For example, in the sale or lease of some types of goods there may be implied statutory warranties, such as: a warranty of title, a warranty that the goods will be merchantable, or a warranty that the goods are fit for a particular purpose. If an implied warranty is important to the quality of the goods/services, the best practice is to make the implied warranty an express warranty by including the warranty in the language of the contract.

Include clear standards for contractual performance or an express warranty describing the standard of performance in the SOW or contract.

**3.6.4.9 Reporting** – Status reporting, performance and activity reporting are terms used to describe information that a contractor must provide to show the status of a contract. These terms must be defined in the SOW or the contract, and the definition of each should include content, frequency and audience for each report.

A status report describes the level of completion of the work and/or the cost of the contract. Percent complete is often used to describe status. For the report to be useful, a baseline should be established for timelines and budgeting.

If deliverables are specified, include the format of the deliverable and the number of copies required. For example, if a deliverable is a final project report, state how many copies of the report are needed and specify the format of the electronic copy. State all items that must be included in the report. These requirements are usually addressed in the SOW within the solicitation.

If vendor-provided information is anticipated to be reported as part of the Institution's performance measures, ensure that there are requirements that allow for data verification and that the data corresponds with the data required for the performance measures.

If possible, include in the solicitation the desired format or a sample of any required reports.

**3.6.4.10 Inspection and Testing** – The SOW should provide for inspection and testing. The Institution should include inspection and testing of goods/services purchased under the contract to ensure compliance with the specifications of the solicitation and the contract.

Testing should be performed on samples submitted with the proposal and samples taken from regular shipments. All costs of inspection and testing should be borne by contractor. In the event the goods/services tested fail to meet or exceed all conditions and requirements of the solicitation and contract, the goods/services should be rejected in whole or in part at contractor's expense. Latent defects may result in cancellation of a contract at no expense to the Institution. Institutions should contact legal counsel with any questions regarding latent defects.

**3.6.4.11 Final Acceptance** – The SOW should clearly define how the Institution will determine that the contract has been satisfactorily completed. The SOW sets a standard for acceptance of the deliverable and establishes a procedure to receive or reject the deliverable based on specific factors.

Tracking the status of several phases, segments and deliverables, where each deliverable may have multiple tasks, activities, and products, can be challenging. A formal acceptance process for each step in a contract allows the contract manager and the contractor to know the conditions of contract performance.

**3.6.4.12 Additional Considerations** – Listed below are additional issues which should be considered when preparing the SOW. These items may affect pricing, so it is important that respondents are aware of these requirements. The SOW answers – who, what, when, where, why and how. If these questions are answered, it is a reasonable assumption that the SOW is complete.

- *Data security and privacy requirements;*
- *Accessibility of electronic and information resources requirements;*
- Licenses or permits required;
- Use of Institution equipment;
- Storage space for contractor materials/supplies, including space license (if appropriate);
- Intellectual property/use of marks/copyright issues;
- Access to the Institution's premises;
- Subcontractor requirements;
- Insurance requirements; and
- Conflicts of interest/organizational restrictions.

**Where can I go for more information?**

[UTS150 Access by Persons with Disabilities to Electronic and Information Resources Procured or Developed by The University of Texas System Administration and The University of Texas System Institutions](#)

[UTS165 Information Resources Use and Security Policy \(including Standards 1, 21, and 22\)](#)

[OGC Contracting and Procurement Practice Group Resource Pages](#)

[APPENDIX 13 – Sample Contract Terms](#)

[Chapter 2 - Planning](#)

[Section 6.6 – Contract Terms](#)

### **3.7 Payment Types**

As with specification types, there are also various payment types. Payment method should be consistent with the goods/services delivered. Payments should be structured to fairly compensate contractor and encourage timely and complete performance of work. As a general rule, payment should be approximately equal to the value of the completed work.

Institutions may not pay for goods/services not received.

Institutions also may not use funds in or outside of the state treasury to pay the vendor if CPA is prohibited from issuing a warrant or initiating an electronic funds transfer to the vendor (ref. Section 403.055 and Section 2107.008, *Government Code*).

Institutions may only make prepayments if the appropriate Institution authority analyzes the facts surrounding the transaction and makes a written determination that (1) there is, in fact, a public purpose for any pre-payments required by the contract, and (2) there are sufficient controls over the pre-payments, contractual or otherwise, to ensure that the public purpose is actually achieved. This written determination must identify the facts supporting the determination and be retained in the procurement file.

The following table illustrates the various common types of payments and how each applies to various types of contracts:

## COMMON PAYMENT METHODS

Payment Type	Commonly used for:	Payment based on:
<b>Cost Reimbursement</b>	Interagency Cooperation Agreements  Interlocal Cooperation Agreements	Reimbursement of allowable costs in accordance with the approved budget.  Some contracts may combine payment methods and include cost reimbursement of contractor's expenses (see <b>Note 1 below</b> ).
<b>Cost Plus Incentives</b>	Materials contract where the materials are unknown at the time of contract award.  Example: Job order contracts.	Contractor's cost <u>plus</u> a percentage of cost or cost <u>plus</u> fixed fee.  This payment method is discouraged because there is no incentive for contractor to minimize costs.
<b>Fee For Service</b>	Contracts where a fee can be established per unit of goods/services.  Example: When providing flu shots to employees, unit of service may be one flu shot.	Number of completed good/service units.
<b>Firm Fixed Price</b>	Contracts where a firm fixed price can be established for goods/services to be provided.  SOW must provide clear and accurate specifications.  Examples: Contracts for common goods/services, including office supplies and furniture.	Firm fixed price agreed upon at the time the contract is awarded.  In this pricing method, contractors carry any pricing risk because the fee does not change, regardless of costs incurred by contractor to provide the goods/services. This risk may cause contractors to inflate the quoted price to protect themselves from fluctuations in material/labor costs.
<b>Firm Fixed Price with Escalator</b>	Contracts where a firm fixed price can be established for goods/services to be provided, including longer term contracts and contracts where the costs of materials/labor are subject to market fluctuations.  Examples: Lumber, steel, fuel and paper contracts.	Firm fixed price subject to escalation based on a fixed percentage or an index such as the Consumer Price Index.  Contractors are less likely to inflate the quoted price to protect themselves against possible increases in materials/labor because the contract allows for market adjustments to the price.
<b>Progress Payments</b>	Contracts where the SOW is completed in phases or stages.  Examples: Consulting services and construction.	Pre-established deliverables.  Deliverables must be measurable (see <b>Note 2 below</b> ).
<b>Time and Materials with Fee Cap</b>	Service contracts under which the volume of labor/ materials required to perform the work are difficult to forecast.  Examples: Electrician, plumber and carpenter services.	Number of hours worked for a specific SOW <u>plus</u> cost of materials <i>subject to</i> maximum fee cap.  Also consider establishing fixed labor fees for specific units of labor such as "installation of 120 volt outlet."

**Note 1:** Institutions may reference the state *Travel Allowance Guide* published by CPA at <https://fm.x.cpa.state.tx.us/fm/pubs/travallow/index.php> when including travel costs as an allowable expense within a contract.

**Note 2:** For example, a contractor is hired to conduct an *analysis* of a specific business process and prepare a *report* with recommendations for improvement. Contractor will be paid 30 percent of the contract amount upon receipt and acceptance of the analysis and the remaining 70 percent upon receipt and acceptance of the report and recommendations. The contract must specify what documentation will be required to evidence completion of each deliverable, such as paper and electronic copies of the analysis and the report. *Be careful not to shift the financial risk to the Institution by paying contractor for more than the amount (or percentage) of work contractor has actually completed.*

Also consider the importance of the deliverable. In this example, the Institution could be asked to pay contractor 80 percent of the contract amount upon completion of the analysis because the analysis takes a significant amount of labor. This increase in the payment for the analysis shifts financial risk to the Institution because the Institution may pay for 80 percent of the work, but will have nothing to show for the dollars spent if contractor fails to complete and submit the report and recommendations.

Best practice suggests that each payment should reflect the value and importance of the work completed. Institutions should manage financial risk by dividing the overall contract payments into smaller amounts that each reflects a small increment of the work as it is completed. If there is a dispute, the scope of the dispute may be contained to a discrete deliverable (rather than the entire contract) since the amount of money associated with each deliverable is known and limited. Keep in mind that each of the deliverables has the ability to shift risk between the Institution and contractor.

### **Where can I go for more information?**

*Texas Government Code §§ [403.055](#) and [Section 2107.008](#)  
[Travel Allowance Guide \(Textravel\) at Texas Comptroller website](#)  
**[Chapter 6 – Contract Formation](#)**  
**[Section 6.9 – Required Check of Vendor Hold Status](#)**  
**[Section 7.4 – Invoices and Payments](#)***

# CHAPTER 4

## PUBLICATION OF THE SOLICITATION

### 4.1 Advertising

Solicitations will be posted publicly on the Internet via the Electronic State Business Daily (ESBD) (an Internet based website for posting state procurement opportunities). The ESBD is available on the Internet at <http://esbd.cpa.state.tx.us>. Solicitations are also posted on The University's Sourcing Manager website at <https://adminapps.utep.edu/sourcing/>.

When marketing a solicitation, the Purchasing Office will consider the types of goods/services being procured. For example, effective advertising for goods/services may be different from effective advertising for professional services. The Purchasing Office should refer to Applicable Laws and University Rules to ensure compliance.

#### Where can I go for more information?

[Texas Education Code §51.9335](#)

[Texas Government Code, §§ 2155.083 and 2155.083\(n\)](#)

## **4.2 Solicitation Announcements**

Announcements are an efficient way to reduce mailing costs when publishing large solicitations. An announcement is a brief notification sent by the Institution to potential proposers (including potential HUB proposers) advising of the upcoming procurement opportunity and providing a link to the solicitation.

The Institution's HUB Coordinator should be notified of significant procurements so that announcements can be shared within the HUB community.



### **4.3 Communication with Respondents**

All communication with potential respondents should be made only through the Purchasing Office or the HUB coordinator. The solicitation should provide only Purchasing Office and HUB coordinator points of contact with acceptable forms of communication such as email and address. Although purchasing staff or HUB coordinator may not be able to answer technical questions, they will obtain the responses from the appropriate program staff and ensure that the information is communicated to all potential respondents.

*Program staff should not have contact with potential respondents outside of the pre-proposal conference.* If a potential respondent contacts program staff, program staff should politely decline to discuss the solicitation and forward the inquiry to the purchasing department.

A respondent that contacts someone other than designated staff in the purchasing department or the HUB office regarding the solicitation may be disqualified *so long as the solicitation notifies respondents of this possible penalty.*

#### **Where can I go for more information?**

[OGC Contracting and Procurement Practice Group Resource Pages](#)

## **4.4 Written Questions**

The solicitation may invite respondents to submit written questions. This option may be in addition to or in lieu of a pre-proposal conference. The date and time for submission of written questions should be specified in the solicitation. Written questions must be submitted by mail, facsimile, email or hand delivery.

If the solicitation is posted on the Internet (including ESBD), the questions and answers should be posted, in the form of a written addenda, with the solicitation as they become available.

**Where can I go for more information?**

[OGC Contracting and Procurement Practice Group Resource Pages](#)

## **4.5 Pre-Proposal Conferences**

Institutions may conduct either voluntary or mandatory pre-proposal conferences. Carefully consider the use of mandatory conferences. Mandatory conferences may raise concerns because requiring respondents to be at a certain place at a given time may limit competition. Conferences should be mandatory only if there is a reasonable business justification for the requirement. For example, a mandatory pre-proposal conference may be appropriate if (1) an on-site visit is required to have a full understanding of the procurement or (2) the solicitation is so complex that attendance is critical for potential respondents to fully understand the procurement. Institutions should document the justification for a mandatory conference in writing.

- Pre-proposal conferences provide a forum for Institution staff (including Purchasing Office and HUB office staff) to explain the solicitation (including HUB requirements) and respond to questions regarding the solicitation. Conferences provide a forum for Institutions to provide additional information, schematics, plans, reports, or other data that is not easily transferable or distributed through hard copy.
- Conferences allow potential respondents to address specific questions or concerns with the solicitation, including questions about HUB compliance.
- Conferences are especially important when there is a need for an on-site visit prior to submitting proposals. Note that, in lieu of a conference, in some cases site photographs or a slide show may be sufficient. Photographs or a slide show may also be an alternative to taking respondents to multiple physical locations. Copies of photographs and slide shows should be provided to all respondents and posted on the Internet.
- If issues are identified at the conference, the Institution may need to publish an addendum to the solicitation.
- All potential respondents must receive the same information.
- Subcontracting relationships may develop through the contacts established by potential respondents at the conference.

The solicitation must indicate the date, time and location of the conference. The conference is usually held approximately ten (10) days after the solicitation is published. All conference attendees should be documented through a sign-in sheet. A sign-in sheet is especially important if the conference is mandatory because the sign-in sheet is the document used by the Institution to verify respondent attendance at the conference.

The Purchasing Office should facilitate and conduct the conference, in coordination with the program staff. The Purchasing Office should answer procurement related questions, while the program staff should respond to the technical questions. If it is not possible to answer all questions at the conference, unanswered questions should be answered in writing as soon after the conference as possible. Depending on the significance of the questions asked and answers given, the Purchasing Office may consider posting the questions and answers for the benefit of potential respondents unable to attend the conference. If clarification of the solicitation is necessary, addenda to the solicitation may be issued.

### **4.5.1 Written Addenda**

All changes to solicitations must be made through written addenda. Each addendum must be provided to all conference attendees and posted on the Internet where it may be accessed by all other potential respondents.

When issuing an addendum, consider the amount of time remaining until the opening date of the solicitation. It may be necessary to extend the proposal deadline – which must also be done through a written addendum.

## 4.5.2 Sample Agenda

A typical agenda for a pre-proposal conference follows:

- Opening. Institution representatives introduce themselves and explain their role in the procurement.
- Introductions. Attendees introduce themselves and identify the company they represent.
- Solicitation Review. Solicitation is reviewed section by section. It is not necessary or recommended to read the entire document, but the entire document should be covered. Questions should be answered as each section is discussed.
- HUB Requirements. HSP requirements and resources for answering HUB questions should be discussed.
- Closing. Summarize any solicitation changes to be included in an addendum. List any unanswered questions requiring written response after the conference. Remind attendees that verbal comments or discussions about the solicitation are not binding and that all changes to the solicitation must be in the form of a written addendum.

### Where can I go for more information?

[OGC Contracting and Procurement Practice Group Resource Pages](#)  
[APPENDIX 7 –Sample Pre-Proposal Conference Guidelines](#)

## **4.6 Solicitation Submission and Opening**

The solicitation must indicate the submission deadline (including date and time) and location for submission.

The solicitation should also indicate whether or not the Institution will hold a public opening of proposals. The Institution may choose not to hold a public opening. Depending on the solicitation, a public opening may include a public reading of respondent names or pricing tabulations prior to award of the contract.

**Where can I go for more information?**

[OGC Contracting and Procurement Practice Group Resource Pages](#)

## **CHAPTER 5**

### **EVALUATION AND AWARD**

Institutions must evaluate responses in a fair and impartial manner consistent with the solicitation, Applicable Laws and University Rules. As discussed in Chapter 3, the solicitation should include a general description of the evaluation process, the evaluation criteria and, at the Institution's discretion, the scoring weight.

## **5.1 Evaluation Team**

The evaluation team should be comprised of individuals who are stakeholders in the goods/services being procured and/or individuals who have necessary technical or program expertise. The evaluation team will include a representative of the Purchasing Office who is usually the evaluation team leader and serves as a non-voting member. The evaluation team members are typically recommended by program staff. It is important to select members who understand the needs of the program office and the Institution, and who understand the desired outcome of the procurement. The evaluation team should bring together as much knowledge as possible to ensure selection of the vendor that provides the best value to the Institution.

The Purchasing Office will coordinate with evaluation team members to assure that they have the opportunity to participate in preparing the solicitation, especially the evaluation criteria and assigned scoring weights. The members should fully understand the requirements of the solicitation and must be able to critically read and evaluate responses and document their judgments clearly, concisely and consistently in accordance with the evaluation guide.

The recommended size of an evaluation team is three to five members. To avoid potential individual bias, the team should not be less than three members. Complex projects may require more than five members or even additional teams. Coordination and management of the evaluation process becomes more difficult as the size and number of teams increase.

## 5.2 Scoring Matrix

The scoring matrix, which should be a part of a well-developed evaluation guide, is used by the evaluation team members to score the individual responses based on the evaluation criteria defined in the solicitation. The scoring matrix should be completed prior to publishing the solicitation because, when developing the scoring matrix, it may become apparent that the solicitation needs to be supplemented or revised. If time does not permit the scoring matrix to be completed prior to publication, the scoring matrix must be completed prior to the opening and review of the solicitation responses. Failure to complete the scoring matrix before the opening of responses may subject the procurement to protests.

A *Sample Proposal Score Sheet* is attached as [APPENDIX 8](#).

**Where can I go for more information?**

[Chapter 3 – Preparing the Solicitation](#)  
[APPENDIX 8 - Sample Proposal Score Sheet](#)



### **5.3 Responsive Proposals**

Prior to opening proposals requiring HSPs, the HUB office will review the HSPs for compliance with HUB requirements. If an HPS is not compliant, the proposal should be returned unopened to the respondent. If an HSP is compliant, the HUB office will notify the Purchasing Office and the proposal may then be opened.

After all HUB compliant proposals are opened and recorded, the Purchasing Office determines if the proposals submitted are responsive. This is sometimes referred to as an administrative review. At a minimum, this includes review of the signed execution of offer, responses to respondent questions or similar documents, HSP and any other required documents such as bonds and certificates of insurance. In addition, the Purchasing Office will review the proposals to ensure that minimum qualifications are met. The Purchasing Office is responsible for assuring that all appropriate reviews necessary to determine responsiveness are completed.

An administrative review checklist is a good tool for ensuring the proposals are responsive. A *Sample Administrative Review Checklist* is attached as [APPENDIX 9](#).

*The evaluation team will only be provided with those proposals deemed responsive.*

**Where can I go for more information?**

**[APPENDIX 9 - Sample Administrative Review Checklist](#)**

## 5.4 Evaluation Team(s) Training

In advance of receiving responses, the Purchasing Office will provide training for the evaluation team to outline the team's duties and responsibilities in accordance with the material contained in a well-developed evaluation guide. This may be a separate meeting or may be held in conjunction with and just prior to the evaluation. *Evaluation Team Guidelines and Purchasing Office Responsibilities* are attached as [APPENDIX 10](#).

Team members should be instructed on their responsibilities including the critical nature of confidentiality to the integrity of the evaluation process.

Each evaluation team member should submit a signed *Non-Disclosure Statement* to the Purchasing Office prior to engaging in any discussion about, or having access to response documents. A Sample Non-Disclosure Statement is attached as [APPENDIX 6](#).

The Purchasing Office will review all evaluation criteria with the team members and explain how the evaluation process will be conducted.

Communication between team members during the evaluation must be limited to asking questions of the Purchasing Office and, if authorized, obtaining information from technical experts (for example, insurance and accounting experts) to better understand the response contents and requirements.

Each response must be evaluated individually against the requirements of the solicitation.

Each solicitation is considered independently of all other solicitations.

### **Where can I go for more information?**

[APPENDIX 6–Sample Non-Disclosure Statement](#)

[APPENDIX 10 – Evaluation Team Guidelines and Purchasing Office Responsibilities](#)

## **5.5 Single Responses**

- To determine why an Institution receives only one response to a competitive solicitation, the Purchasing Office or other appropriate employee of the Institution should re-review the solicitation for any unduly restrictive requirements.
- Potential respondents may be contacted to determine why they did not submit a response

If it is determined that there were unduly restrictive requirements in the solicitation, the Institution may decide to re-advertise the solicitation.

Otherwise, the Institution should consider the reasons that other responses were not received and determine if it is in the best interest of the Institution to make an award, to re-advertise with a revised solicitation, or to determine if an exclusive acquisition justification is required.

## 5.6 Proposal/Bid Evaluation

Once responses have been reviewed and found to be responsive by the Purchasing Office, the Purchasing Office will provide members of the evaluation team copies of the qualified responses. Some evaluations are conducted with the evaluation team in the same room evaluating the responses at the same time. This may facilitate questions by team members to purchasing staff or technical experts.

Alternatively, evaluation team members may work from their respective workspaces. In that case, purchasing staff and technical experts need to be available to answer technical questions regarding responses. All questions must be presented to the Purchasing Office. The Purchasing Office may seek out the answers to questions. Evaluation team members should only ask questions in the areas related to the evaluation criteria presented in the solicitation.

Once the evaluations are complete, the Purchasing Office will collect all of the evaluation score sheets and the responses. The Purchasing Office totals the score sheets and verifies the accuracy of calculations for input into the final evaluation formula.

If it is apparent that one or more team members' evaluations differ significantly from the majority, the Purchasing Office will contact the team member(s) to discuss the situation to ensure the criteria were clear and that information was not overlooked or misunderstood. If after this discussion, a team member feels that he/she did not understand the criteria, the requirement, or missed information that was included in the response, the member, at his own discretion, may revise his evaluation score. Under no circumstances should any team member attempt to pressure other members to change evaluation scores.

It is recommended that the cost or price information be scored by the Purchasing Office as cost/price is an objective criterion that should be calculated through predetermined formulas outlined in a spreadsheet.

A *Sample Proposal Score Sheet* is attached as [APPENDIX 8](#).

**Where can I go for more information?**

**[APPENDIX 8 - Sample Proposal Score Sheet](#)**

## 5.7 References

The evaluation team may verify references included in the response and conduct any other reference or credit check deemed appropriate. Or, reference verifications may be performed by the Purchasing Office that would contact all references and attempt to obtain answers to questions developed by the evaluation team.

All reference checks should be documented in writing. The same script or format of questions should be used when conducting reference checks so that the results are consistent and fair to all respondents. A *Sample Reference Check Form* is attached as [APPENDIX 11](#).

Sometimes it is difficult to obtain information from references, either because references have a policy of not providing information or because they cannot be reached in a timely manner.

Depending on the importance of the procurement, Institutions may want to consider using the following statement in the solicitation in lieu of checking references for all respondents:

***Institution reserves the right to check references prior to award. Any negative responses received may be grounds for disqualification of the proposal.***

By including this statement, Institutions are not required to check references but may choose to do so. Whether or not to check references as part of the evaluation is at the discretion of the Institution based on the individual procurement. Note that if references are verified for one respondent, then references should be verified for all respondents.

Best practice indicates that the evaluation team may use the CPA Vendor Performance Tracking System at [http://comptroller.texas.gov/procurement/prog/vendor\\_performance](http://comptroller.texas.gov/procurement/prog/vendor_performance) as a helpful tool to evaluate past vendor performance for the state.

### **Where can I go for more information?**

[Vendor Performance Tracking System at Texas Comptroller web site](#)  
[APPENDIX 11 - Sample Reference Check Form](#)

## 5.8 Oral Presentations/Discussions

Oral presentations or discussions are conducted at the option of the Institution. Oral presentations and discussions provide an opportunity for respondents to highlight the strengths and unique aspects of their response and to provide answers to questions the Institution may have regarding the response.

Demonstrations of product functionality are recommended, when appropriate. Demonstrations may be useful for information technology procurements.

Oral presentations and demonstrations should be fair to all parties. The time allowed and the format should be the same for all presenters.

### 5.8.1 Determining Competitive Range

Oral presentations and demonstrations may be scheduled for all respondents or limited to only the top ranked vendors in the competitive range. The Institution should look for a “natural break” in the scores that will determine the competitive range. The competitive range should consist of those responses determined to be reasonably considered for award.

An example of how to determine competitive range is demonstrated below:

<b>Evaluation Scores - Scenario 1</b>	<b>Evaluation Scores - Scenario 2</b>	<b>Evaluation Scores - Scenario 3</b>
97	97	97
93	93	96
90	82	90
89	81	89
88	79	88
65	68	85

NOTE: In Scenario 1, the top five respondents are in the competitive range.

In Scenario 2, the competitive range could include the top two respondents or the top five respondents.

In Scenario 3, there is a six-point difference between the 2nd and 3rd score, with the remaining scores close behind. Therefore, the best option is to include all six respondents.

## **5.9 Best and Final Offers**

After oral presentations or demonstrations are completed, discussions between the Institution and respondent may be held. If discussions are held and the Institution intends to permit respondents to revise their responses, all respondents within the competitive range and that participated in oral presentations or demonstrations will be given equal opportunity to discuss and submit revisions to their responses.

Revisions of proposals are normally accomplished by formally requesting best and final offers. The request sets a deadline for receipt of BAFO responses and provides instructions regarding information and documentation that should be submitted.

## 5.10 Negotiations

Before negotiating with respondents, Institutions should closely review the terms of the solicitation to confirm that negotiation is permitted. The ITB procurement method does not generally allow negotiations. However, the RFP and RFQ methods generally do allow negotiations.

During negotiations Institutions may not use “technical leveling” and/or “technical transfusion” techniques. “Technical leveling” means helping a respondent bring their proposal up to the level of other proposals through successive rounds of discussion, usually by pointing out proposal weaknesses. “Technical transfusion” means disclosing technical information or approaches from one respondent’s proposal to other competitors in the course of discussion.

In addition, the following disclosures are prohibited:

- disclosing competing respondents’ cost/prices (even if the disclosure is made without identifying the vendor by name); and
- advising a respondent of its price standing relative to other respondents.

Care must be taken to avoid making substantial changes to the Institution’s contracting objectives, requirements and specifications set out in the solicitation. If the contracting objectives, requirements or specifications are substantially changed through the negotiation process, the pool of contractors who may have been interested in submitting a response may change. Additional contractors may have competed, if the changed objectives, requirements and specifications were included in the original solicitation. *Whenever it appears that contracting objectives, requirements or specifications may have been changed, legal counsel should be consulted before proceeding further.*

Institutions may continue with negotiations until the best value for the Institution is achieved and an award to one or more respondents is made.

**NOTE:** A request for a respondent to clarify its proposal is not the same as negotiation of the terms of respondent’s proposal. However, when seeking clarifications, Institutions should not give one respondent an advantage over another and should extend the same opportunity to each respondent.

### 5.10.1 **Negotiation Strategies**

Negotiation strategy should be tailored to suit the particular facts and circumstances of the specific procurement. When establishing negotiation strategy, care should be taken to avoid giving the respondents a cost or price that must be met to proceed in the selection process. Suggesting a cost or price could keep the competitive process from generating the cost or price that is the best value to the Institution. Also, be mindful that disclosing competitor costs or prices is not allowed, even if done without tying the cost or price to the specific vendor. In addition, a respondent cannot be told its price standing relative to other competitors.

Negotiation is based on the willingness of each party to compromise. In any contract, there are usually terms or conditions that each party may be willing to relinquish. Before conducting negotiations, the Institution should identify those terms or conditions that are essential and those that are desirable but negotiable. Like other parts of the contract management process, planning is essential to conducting a successful negotiation. The best practice is to meet with members of the contract management team and divide the terms and conditions into groups. Identify the terms and conditions that are essential to the contract. These are the terms or conditions upon which the Institution is either unable or unwilling to compromise. Then identify and prioritize the terms and conditions that are desirable, but not essential to the contract and which the Institution is



willing to compromise or relinquish.

## 5.10.2 Negotiation Techniques

There is not a single approach to negotiation. A discussion of one method to facilitate a successful negotiation effort follows:

Designate a lead negotiator to establish an organized and controlled negotiating environment that ensures the Institution's efforts are efficient, coordinated and unified. The lead negotiator should control the meeting and ensure everyone is hearing and discussing the same issue. Side discussions are distracting and may inadvertently provide information to the respondent to the disadvantage of the Institution. If available, provide a private side room for the negotiation team to use for private conversations or to "caucus" during negotiations.

Do not provide the list of essential or other prioritized issues to the respondent because the list will offer a negotiating advantage. On the other hand, before meeting with the respondent, if objections to terms and conditions were not a part of a complete response, the Institution should request a list of respondent's objections to any contract terms and conditions and an explanation regarding why respondent is objecting to each term or condition.

Be prepared to explain why a particular term or condition is essential or objectionable and place the burden on respondent to identify an alternative solution that meets Institution needs. Do not feel pressured to agree or disagree to a single term or condition without considering the impact of the entire group of negotiated terms and conditions within the context of a final contract. When the entire group of negotiated terms and conditions is completed, consider any new risks, costs or benefits. Take frequent breaks to discuss suggestions, options or alternatives, outside of the presence of respondent. Write down or use a laptop to record the exact language of any proposed or alternative terms and conditions, so that the team evaluates the exact language that will be included in the contract.

Negotiations can reach an impasse over conflicting terms thought to be essential to each party. The following three-question approach used to assist in identifying the contracting objectives may be useful to assist the parties in clarifying and harmonizing potentially divergent objectives and interests. The three questions are:

1. What does the party want, *specifically*?
2. What will having what the party wants, *specifically*, do for the party?
3. How will the party know, *specifically*, when the party has received what it wants?

The second question, "What will having what the party wants, *specifically*, do for the party?" may provide common ground to explore options to meet the needs of both parties. If an agreement is not reached, consider beginning negotiations with the next ranked respondent or re-soliciting.

### Where can I go for more information?

[OGC Contracting and Procurement Practice Group Resource Pages](#)

## 5.12 Award

An Institution will award a contract for the purchase of goods/services that provides the best value for the Institution pursuant to the mandatory evaluation criteria required by the Best Value Statutes and specified in the solicitation.

The Institution will complete a best value award justification that addresses each evaluation criteria and retain the justification in the contract file. A *Sample Best Value Award Justification* is attached as [APPENDIX 12](#).

Upon award of a contract, the contract manager is responsible for assuring that any notifications required by Applicable Laws or University Rules are made to announce the award of the contract.

In addition, the HUB office should be informed of the contract award in order to track all subcontracting associated with the contract.

### **Where can I go for more information?**

[APPENDIX 12 - Sample Best Value Award Justification](#)

# **CHAPTER 6**

## **CONTRACT FORMATION**

The information in this chapter is not intended to provide legal advice. This chapter includes general rules regarding contract formation.

Texas courts define a contract as a promise or a set of promises to which the law attaches legal obligation. The law regards the performance of these promises as a duty and provides a remedy for the breach of that duty.

Contracts that deviate substantially from the Institution's requirements and specifications defined in the solicitation are subject to protest by unsuccessful respondents.

## **6.1 Approach to Contract Formation**

Fundamentally, the purpose of any written contract is to (1) create a legal, binding and enforceable obligation, and (2) serve as a reference document that records the terms of an agreement to prevent misunderstanding and conflict as to those terms at a later date. Most often, conflicts over contracts arise well into a contract period – when memories fade and prove to be unreliable. With this in mind, clarity of the terms and completeness of the issues addressed are of primary importance. The person who drafts the contract must (1) know the subject matter and the concerns of the parties thoroughly enough to anticipate potential areas of disagreement and confusion, and (2) specifically address those areas in the contract.

Thoroughness and precision are necessary in determining the scope of a contract because contract law does not allow parties to add terms not part of the original contract without the consent of both parties. This rigidity in contract law is mostly seen as an advantage to both parties. However, this advantage may become a liability if the Institution does not include all necessary terms and conditions in the contract.

Creating contracts for the state is an exercise in balancing potentially conflicting interests. These interests include (1) the state's requirements, fiscal constraints, and statutory requirements, and (2) the contractor's requirements. The primary concern should always be the benefit of the contract to the state as a whole, or more specifically, the taxpayers of the state.

Negotiating the best contract for the state does not necessarily mean taking advantage of the contractor. While onerous and unnecessarily harsh provisions may be legal, they usually have negative future consequences that outweigh the initial gains. Contractors who feel they have been aggrieved by the state are less likely to provide good service and are more apt to engage in legal action. These contractors may decide to never contract with the state again, thus limiting future competition on state contracts. In addition, contractors who have been informed by other contractors of bad experiences with the state, may demand more money on future contracts to do the same work to offset that perceived risk.

## **6.2 Legal Elements of a Contract**

The essential elements necessary to form a binding contract are usually described as:

- Offer;
- Acceptance
- Legal Purpose
- Consideration
- Certainty of Subject Matter
- Competent Parties

### **6.2.1 Offer**

An offer is considered the indication of one party of a willingness to enter into a bargain made in a manner that justifies the other parties' belief that assent to the bargain is invited and will create an obligation.

### **6.2.2 Acceptance**

Acceptance of an offer can occur in several ways. Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer. An acceptance may not change the terms of an offer. If it does, the offer has not been accepted and has been rejected. However, an acceptance with a material change in a proposed offer also creates a counteroffer, which, before a contract is formed, must be accepted by the other party.

### **6.2.3 Legal Purpose**

The objective of the contract must be for a legal purpose. A contract for an illegal purpose is not binding. For example, a contract for illegal distribution of drugs is not a binding contract because the purpose of the contract is illegal. A contract for which the agency does not have statutory authority may be considered void.

### **6.2.4 Consideration**

Consideration is an essential element of any valid contract. Consideration is a present exchange bargained for in return for a promise. It may consist of some right, interest, profit, or benefit that accrues to a party, or alternatively, of some forbearance, loss or responsibility that is undertaken or incurred by a party. Consideration is not required to be monetary.

### **6.2.5 Certainty of Subject Matter**

In general, a contract is legally binding only if its terms are sufficiently definite to permit a court to understand the parties' obligations. Material terms of an offer cannot be accepted to form a contract unless the terms are reasonably definite. Material contract terms are those that are essential to the understanding between the parties. The material terms of a contract must be agreed before a court can enforce the contract. The unique facts and circumstances surrounding each contract are considered to determine which contract terms are material.

As a general rule, an agreement to enter into negotiations for a contract later does not

create an enforceable contract. However, as previously discussed, parties may agree on the material terms of a contract and understand them to be an agreement, and leave other immaterial portions of the agreement to be established later.

When immaterial terms are omitted from contracts, a court may imply or supply the term to preserve the enforceability of the contract. A court may uphold an agreement by supplying missing immaterial terms. Historically, Texas courts prefer to validate transactions rather than void them. However, courts may not create a contract where none exists. Therefore, courts will not insert or eliminate material terms. Whether or not a court will imply or supply missing contract terms will depend on the specific facts of the transaction. An example of terms that have been implied or supplied by a court are time and place of performance.

## **6.2.6 Competent Parties**

Parties to a contract must be *competent* to enter into a binding contract. In Texas, a person typically must be eighteen years of age and of sound mind to be competent.

## 6.3 Drafting the Contract

The contract should fully describe the actual agreement of the parties. Except for contract terms that are contrary to public policy (that may be void, voidable or severable from a contract), the types of contract terms that may be included in a contract are only limited by the creativity of the drafter. There are several types of provisions that are usually included in contracts, including:

### Essential Provisions

- Scope of work (including deliverables);
- Financial provisions;
- Contract term, termination and dispute resolution provisions; and
- Identification of contracting parties.

### Recommended Provisions

- Administrative provisions;
- Risk allocation provisions;
- Identification and safeguarding of confidential information provisions;
- Work product and intellectual property ownership and rights provisions.

When drafting a contract, consider using an OGC Standard Contract (*see link below*) if available and appropriate. Using a suitable OGC Standard Contract will usually expedite legal review and reduce the number of legal changes to the contract because the Standard Contracts contain the applicable Essential Provisions and Recommended Provisions discussed in [Section 6.6](#) of this Handbook. If an OGC Standard Contract is not available or appropriate, please consider using one of OGC's Model Contracts and Agreements (*see link below*), if suitable. OGC's Model Contracts and Agreements also include the applicable Essential Provisions and Recommended Provisions.

When drafting a contract, also consider the OGC General Procedure Contract Checklist (*see link below*) that provides information regarding topics like compliance with purchasing laws, policies and procedures; form of the agreement; parties to the agreement; effective date, term and termination; consideration and payment terms; representations, warranties, duties and obligations; insurance; remedies; software and database licenses; compliance with privacy laws, policies and procedures; and statutory contract provisions.

### Where can I go for more information?

[UTS145 Processing of Contracts](#)

[OGC General Procedure Contract Checklist](#)

[OGC Contracting and Procurement Practice Group Resource Pages](#)

## 6.4 Planning for Contract Preparation

Just like other contract management processes, the Institution should plan for drafting of the contract. A common practice is to include a draft of the applicable OGC (or Institution) contract template in the solicitation or to use an OGC solicitation template that includes UT standard terms and conditions. This allows a respondent to make an offer with knowledge of the proposed contractual terms and conditions.

*During the procurement process always allow adequate time to draft, review and negotiate the final contract. In addition, be sure to include sufficient time for HUB compliance and legal review of the contract.*

The Institution should begin its contract planning effort by collecting and reviewing OGC or Institution contract templates, as well as similar contracts that have been previously approved by OGC, if any. The Institution may also want to review similar contracts entered into by other Institutions. Studying risks, contracting objectives, assumptions and constraints in other contracts may be helpful. However, do not automatically adopt terms and conditions from another contract without a thorough and independent review of how the terms and conditions relate to the current procurement.

The Institution may also want to prepare (and compare to the appropriate OGC contract templates and OGC-approved samples) an outline containing headings for the major terms, conditions and provisions. This makes it easier to group related terms and conditions. An outline will also illustrate gaps in the structure of the contract.

### **Where can I go for more information?**

[UTS145 Processing of Contracts](#)

[OGC General Procedure Contract Checklist](#)

[OGC Contracting and Procurement Practice Group Resource Pages](#)



## **6.5 Form of the Contract**

Evidence of an agreement or a contract may be documented in different formats, including a “four-corner” contract, a purchase order, or an exchange of correspondence. The term “four-corner” contract means a single document that includes all of the terms and conditions within the four-corners of a single document.

Each form of contract has advantages and disadvantages. Determining which form to use should be based on an assessment of the risks involving contract construction or interpretation.

### **6.5.1 “Four-corner” Contracts**

A “four-corner” contract offers the greatest opportunity to avoid conflicting provisions, because all of the provisions are contained in one document. Contract management is sometimes easier when all of the provisions regarding the duties, obligations and responsibilities of each party are logically organized and easily found. On the other hand, “four-corner” contracts require more time to plan and prepare. Notwithstanding the additional time required, in a major or complex transaction, a “four-corner” contract is the best format to clearly document an agreement.

### **6.5.2 Purchase Orders**

Purchase orders are also contracts. For example, Contractor delivers an offer, in a form requested by the Institution, and the Institution indicates acceptance of the offer by issuing a purchase order. The documents that comprise the offer and acceptance are the evidence of the contractual agreement. In addition, a contract may be formed if an Institution issues a purchase order and Contractor accepts that offer through performance.

A purchase order uses a layered approach (i.e., the purchase order usually relies on a number of documents that in combination, comprise the contract). The Institution may publish a solicitation that includes product specifications, contractor qualifications and other terms and conditions. Contractor’s response may condition the offer on terms and conditions that are different from or in conflict with the solicitation. When using a purchase order, the Institution should take care that contractor’s terms and conditions do not become the basis of the agreement.

Despite the potential for conflicting or additional terms, when used properly, a purchase order is often relatively fast, efficient and rarely has problems. When using a purchase order as evidence of a contract, the Institution should insure the inclusion of the Institution’s standard terms and conditions rather than blindly accepting terms the contractor proposes. All final terms and conditions that vary from either the offer or the acceptance must be contained in a written document signed by both parties. OGC has posted sample purchase order terms and conditions on the OGC Contracting and Procurement Practice Group website (*see link below*).

#### **Where can I go for more information?**

[UTS145 Processing of Contracts](#)

[OGC General Procedure Contract Checklist](#)

[OGC Contracting and Procurement Practice Group Resource Pages](#)

## 6.6 Contract Terms

Contracts include a variety of routine terms and conditions often referred to as ‘boilerplate’ or ‘standard’ terms and conditions. Generally accepted terms and conditions for use by all Institutions are provided on the UT System OGC Contracting and Procurement Practice Group website. These are recommended terms and conditions. Unless required by Applicable Laws or University Rules, the recommended terms and conditions may be modified to meet the Institution’s needs.

During the development of the contract, devote careful attention to the details. Below is a list of certain provisions that are essential and should be included in all contracts as well as some provisions that are recommended for inclusion in some contracts depending on specific facts and circumstances. *Sample Contract Terms* are attached in [APPENDIX 13](#).

Consult with the Institution’s legal counsel regarding additional contract terms that may be required by Applicable Laws and University Rules for particular situations.

### Essential Provisions:

Scope of Work	Confidentiality and Safeguarding of University Records; Press Releases; Public Information
Schedule	Binding Affect
Term of Contract	Records Notices
Contractor’s Obligations	State Auditor’s Office
HUB Requirements	Limitation of Liability
Contract Amount	Survival of Provisions
Payment Terms	Breach of Contract Claims
Ownership and Use of Work Materials	Undocumented Workers
Default and Termination	Limitations
Indemnification	Ethics Matters; No Financial Interest
Relationship of the Parties	State of Texas Computer Equipment Recycling Program Certification
Insurance	Enforcement
Assignment and Subcontracting	Access by Individuals with Disabilities
<i>Texas Family Code</i> Child Support Certification	HIPAA Compliance
Not Boycotting Israel Certification	Historical Underutilized Business Subcontracting Plan
Not Boycott Firearm Entities or Trade Associations Verification	Responsibility for Individuals Performing Work
Not Boycotting Energy Companies Verification	Criminal Background Checks
Certification Regarding COIDD-19 Vaccination	Quality Assurance
Contractor Certification regarding Business with Certain Countries and Organizations	EIR Environment Specifications
Loss of Funding	Security Characteristics and Functionality of Proposer’s Information Resources
Entire Agreement; Modifications	Payment Card Industry Standards
Force Majeure	External Terms
Governing Law	FERPA Compliance
Waivers	Group Purchasing Organizations (GPO)

## **Recommended Provisions:**

Use of Marks  
Tax Certification  
Payment of Debt or Delinquency to the State  
Captions  
Severability  
Drug Free Workplace Policy  
Order of Precedence of Contract Documents  
Security/Parking Access  
Smoking Policy

## **Where can I go for more information?**

[UTS145 Processing of Contracts](#)

[UTS150 Access by Persons with Disabilities to Electronic and Information Resources](#)

[Procured or Developed by The University of Texas System Administration and The](#)

[University of Texas System Institutions](#)

[UTS165 Information Resources Use and Security Policy \(including Standards 1, 21, and 22\)](#)

[UTS145 Processing of Contracts](#)

[OGC Contracting and Procurement Practice Group Resource Pages](#)

[OGC General Procedure Contract Checklist](#)

[Appendix 13 – Sample Contract Terms](#)

## **6.7 State Contracting Standards/Oversight**

Institutions are subject to *Texas Government Code*, Chapter 2261, Subchapter F Ethics, Reporting, and Approval Requirements for Certain Contracts, *except to the extent that Subchapter F conflicts with Texas Education Code, §51.9337 Purchasing Authority Conditional; Required Standards*. Institutions are not subject to other Subchapters of Chapter 2261.

To the extent applicable, *Texas Government Code*, Chapter 2261, Subchapter F, provides Institutions guidance regarding multiple contract matters including conflicts of interest (see [Section 1.7](#) of this Handbook), Internet posting (see [Section 6.7.1](#) of this Handbook), monitoring (see [Section 6.7.3](#) and [Chapter 7](#) of this Handbook), reporting (see [Section 6.7.4](#) of this Handbook), risk analysis (see [Section 7.1.6](#) of this Handbook), and management (see [Chapter 7](#) of this Handbook).

### **6.7.1 Enhanced Transparency**

Except with regard to memoranda of understanding, interagency/interlocal contracts or contracts for which there is not a cost, Institutions must post on the Internet (until the contract expires or is completed) (a) a summary of each contract (including purchase orders) the agency enters for the purchase of goods/services from a private vendor (including “sole source” contracts), (b) statutory or other authority for exclusive acquisition purchases, and (c) the RFP related to competitively bid contracts (ref. *Texas Government Code*, Section 2261.253).

### **6.7.2 Enhanced Management**

Each Institution must (1) publish a contract management handbook that is *consistent with Rule 20901, the UT System Sample Contract Management Handbook, and CPA’s contract management guide*, (2) post the Institution’s handbook on the Institution’s Internet and (3) submit the Institution’s handbook link to CPA for re-posting on CPA’s web page.

### **6.7.3 Enhanced Monitoring**

Except with regard to memoranda of understanding, interagency/interlocal contracts or contracts for which there is not a cost, Institutions must (1) establish procedures to identify contracts that require enhanced contract or performance monitoring and submit information on those contracts to the Board of Regents, and (2) report serious issues or risks with respect to monitored contracts to the Board of Regents (ref. *Texas Government Code*, Section 2261.254).

In addition, Institutions must develop and comply with a purchasing accountability and risk analysis procedure providing, among other things, for (1) assessment of risk of fraud, abuse or waste in the procurement and contracting process, and (2) identification of contracts that require enhanced monitoring (ref. *Texas Government Code*, Section 2261.256).

In connection with contracts for the purchase of goods/services with a value exceeding \$5 million, *Texas Government Code*, Section 2261.255 requires the contract management office or procurement director to verify in writing that the solicitation process complies with state law and Institution policy and submit to the Board of Regents information on any potential issue that may arise in the solicitation, purchasing or contractor selection process.

## 6.7.4 Enhanced Reporting

Institutions must develop contract reporting requirements for contracts for the purchase of goods/services with a value exceeding \$1 million (ref. *Texas Government Code*, Section 2261.254).

In addition, *among other statutory and regulatory reporting requirements*, Institutions must provide notice including the nature of the goods or services, the term, amount and vendor name, to the LBB for all contracts (a) with a maximum value over \$10 million, and (b) contracts with a value over \$1 million that are not competitively procured. Institutions must also provide an attestation to the LBB on this [form](#) consistent with the specific requirements of Section 7.12 of HB 1 (2015). *These requirements apply without regard to source of funds or type of contract or purchase order.*

Note: This Handbook does not attempt to identify all applicable reporting requirements.

### Where can I go for more information?

[Section 7.12 of HB 1 \(2015\)](#)

[Texas Government Code, Chapter 2261, Subchapter F](#)

[Texas Government Code, Section 2261.253](#)

[Texas Government Code, Section 2261.254](#)

[Texas Government Code, Section 2261.255](#)

[Texas Government Code, Section 2261.256](#)

[Section 6.7.1 – Enhanced Transparency](#)

[Section 6.7.3 – Enhanced Monitoring](#)

[Section 6.7.4 – Enhanced Reporting](#)

[Chapter 7 – Contract Administration](#)

[Section 7.1.6 – Risk Management](#)

## 6.8 Authority to Sign Contracts

### 6.8.1 Actual Authority, not Apparent Authority

As state agencies, Institutions have only the power and authority that is granted by law or that may be reasonably inferred from law. An Institution, just like a corporation or other business entity, acts through its officers and employees. In the case of a private business, an officer or employee with apparent authority may commit the business to legal obligations. Actual authority is not required.

On the contrary, only Institution representatives with actual authority may commit the Institution to legal obligations, including contracts. It is important for Institution officers and employees to know whether they have delegated authority to act on behalf of the Institution because Institutions cannot legally perform obligations that are agreed to by representatives who do not have actual authority to do so. For example, if an invoice is submitted to an Institution under a contract that is signed by an employee who lacks actual authority, the Institution may not pay the invoice. This situation may embarrass the Institution and damage the Institution's business reputation. In addition, Institution representatives who enter into obligations on behalf of the Institution, but do not have actual authority to do so, may be personally responsible for those obligations.

The Texas Education Code gives the Board of Regents the authority to govern and operate the UT System. The Texas Education Code also authorizes the Board of Regents to delegate any power or duty to a committee, officer, or employee. In many instances, the Board of Regents has delegated its authority to officers pursuant to the Regents' Rules. Subject matter generally determines which officer receives delegated authority from the Board of Regents to bind an Institution. It is not the purpose of this overview to cover all delegations; however, Institutions may refer to the OGC Delegations of Authority web page (<https://www.utsystem.edu/offices/general-counsel/delegations-of-authority-ut-institutions>) for charts summarizing current delegations at Institutions.

Pursuant to Rule 10501, Section 2.1, the Board conditions its delegation of authority to sign contracts on the delegate's compliance with applicable laws and special instructions or guidelines issued by the Board, the Chancellor, the Deputy Chancellor, an Executive Vice Chancellor and/or the Vice Chancellor and General Counsel. As an example, special instructions or guidelines issued by the Vice Chancellor and General Counsel include the OGC Contract Review Procedures posted on the OGC website (*see link below*).

#### Where can I go for more information?

[Texas Education Code §65.31](#)

[Texas Education Code §65.34](#)

[Regents' Rule 10501 Delegation to Act on Behalf of the Board](#)

[Regents' Rules and Regulations](#)

[UTS145 Processing of Contracts](#)

[Flow Chart of Steps 1 through 9 for UTS145 \(UT Authentication required\)](#)

[OGC Delegations of Authority webpage](#)

[UT System Delegation of Authority Charts](#)

[OGC Contracting and Procurement Practice Group Resource Pages](#)

### 6.8.2 Authority to Sign Contracts

Two important types of delegations to be aware of are: (1) the authority to sign contracts, and (2) the authority to approve the expenditure of funds from budget accounts. It is important to note that authority to authorize the expenditure of funds does not authorize an

employee to sign contracts.

With regard to authority to sign contracts, the Board of Regents delegates (through the Regents' Rules and Board of Regents meeting minute orders) to the chancellor, Institution presidents, and certain other officers, the authority to sign certain contracts so long as those contracts conform to the requirements of UTS145 Processing of Contracts. *UTS145 includes a flowchart that details the nine (9) steps of required contract review established by UTS145, including:*

- Step 1:** System Approval Required before Legal Review;
- Step 2:** Determine if Contract is on Standard Contract Form;
- Step 3:** Determine if Contract is a Special Procedure Contract;
- Step 4:** Determine Value of Contract;
- Step 5:** Legal Review by OGC;
- Step 6:** System Approvals Required after Legal Review;
- Step 7:** Determine whether Contract must be listed on the Consent Agenda;
- Step 8:** Follow Proper Consent Agenda Procedures; and
- Step 9:** Execution of Contract.

In conjunction with UTS145, OGC has developed the OGC General Procedure Contract Checklist (*see link below*) that must be used to review certain contracts as indicated in UTS145. The OGC General Procedure Contract Checklist covers topics including compliance with purchasing laws; policies and procedures; form of the agreement; parties to the agreement; effective date, term and termination; consideration and payment terms; representations, warranties, duties and obligations; insurance; remedies; software and database licenses; compliance with privacy laws, policies and procedures; and statutory contract provisions.

**6.8.2.1 Primary and Secondary Delegates** - Only officers who receive authority to sign contracts directly from the Board of Regents (Primary Delegates), including the chancellor and Institution presidents, may further delegate their authority to sign contracts to other Institution employees (Secondary Delegates). In some cases, Primary Delegates have further delegated authority to sign contracts to Secondary Delegates. Secondary Delegates may not further delegate their authority. All delegations of authority must be in writing.

Before signing a contract, Primary Delegates and Secondary Delegates must process that contract in accordance with UTS145 Processing of Contracts (including the OGC Contract Review Procedures). UTS145 helps Institutions evaluate contracts that will be signed on behalf of the Board of Regents.

**6.8.2.2 OGC Contract Review Procedures** - UTS145 includes the required OGC Contract Review Procedures. Those procedures are a way for OGC to provide Institutions with general information about contracts. However, those procedures cannot provide specific legal advice for any particular situation. As a result, Institutions must not rely on that information as a substitute for obtaining legal advice from the Institution's legal counsel, if needed. Use of the OGC Contract Review Procedures means that the Institution complied with OGC's requirements for review of the contract, but it does not mean that OGC has "approved" the contract in the same way OGC would approve a contract if OGC actually reviewed the contract. If the Institution feels the OGC Contract Review Procedures are not adequate for the Institution's needs, consult the Institution's legal counsel directly.

**6.8.2.3 Verification of Delegated Authority** - Before taking any action on behalf of an Institution or signing any contract or other document that would bind an Institution, Institution employees must verify that (1) they have received a written delegation of authority to do so, and (2) the Institution has complied with the requirements of UTS145 Contract Review Procedures.

Neither Primary Delegates nor Secondary Delegates should sign a contract unless the Institution has complied with UTS145 Contract Review Procedures in connection with the specific contract to be signed.

**Where can I go for more information?**

[Texas Education Code, §65.31\(a\) & \(g\)](#)

[Texas Government Code, §660.024](#)

[Regents' Rule 10501 Delegation to Act on Behalf of the Board](#)

[Regents' Rules and Regulations](#)

[UTS145 Processing of Contracts](#)

[Flow Chart of Steps 1 through 9 for UTS145 \(UT Authentication required\)](#)

[OGC Delegations of Authority Web Page](#)

[OGC General Procedure Contract Checklist](#)

[The University of Texas at El Paso Delegation of Authority Chart](#)



## 6.9 Required Check of Vendor Hold Status

Not earlier than the seventh (7<sup>th</sup>) day before and not later than the date of entering into the contract, Institutions must determine whether a payment law prohibits CPA from issuing a warrant or initiating an electronic funds transfer to the vendor (“vendor hold status”). The determination must be made in accordance with the comptroller's requirements no later than the date the Institution signs the contract. (ref. Section 2252.903, *Texas Government Code*)

Institutions must also check the vendor hold status before making each payment under the contract. (See Sections [3.7](#) and [7.4](#) of this Handbook; ref. Section 2107.008, *Texas Government Code*)

### Where can I go for more information?

[Texas Government Code 2252.903](#)

[Texas Government Code 2107.008](#)

[Section 3.7 – Payment Types](#)

[Section 7.4 – Invoices and Payments](#)

## **6.10 Execution of Institution Contracts**

Signatures of Primary Delegates or Secondary Delegates with written authority to bind the Institution are the way through which a contract usually becomes a binding obligation of the Institution. See [Section 6.8.2 Authority to Sign Contracts in this Handbook](#) for more information regarding delegated authority to bind the Institution to a contract.

Only contractor's employees authorized to bind the contractor to contract terms may sign the contract on behalf of the contractor.

**Where can I go for more information?**

**[Section 6.8.2 – Authority to Sign Contracts](#)**

# **CHAPTER 7**

## **CONTRACT ADMINISTRATION**

Contract administration and oversight includes the following seven (7) general processes:

- Planning
- Monitoring Performance
- Change Management
- Payment Approval (Through Department End Users)
- Dispute Resolution
- Termination
- Contract Close-out

The primary tasks of contract administration include:

- Verifying contractor performance;
- Identifying any material breaches of the contract by assessing the difference between contractor's actual performance and contract requirements;
- Determining if corrective action is necessary and taking action, if required; and
- Developing a completion plan for contractor exit requirements, including acceptance of the goods/services, final payment, and contract close-out.

## 7.1 Planning

As previously mentioned, planning for contract administration should be simultaneous with drafting of the SOW for the solicitation. Procedures for contract administration should be described in the solicitation. At the same time, the Institution should appoint, coordinate and schedule resources for the contract administration team that will assist the contract manager with performance of contract administration procedures.

To properly plan for contract administration, the program staff must thoroughly understand all of the components of the solicitation and the contract. Examples include:

- Proposed contract outcomes and related performance measures.
- Scheduling for deliverables, if applicable.
- Links between the payment schedule and significant deliverables.
- Total contract cost, including any indirect cost allocation for the goods/services to be provided under the SOW.
- Identification and management of potential contract risks.
- When, where, and how the contract is to be performed, including delivery of goods/services.
- Institution's right to inspect and accept or reject the goods/services, as well as any conditions related to acceptance or rejection.
- Effective date, completion date, contract term extension options, and other dates applicable to contract performance.
- Contractor's contact information for correspondence, payment and notice (including address, email, telephone and fax and other contact information).

**Where can I go for more information?**

**[Chapter 2 - Planning](#)**

### 7.1.1 **Scope of Work**

Before the solicitation is issued, contract administration begins with the development of a clear and concise SOW. The SOW is the roadmap for contract administration. The goal of contract administration is to ensure the contract is satisfactorily performed by contractor and the responsibilities of the contract parties are properly discharged. Effective contract administration helps to minimize (or eliminate) problems, disputes and claims.

**Where can I go for more information?**

**[OGC Standard Contracts](#)**

### 7.1.2 **Communication**

Communication is a critical factor in successful contract administration. It is essential for contract administrators to (1) understand the provisions of the contract, (2) communicate contractual obligations to all parties involved, and (3) closely monitor contract performance over the entire term of the contract. The contract manager's role includes ensuring, to the extent possible, that the contract requirements are satisfied, that the goods/services are delivered in a timely manner, and that the financial interests of the Institution are protected.

### **7.1.3 Familiarity with Contracting Principles**

Contract managers must be aware of and understand general contracting principles because those principles impact the Institution's responsibilities in administering the contract.

### **7.1.4 Central Contract Repository**

Institutions should maintain a copy of all contracts on file in a central repository, which may be an electronic repository. A central repository will facilitate reporting, audits and responses to requests for public information, as well as allow contract managers access to useful information in past and present contracts.

### **7.1.5 Master Contract Administration File**

Ideally, the Institution should keep one complete master contract administration file. That file will provide a basis for responding to questions and resolving contract issues, if any. Throughout the life of the contract, the contract administration file may include the following:

- A copy of the current contract and all amendments (including amendments made by letter);
- A copy of all specifications, drawings, manuals, terms posted on the Internet or other documents incorporated into the contract by reference;
- A list of all prior contracts with the same contractor (if those contracts offer valuable historical data);
- If the goods/services were competitively procured, documentation evidencing the Institution's need for the goods/services, the solicitation, contractor's proposal, the proposal scoring sheet summarizing the scores for all proposals to be used as criteria for justification of best value for the successful proposal, and the notice of award;
- If the goods/services were not competitively procured, documentation evidencing the Institution's need for the goods/services, the exclusive acquisition justification, the best value justification for the procurement;
- A list of contractor work product submittal requirements and deliverables;
- An inventory of Institution furnished property or services;
- An inventory of all institution information furnished to contractor;
- A copy of the post-award conference summary, if conducted;
- A copy of the compliance review schedule, if applicable;
- A copy of all correspondence related to the contract;
- The originals of all contractor work product data and report submittals;
- A copy of all routine reports required by the contract, including sales reports, pricing schedules, approval requests, and inspection reports;
- A copy of all notices to proceed, to stop work, to correct deficiencies and other notices;
- A copy of all Institution approvals, including approvals of contractor's materials, quality control program and work schedules, if applicable;
- The sign-in sheet, agenda and handouts for meetings with contractor, or internal meetings
- A copy of all contractor invoices and supporting documentation, including information regarding prompt payment discounts, contract deductions and fee adjustments;
- Copies of original HSP and revisions, if any;
- Copies of HUB Progress Assessment Reports.

## 7.1.6 Risk Management

To help manage contract risk for significant contracts, the Institution should complete a preliminary risk assessment to (1) document the Institution's initial perception of the level of risk, (2) identify specific risks, (3) determine the level, type and amount of management oversight and resources needed to plan and implement the contract from beginning to end, and (4) identify and assign experienced Institution risk personnel to assist with the contract management process.

As the risk associated with a particular contract increases, the level and degree of executive management sponsorship, participation and oversight should be increased by a corresponding level.

**7.1.6.1 Assessment of Contract Risk** - Risks are inherent in all the stages of the contract. Limited resources (time and money) necessitate the use of contractual risk assessment tools because there is not sufficient time to oversee all aspects of every contract. An effective risk assessment model will help focus contract monitoring resources on contractors with the highest risk of noncompliance.

The contract risk assessment is a dynamic process that should be updated regularly to reflect the actual results of the contract monitoring program. For example, if a contractor has fallen significantly behind schedule in delivering goods/services, the risk assessment should be updated to indicate that elevated risk. The elevated risk should be incorporated into the contract monitoring program. Likewise, if a contractor is well ahead of schedule in delivering goods/services, the risk assessment and the contract monitoring program should be updated to indicate that lower level of risk.

**7.1.6.2 Risk Factors, Weights and Rating** - Risk factors are indicators that assess the risk to the Institution if the contract or project objectives are not achieved. General risk factors may include:

- Contractor's past performance (and past performance of similar contractors);
- Contractor's turnover in key personnel;
- Dollar value of the contract;
- Information obtained from contract monitoring, such as the variance between contractor's expected and actual performance;
- Significant problems with contractor's invoices;
- Results of previous contractor monitoring site visits;
- Results of site visits completed by other divisions within the same Institution or by other state agencies, that contract with the same contractor;
- Length of time since the last site visit; and
- Contractor's experience performing the specific work.

Once the risk factors are identified, assign weights to each factor. Weights indicate how significant each factor is in identifying contractors who should be monitored. However, weights can also be designed to ensure statutory or policy requirements. For example, if a policy requires a site visit every three years, the assigned weight would be indicative of the period since the last site visit.

Next, rate each contractor on the risk factors. Consider using a three-point scale, where 3 is high risk, 2 is medium risk and 1 is low risk. Institutions should

define their own past performance risk factors and weights.

Risk analysis may be used to identify contractors with the highest risk level that should be monitored more closely. Risk analysis may also be used to identify specific areas of risk within a contract that should be monitored.

**7.1.6.3 Sample Risk Assessment** - Assumptions:

- The Institution has contracts with many vendors providing the same service. (Only three contractors are rated in this example but there are many contractors providing this service.)
- Risk factors evaluated are (1) contract dollar value, (2) contractor’s past performance, and (3) contractor’s experience.
  - Dollars:
    - 40 percent of contractors receive less than \$100,000 from the Institution per year.
    - 50 percent receive between \$100,000 and \$250,000.
    - 10 percent receive more than \$250,000.
  - Experience:
    1. High Risk – the vendor has never done this type of work before.
    2. Medium Risk – the vendor has contracted with the Institution before but not for this type of work.
    3. Low Risk – the vendor has previously contracted with the Institution for the same type of work.
  - Past Performance:
    - If contractor has at least one (1) significant finding from a prior contract monitoring program or three (3) less significant findings, contractor is considered high risk.

**EXAMPLE – RISK ASSESSMENT ANALYSIS**

Contractor	Dollars			Experience			Past Performance			Total Risk
	Amount	Risk	Risk x Weight (0.2)	Results	Risk	Risk x Weight (0.5)	Results	Risk	Risk x Weight (0.3)	
#1	\$300K	3	.6	Held previous contract with the state	1	.5	3 minor findings	2	.6	.6 + .5 + .6 = <b>1.7</b>
#2	\$75K	1	.2	New to type of work	3	1.5	New – no findings	1	.3	.2 + 1.5 + .3 = <b>2.0</b>
#3	\$125K	2	.4	Used before – but not for this type of work	2	1.0	Previous year finding regarding safety	3	.9	.4 + 1.0 + .9 = <b>2.3</b>

NOTE: In this example, Contractor #3 has the highest risk, followed by Contractor #2 and #1, respectively.

Contractor #3 has been used by the Institution before with one monitoring finding in regard to safety. Safety is the key area for close monitoring during the contract term.

Typically, there will be more than three different risk elements. This is a simple example for illustration purposes only.

## 7.1.7 Contract Manager Responsibilities

The primary responsibilities of the contract manager, and in some cases, in conjunction with the Purchasing Office, include:

- Developing the contract management team.
- Participating in developing the solicitation and drafting the sample contract. Contract administration processes must be considered during development of the solicitation and the sample contract.
- Consulting with legal counsel to address any legal issues related to the sample contract.
- Reviewing solicitation responses to determine if contractor's compensation structure is appropriate for the SOW.
- Serving as contractor's official point of contact with the Institution for the contract.
- Receiving and responding to communications between contractor and the Institution.
- Consulting with the HUB office regarding HSP changes.
- Managing, approving, and documenting all amendments to the contract.
- Managing any Institution property (including computers, telephones, equipment, furniture, and identification badges) used by contractor when performing its duties and obligations under the contract. This responsibility is primarily managed by UTEP Technology Support and Asset Management.
- Identifying and resolving issues and disputes with contractor in a timely manner.
- Implementing a quality assurance process.
- Maintaining appropriate contract records (see [Section 2.5](#) of this Handbook).
- Documenting significant contract events.
- Monitoring contractor's progress and performance of the SOW to ensure goods/services conform to contract requirements.
- Exercising appropriate Institution contract remedies when contractor's performance is deficient.
- Inspecting and approving the final goods/services. Approval should be documented in writing. This responsibility is primarily managed by the department end user.
- Monitoring the Institution budgeting and accounting process to ensure sufficient funds are available to pay contractor. This responsibility is primarily managed by the department end user.
- Verifying accuracy of invoices and authorizing payments consistent with contract terms. This responsibility is primarily managed by the department end user.
- Performing contract close-out process, including ensuring the contract file contains all necessary contract documentation, formal acceptance documentation, and documented lessons learned.

## 7.1.8 Developing the Contract Management Team

The number of participants in the contract management process will vary in number from one person to several people depending on the dollar value, term, level of risk and complexity of the contract. At the beginning of solicitation development, the Institution should identify a single contract manager and others to assist the contract manager. The contract manager, in consultation with executive management, should assign roles and responsibilities to each member of the contract management team, including:

- Determining the sequence of activities, dependencies, required or desired outcomes, and acceptable performance levels.
- Developing a timetable (with start and end dates) for each performance component,



including milestones with accompanying timeframes, and monitoring and reporting requirements.

- Monitoring and documenting contractor activity on a specified frequency to identify any problem areas.
- Meeting with contractor on a regular basis to review progress, discuss problems and consider necessary changes.
- Providing access to state facilities, equipment, data, staff, materials and information.
- Contacting other staff as necessary to obtain equipment and data.
- Establishing scope of authority, clear lines of communication and reporting protocol for individuals who will interact directly with contractor.
- Establishing control of correspondence, data and reports.
- Identifying potential problems and solutions.
- Defining terms or conditions of default.
- Establishing a procedure, identifying a responsible person and establishing for handling noncompliance.
- Establishing a procedure and timeframe and identifying a responsible person for making necessary contract decisions, amendments, modifications, and changes.

NOTE: Most contract managers do *not* have authority to:

- Instruct contractor to start work before the contract is fully executed (signed by both parties);
- Change the terms or scope of the contract without a formal written amendment;
- Direct contractor to perform work that is not specifically described in the SOW and funded by the contract;
- Extend the term of the contract without a formal written amendment; or
- Allow contractor to incur costs in excess of the cap or limit set by the contract.

Generally, contract managers who take those actions are acting outside the course and scope of their employment.

## 7.1.9 Post Award Conference

**7.1.9.1 Informal or Formal Conference** – The Institution may hold an informal or a formal post-award conference with contractor personnel responsible for administering the contract. Although contractor personnel involved in the procurement process should already be aware of the contract requirements, the post-award conference ensures that contractor personnel who were not involved in the procurement, but will be responsible for contract administration, understand the contract requirements. The conference should be held as soon after award as practical. The conference will help identify contract requirements and avoid potential misunderstandings early in the life of the contract. The post-award conference should NOT be used to change contract requirements.

Not every contract will require a formal post-award conference; however, for every contract there should be some form of discussion after award between the Institution and contractor personnel responsible for performing the contract, to review the applicable performance requirements and administration procedures.

For less complex, low risk, low-value contracts, a telephone call to contractor may be sufficient. During the telephone conversation, the Institution should review major contract requirements with contractor (including the value of contract, major performance milestones [deliverables, reports, and meetings] and time and place of delivery).

Factors used to determine the need for a formal post-award conference include:

- Type of contract;
- Level of risk associated with the contract;
- Contract value and complexity;
- Term of contract, period of performance and/or delivery requirements;
- Institution's procurement history for the goods/services;
- Experience and expertise of contractor;
- Urgency of delivery schedule;
- Institution's prior experience with contractor;
- Any special or unusual contract requirements; and
- Any special or unusual payment requirements.

**7.1.9.2 Agenda** – The post-award conference agenda should include the following:

- **Introduction.** Introduce all conference attendees and identify Institution and contractor points of contact.
- **Purpose.** Clearly communicate the purpose of the meeting: to identify contract requirements. Specify that contract requirements will not be revised or re-negotiated at the conference.
- **Scope.** Review the goods/services to be delivered under the contract.
- **Terms.** Summarize contract terms and conditions, including unique and important provisions. Summarizing terms and conditions will provide attendees a better understanding of contract requirements and help reduce misunderstandings.
- **Requirements.** Discuss contractor's technical requirements and reporting obligations under the contract. Emphasize the importance of timely compliance with reporting requirements.
- **Administration.** Discuss applicable contract administration procedures, including contract monitoring and progress measurement.
- **Rights.** Discuss other rights and obligations of the Institution and contractor. Summarize Institution's contractor performance evaluation procedures, including evaluation of performance during the term and at the conclusion of the contract. Mention that performance evaluations may be considered in the award of future contracts.
- **Potential Problems.** Address potential contract problems and possible solutions.
- **Payment.** Discuss invoicing requirements and payment procedures, including any payments based on milestones achieved by contractor.
- **Authority.** Identify the roles and responsibilities of contract managers, contract administrators, project managers, key personnel leads, and other staff. Explain limits of authority for Institution personnel. Obtain the limits of authority for contractor personnel.

The contract manager should summarize the conference in writing and retain the agenda and summary in the contract file. The summary should include topics covered at the conference, attendees, and action items with responsible

individuals and due dates. Copies of the conference summary should be distributed to all conference attendees.

## 7.2 Performance Monitoring

Performance monitoring is a key function of proper contract administration that helps the Institution (1) confirm that contractor is performing all of its duties and obligations in accordance with the terms of the contract, and (2) identify and address any developing problems or issues. Contract monitoring may be viewed as:

- A preventive function;
- An opportunity to determine contractor's need for technical assistance; and
- A valuable source for information concerning the effectiveness and quality of goods/services being provided.

Performance monitoring tools should be specified in the solicitation and included in the contract. Reporting and testing are examples of contract monitoring tools. Institutions may not be able to enforce reporting or testing requirements that are not adequately documented in the contract.

A *Sample Contract Monitoring Worksheet* is attached as [APPENDIX 14](#).

### 7.2.1 Monitoring Program

Not all contracts will require extensive monitoring. The level of monitoring will depend on many factors including the dollar value of the contract, the complexity of the goods/services, the level of contract risk, and the Institution's experience with contractor.

### 7.2.2 Determining What to Monitor

When determining what aspects of a contract or of contractor's performance to monitor, consider the following questions:

- How will the Institution know it is receiving the goods/services it paid for?
- How will the Institution know that contractor is complying with contract requirements?
- How will the Institution know contractor's performance under the contract is complete and the contract may be closed?

Review the SOW and other contract terms, including contractor compliance requirements. Design the monitoring program to focus on contract requirements that are most important to the Institution. Generally, this means monitoring contractor's progress on the SOW, including deliverables. For example, include monitoring tools that will identify the following issues:

- Whether the Institution is receiving the goods/services as required by the contract, including:
  - Confirming the Institution does not receive less goods/services than required by the contract; and
  - Confirming the Institution does not receive the wrong goods/services.
- Whether the Institution is accurately charged for the goods/services, including:
  - Confirming allowable contractor expenses are not used for non-allowable costs (i.e. gifts, etc.); and
  - Confirming contractor accurately reports its progress on providing the goods/services.
- Whether contractor makes satisfactory corrections to goods/services identified as not meeting contract requirements.
- Whether contractor protects Institution assets.

Also, consider the impact the contract payment methodology will have on the monitoring program. For example, if payment is based on a firm fixed-price (a specific amount of

money for a unit of the goods/services), it is not necessary to verify contractor's expenses since contractor's expenses are not relevant to this type of contract. For example, if the Institution is buying a box of pencils, the Institution knows what they are buying and the cost per pencil. It is irrelevant what contractor pays for travel or advertising because the Institution pays a firm fixed price for the pencils regardless of contractor's expenses. Under a firm fixed-price contract, the Institution should ensure that:

- The invoiced quantity of goods/services equals actual quantity received;
- The invoiced quantity and price are the same as the contract quantity and price; and
- The goods/services meet or exceed contract specifications.

If the contract is a cost reimbursement contract (Institution pays contractor's cost *plus* a percentage of overhead and profit), the Institution should consider including in its monitoring program tools to monitor the following:

- Were the invoiced goods/services actually purchased by contractor?
- Did contractor to fulfill the contract use the invoiced good/services?
- Were the goods/services necessary and reasonable to fulfil the contract?
- Did the goods/services meet contract quality and quantity specifications?
- Was the Institution charged for the goods/services more than one time (for example, in both overhead and profit)?
- Were the goods/services included in contractor's Institution-approved budget?

The Institution should review the contract to see how the costs are reimbursed. Many contracts require that all costs be included in the original budget provided by contractor and approved by the Institution in writing. In some cases, the contract may specify that certain costs (such as the purchase of a vehicle or use of a subcontractor) require approval by the Institution *prior to purchase*.

**NOTE:** If the Institution receives grant money to pay for goods/services, the Institution must consider the nature of the relationship with contractor. Is the relationship a vendor relationship or a sub-recipient relationship? See OMB Circular A-133, Section 210, posted at <https://georgewbush-whitehouse.archives.gov/omb/circulars/a133/a133.html> for guidance on this relationship determination. If the relationship is that of a sub-recipient, then federal guidelines and cost principles must be followed. The Uniform Grant Management Standards published by CPA at <https://comptroller.texas.gov/purchasing/grant-management/> provides additional guidance.

### Where can I go for more information?

[OMB Circular A-133, Section 210 at Office of Management and Budget website](#)  
[Uniform Grant Management Standards at Texas Comptroller web site](#)

## 7.2.3 Monitoring Tools

The Institution should establish expectations so that Institution and contractor personnel understand (1) the contract requirements that will be monitored, and (2) the evaluation criteria for each contract requirement.

Monitoring tools include:

- 7.2.3.1 Site Visit** – Contracts that are complex or have a high degree of risk may require visits to contractor's facilities. Site visits may be used to verify that contractor's performance complies with the contract schedule and other

contract requirements (for example, dedication of sufficient resources and appropriately qualified personnel to performance of the work). Site visits help emphasize to contractor the importance the Institution places on the contract. Site visits also provide enhanced communication between the Institution and contractor.

Site visits may be comprehensive (full scope) or limited to particular issues (limited scope). Full scope site visits are typically scheduled visits to contractor's place of business. They are based on risk assessment and cover a broad range of contract compliance and performance issues. Limited scope site visits typically focus on a specific problem. Examples of some typical reasons for considering a limited scope site visit include the following:

- Contractor is responsible for administering funds from two sources and one funding source has noted serious problems with the way contractor used the funds.
- Other contractors have failed to comply with a particular contract requirement and there is an indication this contractor might also have failed to comply.
- Inconsistencies in invoices are identified and clarification from supporting documents is necessary.
- Contractor has proposed a corrective action plan for a contract compliance problem, but the Institution is not certain the proposed solution will resolve the problem.

To perform a site visit, the Institution should:

- Develop a comprehensive and objective site monitoring checklist that:
  - Focuses on desired contract outcomes, but also includes contract compliance requirements. Site monitoring criteria should reference the applicable contract requirement.
  - Assists the Institution in assessing contractor performance consistently. For example, minor or inconsequential noncompliance should be identified. List contractor noncompliance and errors that will be considered minor or inconsequential. Also, identify contract compliance areas where monitors may exercise judgment.
  - Specifies the number of items or documents that will be reviewed to evaluate each element of the monitoring checklist. Do not disclose specifics of sample sizes or the monitoring checklist to contractor. For example, the Institution may indicate it will review invoices and supporting documents those invoices, but should not disclose the Institution will review invoices and supporting documents for December 2015.
  - Allows the site monitor to focus on the highest risk areas of the monitoring checklist.
- Establish standards, procedures and documentation requirements. For example:
  - Describe the standards, procedures and documentation required for the site monitor to bypass an area of the monitoring checklist. For instance, the checklist may specify that if the site monitor determines that no errors in contract reporting have been noted for the past two years, then, with concurrence from the contract manager, the site monitor may omit the contract reporting portion of the monitoring

checklist for the current site visit. The site monitor must document the justification for omitting the contract reporting portion of the checklist on the site monitoring checklist by including the following note “No problems identified prior two years - not monitored this year.”

- Allow space on the checklist (or on a separate document) to record results of the site visit. For instance, if the monitoring checklist requires review of invoices for five months, then the documentation should include the identification of the months monitored and the results of the review for each month.
- Sampling and Population:
  - Ensure the population is complete by including all files relevant to the contract. Contractor should never be the one to select the samples for review.
  - If contractor submits the names of the clients as part of the normal expenditure draw, then the sample can be selected from the client list. Ensure that the clients on the list are paid for by the Institution.
  - If contractor cannot locate the sample item selected, it may or may not indicate a problem. Before agreeing to substitute an alternate file, consider the circumstances of the “lost” sample item and determine if the explanation is reasonable or if the site monitor suspects that contractor did not want the site monitor to see the file.
- Tailor the site monitoring checklist for each contractor and each contract. While there will be standard items the Institution will review for all contractors, each contractor and contract should be reviewed for specific site monitoring requirements unique to that contract or contractor. In addition, consider the following:
  - Review specific contract requirements to determine if these merit site monitoring.
  - Look for items that fall just below an amount requiring additional approval.
  - Consider problems contractor has had in the past or what is likely to cause problems for this contractor. Are parts of the contract new to contractor? For example, contractor may be providing the same services but to a different population during this contract.
  - What types of items do not need to be monitored and why? For example, if contractor uses an information database the Institution tested under previous contracts, then the risk associated with that database may be low and may not need to be reviewed this year.
  - Has another Institution or another department of the same Institution conducted a site visit? If so, the Institutions or departments could coordinate and conduct only one site visit instead of two.
- Site Visit Reports. The site visit report is a written record of the site visit work and should be retained in the Institution’s contract file. A copy of the report or a summary may be sent to contractor.

Even if contractor corrects a problem detected during the site visit while

the site monitor is at contractor's facilities, the site monitor is obligated to include the problem in the site visit report. The notation in the site visit report will remind the site monitor to follow up on the problem on future visits to confirm the problem has been corrected.

Include what has been learned during this site visit in the risk assessment and contract requirements in the next procurement. If the site monitor or contractor recommends changes for the next procurement, include the recommendations in the site monitoring reports.

**7.2.3.3 Desk Review** – A desk review includes a review of reports submitted by contractor to the Institution. A desk review should include:

- Comparison of contractor's actual performance against contract requirements to confirm contractor is performing in accordance with the contract requirements.
- Comparison of contractor's actual expenditures to the Institution-approved budget to confirm contractor is complying with the approved budget.
- Comparison of the current reporting period to prior reporting periods to identify any unexplained trends and determine whether contractor is performing work significantly different during this reporting period than during the prior reporting period.
- Comparison of contractor's reports to reports from other contractors performing similar work.
- Comparison of relationships between key components of the reports such as:
  - Cost per unit of goods/services against percentage of fees charged to the contract;
  - Change in variable costs for each unit of goods/services; and
  - Reported salaries against the contract staffing plan.
- Comparison of the report to known elements of contractor's operating environment to determine, for example, if a weather emergency in contractor's geographic area increased the cost of supplies or caused a temporary reduction in units of goods/services provided.

**7.2.3.3 Expenditure Document Review** – An expenditure document review includes analysis of contractor invoices (including fees for goods/services and expenses) to determine (1) if the fee rates and expenditure items are permitted under the terms of the contract, and (2) if the supporting documentation (including cost reports, third party receipts for expenses, and detailed client information) adequately support the invoice. *If contractor consistently provides improper invoices or supporting documentation is insufficient to support the invoices, consider implementing additional monitoring such as site visits.*

## 7.2.4 Use of Contract Monitoring Findings

An Institution should design the monitoring program to include appropriate follow up on contract monitoring findings. Monitoring reviews, audits, and investigations should be routinely used to:

- Ensure contractor takes corrective action;
- Identify common problem areas for training opportunities; and



- Improve future procurements.

Follow up helps bring contractor back into compliance with contract requirements. Follow up is essential since problems will not correct themselves through identification and reporting alone.

Contract monitoring findings should also be used to improve the contract requirements for future procurements. Unnecessary constraints or inadequate specifications should be noted for incorporation into future solicitations.

## **7.2.5 Monitoring by Third Parties**

In some instances, the obligation of monitoring the progress of a contract is assigned to another contractor. This is also known as independent oversight. For highly technical work, third-party subject matter experts may perform monitoring services independently or in conjunction with Institution staff.

**Where can I go for more information?**

[APPENDIX 14 –Sample Contract Monitoring Worksheet](#)

## **7.3 Contract Reporting Obligations**

Contract reporting obligations include (1) contractor reports to the Institution contract administrator, (2) Institution contract administrator reports to executive management, and (3) Institution reports to other state agencies.

There are generally three report types: Status Reports, Activity Reports, and Vendor Performance Reports. All serve useful functions.

### **7.3.1 Status Reports**

Status reports describe the progress of the work. The content of the status report should be consistent with and track the organizational structure of the SOW (i.e. phases, segments, deliverables and products). A status report should describe status of completed work and pending work. The current status should be compared to the contract schedule. Only work that has been verified as completed and accepted should be categorized as complete. If there are any unresolved issues, those issues should be included in the status report and a resolution should be requested. If the SOW has been amended in accordance with the terms of the contract, status reports should track the original contract schedule *unless* the amendment included a revised contract schedule.

If the contract does not require contractor to provide periodic status reports, the Institution should routinely confirm that sufficient progress on the work is being made by contractor. Confirmation of work status may be accomplished by requesting a status update from contractor or scheduling a site visit to review progress.

### **7.3.2 Activity Reports**

Activity reports describe all activity on the project. Project activity is not the same as a work status. A project may have a great deal of activity without making substantive progress. Note that activity reporting may also be a core feature of managing certain contracts. For example, contractor payments for outsourcing contracts may be based on the number of completed transactions. In that situation, activity reporting would be critical to contract administration of Institution payments under the contract.

### **7.3.3 Vendor Performance Reports**

Best practice suggests that upon termination or expiration of a contract, an Institution should file a Vendor Performance Report as permitted by CPA in accordance with 34 TAC §20.108(b). A Vendor Performance Report may be completed and submitted to the TPSS web portal. Reporting contractor performance may facilitate resolution of contract dispute issues between Institution and contractor. In addition, the Vendor Performance Report database provides a resource for all state agencies when reviewing proposals submitted in connection with subsequent solicitations.

**Where can I go for more information?**

[\*Texas Administrative Code, Title 34, Part 1, §20.108\(b\)\*](#)

## 7.4 Invoices and Payments

### 7.4.1 Invoices

Invoices submitted by contractor must comply with the contract rate schedule. Invoices should be reviewed to ensure that contractor's invoices correspond with contractor's progress on the work. Contractor's progress should be measurable because cost incurred or invoices submitted, in and of themselves, are insufficient indicators of contractor's progress.

Prior to payment, invoices must be approved by program staff familiar with the work and the current status of the work. If the contract manager believes that the invoice exceeds contractor's progress, the contract manager should request and receive contractor's explanation prior to approval of the invoice for payment. *Payment should be withheld pending the Institution's approval of contractor's progress.*

All invoices should be reviewed to ensure:

- Contractor is billing the Institution only for goods/services actually received by the Institution;
- Goods/services have been inspected and accepted by the Institution;
- The invoice is correct and complies with the pricing terms and other contract requirements; and
- Total payments by the Institution to contractor do not exceed the contract cap or fee limit.
- Institution has received HSP Progress Assessment Reports, if required.

The Institution should give contractor written notice of invoice deficiencies not later than 21 days after receipt by the Institution as required by the Texas Prompt Payment Act, Section 2251.042(a), Government Code.

### 7.4.2 Payments

Payments must be made in accordance with Applicable Laws, including the Texas Prompt Payment Act, Chapter 2251, Texas Government Code, the vendor hold requirements of [Section 6.9](#) of this Handbook, and University Rules. The Texas Prompt Payment Act requires that correct invoices be paid within 30 days after the date the correct invoice was received or services were performed and goods received, whichever is later. Under some circumstances, the Institution may be obligated to pay contractor interest on late payments.

#### **Where can I go for more information?**

[Texas Government Code §2251.042\(a\)](#)  
[Texas Government Code, Chapter 2251](#)  
[Section 6.9 – Required Check of Vendor Hold Status](#)

### **7.4.3 Institution Contracts providing Services to Third Parties**

Contracts under which contractor provides goods/services to a third party (not the Institution) are unique in that acceptance of goods/services by the third party is not an indicator that an invoice should be paid. Problems with third party goods/services contracts generally surface after invoices are paid. Contract managers handling third party goods/services contracts should incorporate contract mechanisms that ensure the Institution is able to exercise remedies against contractors for poor performance and withhold future payments until performance deficiencies are corrected.

### **7.4.4 Withholding Payment**

Institution employees must protect the interests of the Institution. Under appropriate circumstances, it may be necessary for the Institution to withhold payments from contractors. Such circumstances include:

- Material breach of the contract by contractor;
- Invoicing errors;
- Invoices that lack sufficient supporting documentation, including an HSP Progress Assessment Report (if required);
- Offset for prior overpayments to contractor under the same contract; and
- Contractor performance does not comply with contract requirements.

## 7.5 Change Management Process

During the term of the contract it may be necessary to amend the contract. Possible modifications include changes to notice addresses, pricing or delivery schedule.

There are two types of amendments. A bilateral amendment requires the agreement of all parties to amend the contract. A unilateral amendment requires only the agreement of one party to amend the contract. Terms and conditions in the original contract may specify when a bilateral (agreement of all parties) or a unilateral (agreement of one party) amendment is required. If the contract is silent, then bilateral amendment (agreement of all parties) is required.

The Institution should implement an effective change management process. Failure to manage and control contract changes can result in *unintentional* modification of the SOW, extension of the schedule, increase in contract cost, circumvention of management controls or decrease of contractor accountability.

An effective change management process includes:

- Procedures to avoid an informal undocumented change process;
- Documentation of all proposed changes and approval/disapproval;
- Evaluation of the impact of each change to contracting objectives, deliverables, schedule, cost, overhead, work-in-progress, completed work, standards, and acceptance criteria;
- Planning for requests and approvals of draws against any contingency allowance;
- Single point of contact for recommendation and authorization of all changes;
- Formal, written approval of all changes prior to contract amendment.
- Monitoring of the HSP;
- Documentation of all changes, no matter how small;
- Documentation of impact of changes on the contract (including the HSP); and
- Notification of contract amendment.

**NOTE:** The Institution should not verbally authorize contractor to alter performance under the contract before the formal change management process is complete, including full analysis of the change, written approval of the change, and documentation of the change through a written contract amendment.

### 7.5.1 Impact of Substantial Changes to Solicited Scope of Work

The contract resulting from a solicitation issued by an Institution must be consistent with the specifications and requirements of that solicitation. Contracts that are not consistent with the related solicitation may violate competitive procurement principles, Applicable Laws and University Rules.

If a contract change is needed, the change should also be consistent with the specifications and requirements set out in the original solicitation. A significant difference between the revised SOW and the solicited SOW would be a material or substantial change to the scope of the solicitation and may not be allowed because the revised scope was not originally subjected to fair competition. To permit such a change would go against the ideas of competition and a fair playing field for all vendors. Transparency in government procurement is a key government responsibility. As a result, Applicable Laws require that Institutions conduct a competitive procurement process before making substantial contract changes. The specific method of competition may vary based on the type of goods/services needed.

By way of example, if a contract to buy 10 desks is amended to include 300 file cabinets, the change is outside the scope of the original contract solicitation because vendors did not previously have the opportunity to compete for the sale of 300 file cabinets. Additional vendors may have competed had they known that file cabinets were being solicited. The large volume of file cabinets (as compared to desks) may also have had an impact upon which vendors submitted offers and competed for the opportunity. Vendors not interested in the smaller solicitation may have been interested in the larger solicitation.

In determining whether a proposed amendment constitutes a significant change in scope of the original solicitation, the primary issue is generally whether the proposed change is a material or substantial change.

Material or substantial changes are not measured by the number of changes made to the original specifications. Rather, material or substantial changes are measured by whether the proposed changes would so substantially alter the original solicitation specifications that, if the Institution does not re-advertise the revised specifications, a procurement opportunity would be denied to a vendor who may have been able to respond, or who may have been interested in responding, to the revised specifications. If the proposed changes are material or substantial, then the proposed changes will be treated as a new procurement and a new solicitation is needed to ensure compliance with Applicable Laws related to competitive procurement.

Materially changing solicitation specifications after receipt of responses denies an opportunity to all vendors that might have been interested in the changed specifications to participate in the solicitation. As a result, all contract amendments are required to be within the scope of the solicitation underlying the original contract.

It is important to remember that application of the above principles will depend upon your particular facts and circumstances.

Before proceeding with a contract amendment, consult the Institution's legal counsel for more information regarding the extent to which a contract may be changed.

## **7.5.2 Administrative Changes**

Administrative changes to a contract are changes that are within the scope of the contract and do not affect or alter the rights of the parties. Examples of administrative changes include:

- Changes in billing instructions or contact information;
- Corrections of typographical errors not affecting the substance of the contract;
- Changes permitted by the specific contract language; and
- Changes in Institution or contractor representatives assigned to the contract.

## **7.5.3 Substantive Changes**

Substantive changes are contractual changes that affect the rights of both parties. Examples of substantive changes may include:

- Change in the price of goods/services under the contract;
- Change in the delivery schedule;
- Change in the quantity of goods/services;
- Change in specifications for goods/services;
- Change in the HSP;
- Change of key personnel assigned to work on the contract; and
- Change of any terms and conditions.

## 7.5.4 Constructive Changes

Constructive changes to the contract may occur if an Institution directs contractor to perform in a manner that differs from the terms of the contract. For example, if contractor perceives that work that exceeds the scope of the contract was ordered by the Institution, contractor may claim that the contract was “constructively” changed. Contractor may be entitled to additional compensation as a result of constructive changes. Constructive changes may occur when Institution personnel:

- Provide suggestions to a contractor;
- Accelerate the delivery schedule;
- Direct that the work under the contract be performed in a manner that differs from the contract requirements;
- Change the sequencing of the work;
- Delay accepting or rejecting deliverables;
- Delay reviewing invoices and approving payment; and
- Interfere with or hinder contractor’s performance.

## **7.6 Dispute Resolution Process**

Appropriate dispute resolution is an essential contract management skill. Early identification of issues, effective communication with contractor, and providing contractor with written notice of issues raised by the Institution (including a formal request to cure or a less formal written process) is crucial.

The goal of the dispute resolution process is to resolve contract issues through direct negotiation of Institution and contractor representatives, before the issues need third party resolution. To avoid escalation of contract issues and to ensure the Institution does not alienate contractor representatives, it is imperative that Institution personnel respond promptly to all contractor inquiries. Initial steps to be taken are:

1. **Identify the Issue.** Many times what appears to be an issue can be resolved before the issue becomes a problem by providing contractor with information or clarification.
2. **Research Facts.** When investigating contract issues, the Institution should obtain as much factual information as possible from as many relevant sources as possible, including the project manager and contractor.
3. **Evaluation.** The Institution should review all of the factual information and the contract requirements. After discussing with all decision makers, the Institution should determine an appropriate course of action.



## 7.7 Termination

Contract termination should be the last resort and should be rare. Contract termination reflects a failure by all parties to the contract.

When the contract terms permit termination, the parties are no longer obligated to continue performance of their duties and obligations under the contract. Depending on the specific contract terms, parties may terminate without cause (Termination for Convenience), with cause (Termination for Default) or for force majeure.

### 7.7.1 Termination for Convenience

If the contract permits the Institution to terminate for convenience (also known as no-fault termination), the Institution may terminate the contract at any time in its sole discretion, if termination is in the best interest of the Institution.

**7.7.1.1 Notice** - When terminating, the Institution must comply with the contract terms which will most likely require the Institution to provide contractor written notice specifying the date of termination. The termination notice should be provided to contractor in accordance with the contract terms. A termination notice may include wording similar to the following:

*Pursuant to Section \_\_\_\_\_ [Insert Section number for Institution's right to terminate without cause], which permits Institution to terminate without cause, this contract is hereby terminated effective [date]. Contractor must immediately stop all work, terminate subcontracts, and place no further orders.*

*In accordance with this Notice of Termination, Contractor must:*

- 1. Retain adequate records of Contractor's compliance with this notice, including the extent of completion of the work on the date of termination.*
- 2. Immediately notify all subcontractors and suppliers, if any, of this notice of termination.*
- 3. Notify the Institution Contract Administrator [name], of any and all matters that may be adversely affected by this termination; and*
- 4. Take any other action required by the Institution to expedite this termination.*

**7.7.1.2 Final Payment** - Contractor will generally be paid for fees and allowable costs incurred up to the termination date. The Institution will not be responsible for payments to contractor related to work performed or costs incurred after the termination date.

When the Institution receives the final invoice from contractor for work performed prior to the termination date, the Institution should thoroughly review the invoice to ensure that all charges are appropriate and comply with the terms of the contract as altered by notice of termination.

### 7.7.2 Termination for Cause

An Institution may be able to terminate a contract for cause if contractor failed to perform its duties and obligations under the contract and did not cure the failure within any cure period specified by the contract. A failure to perform may also be referred to as a breach or a default. If program staff consider terminating the contract for cause, the contract manager will contact the Institution's legal counsel for guidance and assistance.

The Institution is not required to terminate a contract even though the circumstances permit termination. The Institution may determine that it is in the Institution's best interest to pursue an alternate resolution. Examples of alternatives may include extending contractor's delivery or completion date, allowing contractor to continue working, or working with contractor's surety (company that issued contractor's performance bond) to complete the outstanding work.

Termination for cause should be used only to protect the interests of the Institution and should be used only as a last resort.

Factors to consider prior to terminating for cause include:

- Has the Institution done everything within reason to assist contractor in curing the contractual failure?
- The specifications, terms and conditions of the contract, Applicable Laws and University Rules.
- The nature of the contractual failure and the explanation provided by contractor for the failure.
- The urgency of the Institution's need for the goods/services.
- The advantages and disadvantages of allowing contractor to continue performance.
- The availability of the goods/services from other sources.
- The time required to obtain the goods/services from another source (including the solicitation process) as compared to the additional time the current contractor needs to complete the work.
- The availability of funds to re-purchase the goods/services.

**7.7.2.1 Potential for Damages** – If a contract is terminated for failure to perform, contractor may be liable for damages. However, the contract may limit the damages the Institution may recover. The Institution may attempt to include re-procurement costs and other expenses in the calculation of damages it seeks to recover from contractor. However, obtaining an award of damages may require protracted legal action. If the Institution is awarded damages, contractor may not be financially capable of paying and the Institution may never recover the damages.

**7.7.2.2 Cure Notice** – When terminating for cause, the Institution must comply with applicable contract terms. In most situations, the contract will require the Institution to provide contractor written notice (1) specifying contractor's default that authorizes the Institution to terminate the contract, and (2) indicating that if contractor does not cure the default within the cure period specified by the contract, the Institution intends to terminate the contract. This notice is sometimes referred to as a cure notice.

The format for a cure notice may be as follows:

*Contractor is notified that the Institution believes contractor breached the contract as follows: [specify failures of contractor to perform its duties and obligations under the contract].*

*Unless contractor cures [this/these] breach(es) within \_\_\_\_\_ days after the date of this letter, the Institution may exercise*

*its rights under the contract and applicable laws, including termination of the contract for cause in accordance with Section \_\_\_\_\_.*

Another format for a cure notice is:

*Because contractor failed to perform its duties and obligations under the contract within the time required by the contract terms, the Institution is considering terminating the contract under Section(s) \_\_\_\_\_.*

*Pending a final decision, the Institution is asking contractor to submit written information, if any, regarding whether contractor's failure to perform was the result of force majeure or other excusable causes. Please submit this information to the Institution within \_\_\_\_\_ days after the date of this notice. If contractor fails to submit this information within \_\_\_\_\_ days, Institution may exercise its remedies under the contract and applicable laws, including termination of the contract.*

*Any assistance provided to contractor by the Institution in connection with the contract or any acceptance by the Institution of goods/services that do not comply with contract requirements will be solely for the purpose of mitigating damages. It is not the intention of the Institution to condone any delinquency or to waive any rights the Institution may have under the contract.*

**7.7.2.3 Notice of Termination** - If contractor fails to cure the default or provide a satisfactory explanation as requested, the contract may be terminated. The Notice of Termination should contain the following:

- Contract number, if any;
- Contract date;
- Effective date of termination;
- Reference to the contract Section under which the contract is being terminated;
- Statement of the facts justifying the termination; and
- Statement indicating that the Institution may pursue all remedies available under Applicable Laws.

### 7.7.3 Force Majeure or Other Excusable Causes for Failure to Perform

An Institution may not be able to terminate a contract for cause when contractor's failure to perform is the result of force majeure or other excusable causes. In order to qualify as an excusable cause, the cause must be beyond the control of and without the fault or negligence of contractor. Excusable causes for failure to perform duties and obligations under a contract generally include:

- Acts of God or of the public enemy;
- Acts of the Institution;
- Fires;
- Floods;
- Epidemics;
- Strikes;
- Freight embargoes;
- *Unusually* severe weather. \*

*\*Severe weather, although beyond contractor's control, may not generally constitute an excusable delay if it is not considered "unusually severe weather." For example, a snow storm in Amarillo in February would not be considered unusual, while it would be considered unusual in Austin. On the other hand, a snow storm in Amarillo in June would indeed be unusual.*

If contractor's failure to perform is due to the default of a subcontractor, in order to qualify as an excusable cause, the default must arise out of causes beyond the control and without the fault or negligence of both contractor and the subcontractor. Even if this requirement is met, the cause will not be excusable if the goods/services to be provided by the subcontractor could have been obtained from other sources in time to meet the contract delivery schedule.

**Where can I go for more information?**

[UTS145 Processing of Contracts](#)

## 7.8 Contract Close-Out

A contract is completed when all goods/services have been received and accepted; all reports have been delivered and accepted; administrative actions have been accomplished; all Institution-furnished equipment and material have been returned; and final payment has been made to contractor.

The contract close-out process is usually a simple but detailed administrative procedure. Purposes of the close-out process include (1) verification that all parties to the contract have fulfilled their contractual duties and obligations and there are no remaining unperformed duties or obligations; and (2) assessment of the success of the contract and lessons learned for use in future contracting.

A contract is ready for close out when:

- All deliverables (including reports) have been delivered to and accepted by the Institution. The contract manager should compare actual performance against contractual performance measures, goals and objectives to determine whether all required work has been completed;
- Final payment has been made;
- All monitoring issues have been resolved;
- All property inventory and ownership issues are resolved, including disposition of any equipment or licenses purchased under the contract;
- The Institution has acceptance all of the work;
- The Institution has advised contractor of, and contractor is in compliance with, records retention requirements (see [Section 2.5](#) of this Handbook);
- The Institution's plan for contract file maintenance is in place; and
- Deficiencies noted during the contract close-out process are documented and communicated to all appropriate parties.

A sample Contract Close-Out Checklist is attached as [APPENDIX 15](#).

### Where can I go for more information?

[Section 2.5 – Records Retention](#)

[APPENDIX 15 - Sample Contract Close-Out Checklist](#)

## VERSION HISTORY

<b>Release/ Revision Date</b>	<b>Contract Management Handbook Version</b>	<b>Description</b>
<b>December 2016</b>	<b>Version 1</b>	<b>Original UTEP Contract Management Handbook</b>
<b>March 2024</b>	<b>Version 2</b>	<b>UTEP Contract Management Handbook</b>

# APPENDICES

## APPENDIX 1

### Contract Management Best Practices Matrix

COMPONENT	POOR	AVERAGE	BEST PRACTICE
<b>Processes</b>	<p>No standard processes for contracting or compliance management</p> <p>Results in labor-intensive processes, duplication of effort, and poorly written solicitations and contracts</p> <p>No contract or solicitation document templates. Every contract or solicitation document looks different</p> <p>No formal, repeatable process for consistent solicitation development</p> <p>Contract managers not involved from “cradle to grave”</p> <p>Contract Management Handbook is ignored or not consulted</p> <p>No effort to capture “lessons learned” and “best practices”</p> <p>No structured business planning process to determine sourcing and re-solicitation strategy</p> <p>No contracting processes that overlap with existing project management practices are defined</p>	<p>Contract processes are defined at the division level, but are sporadically followed</p> <p>Sporadic compliance enforcement</p> <p>Contract templates utilized sporadically or limited availability of templates</p> <p>Limited formal, repeatable process for consistent solicitation development</p> <p>Contract managers assigned after award is made</p> <p>Contract Management Handbook is used sporadically to address specific questions or concerns</p> <p>Undocumented “lessons learned” and “best practices” incorporated into processes</p> <p>Limited planning to determine solicitation efforts, re-solicitation strategies</p> <p>Contracting processes that overlap with existing project management practices are defined, but are sporadically followed</p>	<p>Contracting process standardized Institution-wide</p> <p>Proactive compliance enforcement</p> <p>Formal templates utilized for all solicitations and contracts</p> <p>Formal, repeatable process (e.g., project management methodology) for consistent solicitation development</p> <p>Contract managers are involved in writing solicitation, negotiating contract, managing contract and contract close-out</p> <p>The Contract Management Handbook serves as a roadmap to guide the contracting process</p> <p>Active collection of “lessons learned” and “best practices” are leveraged for continuous improvement</p> <p>Active, formal business planning process</p> <p>Standardized Institution-wide contracting process is comprehensively integrated with existing standardized Institution-wide project management practices</p>
<b>Organization</b>	<p>No structured contract management group</p> <p>Contract decisions made and contracts managed by divisions/personnel “not in the know”</p> <p>No coordination between divisions involved in the procurement and contracting process</p> <p>Supporting team members (financial, legal, and purchasing, etc.) are not available to assist the contract manager</p> <p>No involvement of the end user/customer as subject matter expert during solicitation requirements gathering</p> <p>No executive support and involvement</p>	<p>Contract managers assigned not always the person with the expertise or knowledge</p> <p>Contracting decisions coordinated at division level, but not consistently</p> <p>Sporadic coordination between contract manager, legal, procurement, etc.</p> <p>Supporting team members (financial, legal, and purchasing, etc.) for any given contract assigned “ad hoc”</p> <p>Limited involvement of the end user/customer as subject matter expert during solicitation requirements gathering</p> <p>Executive support but limited involvement</p>	<p>Contract managers within each division possess technical and/or programmatic expertise and knowledge or have expertise and knowledge readily available to them</p> <p>Contracting decisions involve all relevant parties</p> <p>Coordination and input from all relevant divisions to minimize risk and maximize compliance</p> <p>Contract management team members remain engaged through entire process – same staff assigned</p> <p>Active involvement of the end user/customer as subject matter expert during solicitation requirements gathering</p> <p>Executive support and active involvement</p>
<b>Technology</b>	<p>No contract repository or very basic automated folders for contract storage</p> <p>Manual compliance reviews</p> <p>Developing high-level reports with quality contract information is nonexistent or is very labor intensive</p>	<p>Contracts repository supported at division level by basic storage system with little to no reporting capabilities</p> <p>Limited ability to track compliance</p> <p>High level reports have to be manually created from contract status reports or contract repository</p>	<p>Contract automation system that is searchable and allows for the uploading, monitoring and automated reporting of contracts</p> <p>Independent and formal mechanisms in place to track compliance for contract managers</p> <p>Amendments can be approved, uploaded, and tracked online</p>



COMPONENT	POOR	AVERAGE	BEST PRACTICE
<b>Performance Metrics</b>	<p>No involvement from contract manager or division when developing deliverables/SOW</p> <p>Poorly written, unclear or immeasurable deliverables and unclear performance metrics, remedies or incentives</p> <p>Compliance and performance measured sporadically or inconsistently</p>	<p>Deliverables/SOW developed by legal or purchasing offices with minimal input from contract manager or division</p> <p>Unclear distinction between specifications, requirements and deliverables and performance metrics and associated remedies or incentives</p> <p>Compliance and performance measured quarterly (less often than monthly)</p>	<p>Division and/or contract manager solely responsible for developing deliverables with input from Legal, Procurement, etc.</p> <p>Clear distinction of well-developed deliverables and performance metrics as well as associated remedies or incentives</p> <p>Compliance and performance measured consistently (at least monthly)</p>
<b>Vendor Relations</b>	<p>Improper or excessive communication with vendors immediately preceding and during an active solicitation</p> <p>Little to no communication between contract manager and vendor during an active contract term</p> <p>No clear lines of communication of contract issues or dispute resolution</p>	<p>Communication with vendors during the solicitation</p> <p>Sporadic communication between contract manager and vendor during an active contract term</p> <p>Contract issues improperly reported and/or resolution sporadically enforced</p>	<p>Properly routed communication with potential vendors (i.e., through the purchaser) during the solicitation</p> <p>Frequent communication between contract manager and vendor pertaining to all aspects of contract, including issues, technical assistance and overall progress of the work</p> <p>Dispute resolution or contract issue procedures clearly defined</p> <p>Advanced notice of upcoming solicitation posted in accordance with requirements of University Rules</p>
<b>Fiscal</b>	<p>Contract manager has little or no fiscal oversight capabilities</p> <p>No contract manager monitoring or written log of payments to vendor</p> <p>No communication between Accounts Payable and contract manager</p>	<p>Contract manager approves payments</p> <p>Contract manager keeps copies of approved invoices in contract file</p> <p>Contract manager communicates with Accounts Payable when there is a problem</p>	<p>Contract manager approves all invoices, budget changes or fiscal amendments</p> <p>Contract manager keeps a written payment log of all payments and deliverables associated with each payment</p> <p>Contract manager routinely interacts with accounts payable office regarding all fiscal contract matters, disputes, non-payment, etc.</p>
<b>Legal</b>	<p>Terms and conditions required by Applicable Laws or University Rules are not present</p>	<p>Some terms and conditions required by Applicable Laws or University Rules are not present or regularly updated</p>	<p>All terms and conditions required by Applicable Laws or University Rules are included in the contract and regularly reviewed and updated by relevant staff</p>
<b>Training</b>	<p>Contract manager and/or purchasing staff do not have training required by University Rules, including <a href="#">UTS156 Purchaser Training and Certification</a></p>	<p>Purchasing staff has certification required by University Rules, including <a href="#">UTS156 Purchaser Training and Certification</a>, but contract managers are not trained</p>	<p>Contract managers are trained as required by University Rules and purchasing staff hold certifications required by University Rules, including <a href="#">UTS156 Purchaser Training and Certification</a></p>

## APPENDIX 2

### Summary of 2015 Procurement and Contracting Legislation

*Attorney-Client Communication*

*For Discussion Purposes Only*

#### Summary of Procurement and Contracting Legislation

##### SB 20

1. Conditional Authority for Institutions of Higher Education (IHE) to continue to use “Best Value” purchasing granted [§23]:

- Requires governing boards to have rules and policies on ethics, conflicts of interest, internal audit, training, contract review, and delegation
- Only requirement not currently met is establishing a *Contract Management Handbook* by rule
- State Auditor, in consultation with Comptroller, can suspend Best Value authority for non-compliance

2. Conflicts of Interest [§18]:

- Institutions (including System) may **not** enter into contracts if governing official (Chancellor, President), general counsel, chief procurement officer or procurement director (or their family members within second degree of consanguinity)
  - Owns a 1% interest in the vendor (other than through blind trust, retirement plan, insurance coverage)
  - Or could financially benefit

Note: System attorneys advise that Regental conflicts will continue to be controlled by and reviewed under Ed. Code §51.923 (if contract is required to come before BOR for approval, the conflicted Regent must disclose and recuse), although this is subject to continued discussion at the Board level.

3. Internet posting of contracts [§18]:

- All contracts (and purchase orders) for purchase of goods or services from a private vendor
  - If not competitively bid, add statutory authority used (e.g., §51.9335—“Best Value”)
- RFPs if competitively bid, until contract expires
- Contracts less than \$15,000 may be posted monthly (implies more frequent posting if >\$15,000)

Note: Plan is to build on Purchase and Contract Transparency Report, posting same summary information that is posted in current Transparency Report; full documents available through TPIA request.

4. *Contract Management Handbook* (will need to be required by Regents’ Rule) [§23]:

- Consistent with Comptroller’s contract management guide

*Attorney-Client Communication*

*For Discussion Purposes Only*

- Must post on internet the institution procedures for accountability and risk analysis and provide Comptroller link
5. Accountability and Risk Analysis Procedure required [§18]:
- Assess risk of fraud, abuse and waste
  - Identify contracts requiring enhanced monitoring
  - Establish clear levels of purchasing accountability and staff responsibility
- Note: Plan is to include within *Contract Management Handbook*.
6. Submission of certain contracts to governing body [§18]:
- Information on contracts that require enhanced contract or performance monitoring
  - Immediately notify if serious issue or risk
  - Does not apply to Memoranda of Understanding, Interagency Contracts, Interlocal Agreements or no cost contracts
- Note: Consent Agenda probable vehicle
7. Contracts over \$1 million [§18]:
- Requires contract reporting and verification of compliance with financial provisions and delivery schedules; corrective action plans; liquidated damages
  - Governing board or authorized delegate must sign (Regents' Rule 10501)
- Note: Consent Agenda probable vehicle
8. Contracts over \$5 million [§18]:
- Contract management office or procurement director must verify in writing:
    - Solicitation and procurement complies with law and policy
    - Inform governing board of "potential issues" that may arise in procurement process
- Note: Consent Agenda probable vehicle
9. Records Retention [§3]:
- Each contract and all contract solicitation documents must be retained for 7 years
    - After contract is completed or expires; or
    - All issues (litigation, claim, TPIA request or other action) are resolved
10. Employment of former officers or employees restricted [§4]
- Employees or officers participating in a procurement or contract negotiation may not accept employment from that vendor for two years from date employment ceased

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September 23, 2015 Revised

***Attorney-Client Communication***

***For Discussion Purposes Only***

- No enforcement mechanism; no obligation placed on institution

*Effective Date: Implementation required "as soon as practicable" after 9/1/15*

**Appropriation Bill Riders--Article IX, Sections 7.04 and 7.12**

Rider 7.04:

Requires IHE to report contracts, including interagency and interlocal grants and agreements or purchase orders of \$50,000 or greater each fiscal year by October 1 of next fiscal year. This requirement only applies to contracting expending appropriated funds.

Rider 7.12:

Requires IHE to report to the LBB, if appropriated funds are utilized:

- Contracts exceeding \$10 million (\$1 million, if emergency or no competitive process)
- Notice must be sent 10 days prior to payment (or, if emergency, within 48 hours of payment) containing:
  - Nature, term, amount and vendor
  - Certification of procurement processed used. Because IHEs will be utilizing the "conditional authority" granted by §51.9337 to continue using best value procurement, the "alternative process" certification should always be used.
- Certification of process for verification of vendor performance and deliverables, payment only within scope, calculation and clarification of liquidated damages
- Any other information requested by LBB

"Contract" defined as original contract, amendment, extension, purchase order, interagency grant or agreement, interlocal grant agreement; "purchase" defined as any acquisition method

Written certified notice is considered a "governmental record" under Chapter 37, Penal Code

*Effective Date: 9/1/15*

**H.B. 1295**

For contracts requiring governing board approval or with a value of \$1 million or more:

- Before an IHE can enter into a contract with a business entity, the entity must submit a disclosure of "interested parties" on disclosure form and under rules of Texas Ethics Commission.
- "Interested party" defined as person with controlling interest, person actively participating in facilitating or negotiating terms, including broker, intermediary, adviser or attorney for the entity

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September 23, 2015 Revised

***Attorney-Client Communication***

***For Discussion Purposes Only***

- Does not include sponsored research contracts, IACs or contracts related to health and human services, if value cannot be determined at time of execution and any qualified vendor is eligible for the contract

*Effective Date: Contracts entered into after 1/1/16*

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September 23, 2015 Revised

## APPENDIX 3

### Sample Contract Management System Contract Record

The review for Signature Form previously utilized by the institution to collect Contract Record information was retired December 2022, and replaced with the Contract Request/Contract Record process in the Contracts Plus module of the Jaggaer (MinerMall) eprocurement System. The module can be accessed through the [Miner Mall Portal](#) (verification required).

**APPENDIX 4  
Summary of UT Procurement Guidelines**

**LBB Thresholds**

<b>CONTRACT REPORTING REQUIREMENTS BY THRESHOLD</b>				
<b>REQUIREMENT</b>	<b>&gt;\$50,000 ALL CONTRACT TYPES</b>	<b>&gt;\$1.0 MILLION NONCOMPETITIVE/ SOLE SOURCE</b>	<b>&gt;\$1.0 MILLION EMERGENCY</b>	<b>&gt;\$10.0 MILLION ALL CONTRACT TYPES</b>
Due date	Within 30 days of award or amendment	Within 15 days of award	Within 5 days of award	Within 15 days of award
Reporting provision	General Appropriations Act (GAA), Article IX, §7.04; the Texas Government Code, §322.020	GAA, Article IX, §7.11	GAA, Article IX, §7.11	GAA, Article IX, §7.11
Documentation	Requires solicitation and contract documents (1)	Requires attestation letter, solicitation and contract documents	Requires attestation letter, solicitation and contract documents	Requires attestation letter, solicitation and contract documents

**UT System OGC Contract Review Thresholds**

**UT El Paso - \$1,000,000**

## APPENDIX 5

### Exclusive Acquisition Justification Form - Professional Services

<p><b>Exclusive Acquisition - Professional Services Request</b></p> <p>All fields in bold caps, with the exception of the Supplier Information, are required in order to process this request.</p>	<p style="text-align: center;"><b>Supplier Information</b></p> <p>Supplier Name                      UTEP PURCHASING PS</p> <p>Fulfillment Address              UTEP-1-PURCHASING OFFICE: PURCHASING OFFICE EL PASO, TX 79912 US</p>
<p style="text-align: center;"><b>Professional Services Information</b></p> <p><b><u>Professional Services (as defined in Texas Government Code 2254.002)</u></b></p> <p>Professional service providers must normally be pre-qualified based upon a Request for Qualifications (RFQ). The contract award is based on negotiation with the most qualified provider. When a professional service is required and no pre-qualification has been established, a contract award must be justified as an exclusive acquisition to establish that the selection meets best-value criteria.</p> <p>A. Professional service providers are normally licensed or certified and the scope of their services include:</p> <ul style="list-style-type: none"> <li>i. accounting</li> <li>ii. architecture</li> <li>iii. landscape architecture</li> <li>iv. land surveying</li> <li>v. medicine</li> <li>vi. optometry</li> <li>vii. professional engineering</li> <li>viii. real estate appraising</li> <li>ix. professional nursing</li> </ul> <p>B. A provider of professional services may not be selected on the basis of competitive bids, but rather on basis of demonstrated competence and qualifications to perform the service and for a fair and reasonable price.</p> <p>The Requesting Department must select a vendor based on the category of professional services listed above, and submit</p>	<p style="text-align: center;"><b>Requesting Department Information</b></p> <p>I hereby certify that the following statements are true and correct and that I understand and agree to be bound by the commitments contained herein. I am acting on my own accord and am not acting under duress. I am not currently employed by, nor am I receiving any compensation from, nor have I been the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in connection with this supplier in return for favorable consideration of this request.</p> <p>Requestors Name</p> <p>Title</p> <p>College or Department</p> <p>E-mail:</p> <hr/> <p style="text-align: center;"><b>Justification for Services</b></p> <p>Internal Attachments</p> <p>Describe the detail "Scope of Work":</p> <p>Estimated cost of the contract and the type of funding source being used.</p> <p>Anticipated contract completion time frame, based from the award date:</p> <p>Criteria used to select the vendor for these services</p> <p>Reason for selection (Identify specific qualifications of the</p>



this justification form.

Purchasing will review and approve all such requests and shall develop the contract for execution (if needed).

selected individual/firm)

Vendor Selected

**ARCHITECT AFFIRMATION:**

The Texas Board of Architectural Examiners, 333 Guadalupe Street, Suite 2-350, Austin, Texas 78701, Telephone (512) 305-9000, has jurisdiction over individuals licensed under the Architects' Registration Law, Texas Civil Statutes, Article 249a.

I have verified that the above  Yes  
named vendor is certified by  No  
the above named agency.  N/A

**ENGINEER AFFIRMATION:**

The Texas Board of Professional Engineers, 1917 IH 35 South, Austin, Texas 78741-3702, Telephone (512) 442-1414, regulates the practice of engineering under Section 1001.251 of the Texas Engineering Practice Act, (CHAPTER 1001, TEXAS OCCUPATIONS CODE OCCUPATIONS CODE TITLE 6. REGULATION OF ENGINEERING, ARCHITECTURE, LAND SURVEYING, AND RELATED PRACTICES SUBTITLE A. REGULATION OF ENGINEERING AND RELATED PRACTICES).

I have verified that the above  Yes  
named vendor is certified by  No  
the above named agency.  N/A

## Exclusive Acquisition Justification Form – Sole Source Requisition Form

### Exclusive Acquisition - Sole Source Requisition Form ?

#### Directions:

Please ensure that all information is completed.

Incomplete forms will not be processed by the Purchasing office.

### Request an Item or Service Requiring Sole Source Justification ?

#### Sole Source (as defined in Texas Government Code 2155.067)

Justification for a proprietary purchase is used when the goods or services are only available through a single source. The Purchasing Office establishes that the selection meets this criteria. Some examples include:

- a. Equipment maintenance or repair parts from the original equipment manufacturer (OEM).
- b. Pharmaceuticals or chemical reagents that are only available through one supplier.
- c. Software or software maintenance that is only available through one software supplier.
- d. Specific reagents used in long-term experiments. For continuity of research, a lab would need to continue using the same products for the duration of the experiment.
- e. Compatibility with existing equipment. A laboratory is purchasing a new component from a supplier to add to an existing piece of equipment to enhance its quality/performance.
- f. A contract or grant specifically names a supplier, product, or service that is required for the university to use.

Enter Supplier

or

[Supplier Search](#)

### Supplier ?

Description	Rate	Units	Quantity
<input type="text"/> 254 characters remaining <a href="#">expand</a>   <a href="#">clear</a>	<input type="text"/>	EA	<input type="text"/>

### Requestor Certification

?

The following statements, in my professional judgment are correct.

**I AGREE WITH THE FOLLOWING STATEMENT: I have researched/investigated the requirements for this request and find the vendor's proposed costs fair and reasonable for the product or service proposed.**

- Yes
- No

**Do you currently have any relatives working for the proposed vendor, in any capacity including a permanent, limited, or temporary position, or under contract?**

- Yes
- No

If you answered "Yes" please explain the type of relationship and position:

**I, the undersigned, hereby certify that the following statements are true and correct and that I understand and agree to be bound by the commitments contained herein. I am acting on my own accord and am not acting under duress. I am not currently employed by, nor am I receiving any compensation from, nor have I been the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in connection with this supplier in return for favorable consideration of this request.**

**Requestor Name**

**Title**

**Department**

**Phone Number**

**Additional Substantiating Information**

1. List the specific feature(s) or characteristic(s) that are required which are unique to the good or service. Describe the importance of the unique feature(s) as it applies to the intended use and project goals. Include any patent numbers, copyrights, and/or proprietary information.
2. If this is a grant funded project please include the grant name, grant number, and how this purchase relates to the grant itself. Grant information will be verified by Contracts & Grants and/or ORSP.
3. Identify other sources that were evaluated (including the names, manufacturers, model numbers, etc.) and the reason they were found to be unsatisfactory for the intended use or in meeting project goals. (Attach copies of any quotes collected from other suppliers, if applicable.)

**Need Help??**

**Total 0.00**

# Exclusive Acquisition Justification Form – Emergency Requisition Form

## Exclusive Acquisition - Emergency Requisition Form

### Directions:

Please ensure that all information is completed.  
Incomplete forms will not be processed by the Purchasing office.

### Request an Item or Service Requiring Emergency Justification

#### Emergency Purchase (as defined in Texas Government Code 2155.086)

Justification for an emergency purchase occurs as the result of an unforeseen circumstance that requires an immediate response to prevent financial or operational damage to the university. If a situation arises in which routine compliance with procurement practice is impractical and not in the university's best interest, an emergency purchase may be warranted to prevent a hazard to life, health, safety, welfare, or property, or to avoid undue additional cost to the university. Emergency purchases of goods or services are performed to restore a system to its original intended functionality and must not exceed the scope or duration of the emergency. The Purchasing Office will establish that the selection meets this criteria.

Enter Supplier

### Supplier

Description	Rate	Units EA	Quantity
-------------	------	-------------	----------

### Requestor Certification

I AGREE WITH THE FOLLOWING STATEMENT: I have reviewed the vendor's proposed costs and find those costs fair and reasonable for the product or service proposed.

- Yes  
 No

I, the undersigned, hereby certify that the following statements are true and correct and that I understand and agree to be bound by the commitments contained herein. I am acting on my own accord and am not acting under duress. I am not currently employed by, nor am I receiving any compensation from, nor have I been the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in connection with this supplier in return for favorable consideration of this request.

Requestor Name  
Title  
Department  
Phone Number

### Additional Details

#### Additional Substantiating Information

##### Risk Elements

State the reason for the emergency purchase by explaining what the emergency is and/or what caused the emergency situation. Include the financial or operational damage/risk that will occur if needs are not satisfied immediately. Be specific.

##### Special Circumstances

Please state why the needs were not or could not be anticipated so that the goods and/or services could have been procured through the normal competitive bidding process.

##### Supplier Selection

State the reason and process for selecting the supplier.

Need Help??

**APPENDIX 6**  
**Sample Non-Disclosure Statement**

**MONTH, DAY, YEAR**

**MEMORANDUM**

**TO:**            **Proposal Evaluation Team:**  
                  **NAME            TITLE**

**Non-Voting Members:**  
                  **NAME            TITLE**

**FROM:**        **NAME**

**SUBJECT:**    **Obligations related to Request for Proposal (“RFP”) – Selection of a vendor to provide [GOOD AND/OR SERVICE] for The University of Texas at El Paso. Project; RFP No. [###-####-#####]**

In accordance with Texas law, The University of Texas at El Paso will issue the RFP to select a vendor to [GOOD AND/OR SERVICE] pursuant to a competitive procurement process. Responses to the RFP will be due ASAP. One (1) copy of each proposal received in response to the RFP will be available for review for members of the Proposal Evaluation Team at the Evaluation Committee meeting tentatively scheduled for **MONTH, DAY, YEAR**. You have received this memorandum in connection with your appointment to the Proposal Evaluation Team.

To ensure that competitive procurement processes are equitable for all respondents, the employees, representatives, and agents of The University of Texas at El Paso may not participate in or assume any responsibility for procurement decisions of The University of Texas at El Paso if such participation would constitute a conflict of interest. A conflict of interest could result if you are currently employed by, or are receiving any compensation from, or have been the recipient of any present or future economic opportunity, employment, gift, loan gratuity, special discount, trip, favor, or service in connection with (1) any proposal to be submitted in response to the RFP or (2) any respondent participating in the RFP procurement process, in return for favorable consideration.

In addition, The University of Texas at El Paso and the employees, representatives, and agents of The University of Texas at El Paso may not (1) solicit proposals, (2) furnish information, or (3) take any action, which could be construed to give a direct or indirect advantage or disadvantage to any respondent to the RFP.

The disclosure of information pertaining to the contents, status, or ranking of any proposal submitted in response to the RFP, to respondents or other non-university personnel could give direct or indirect advantage or disadvantage to a respondent of the RFP. Such disclosures include, but are not limited to, (1) the delivery of a reproduction of all or any part of any proposal submitted in response to the RFP or other information pertaining to the contents, status, or ranking of any such proposal, and (2) the verbal communication of any information about or contained in any proposal or other information pertaining to the contents, status, or ranking of any proposal.

Section 1.5 of Appendix One of the RFP specifically states that “University will

use commercially reasonable efforts to avoid public disclosure of the contents of a proposal prior to selection of the Vendor.”

If you have any questions or comments regarding your duties and obligations related to your role in the RFP process, please to not hesitate to call me at 915-747-5488. I will be happy to discuss these matters with you.

Please acknowledge your receipt of this memorandum and your understanding of its contents by signing and dating on the lines provided below. In addition, kindly email a signed copy of this memorandum to me at [EMAIL] on or before end of business Thursday, **MONTH, DAY, YEAR**.

Thank you very much for your assistance with this RFP process.

**Acknowledge:**

Signature \_\_\_\_\_  
\_\_\_\_\_

Date:

Print Name \_\_\_\_\_

\*Note: UT El Paso has retired the hard copy NDA, and replaced with an electronic NDA.

## APPENDIX 7

### Sample Pre-Proposal Conference Guidelines

**Objective:** A pre-proposal conference is sometimes required to clarify specifications. Typically, program staff, in conjunction with the Purchasing Office, determines if a pre-proposal conference is necessary. If a pre-proposal conference is necessary, the solicitation must include:

- Exact physical location, including room number.
- Date and time of conference. The date must allow sufficient time for respondents to receive and review the solicitation prior to the conference. Typically, this is approximately 10 days after the solicitation is published.

It may be essential for potential respondents to inspect the site prior to submitting a response to the solicitation; therefore, include in the solicitation:

- Institution contact information for scheduling appointments for site inspections.

If the conference is mandatory, the following statement must be included in the solicitation:

*"Failure to attend the pre-bid/proposal conference will result in disqualification of the response."*

If a mandatory conference is required, consider adding additional conference dates, especially if the expected attendee count will be large.

Typically, Purchasing Office conducts the conference. The Purchasing Office provides:

- A recording device (optional)
- A sign-in sheet for attendees
- Extra copies of the solicitation

The conference begins as follows:

- Purchasing Office opening remarks, including the purpose of the conference, solicitation number and title of the solicitation.
- Inform attendees that the conference is being recorded, *if applicable*.
- Advise attendees to turn off or turn to vibrate any cell phones or pagers.
- Remind attendees to sign in, especially for mandatory conferences.
- Inform attendees that, whenever possible, the Institution will provide answers to questions raised at the conference, but any answer which changes or affects the solicitation requirements will be reviewed and published in an Addendum to the solicitation.
- Advise attendees that potential respondents may not rely on verbal answers to questions that differ from the solicitation requirements.
- Introduce Institution representatives.
- Introduce attendee's (optional depending on number attending conference).
- Review solicitation by section or page and ask for questions regarding each section or page. (Do not read the solicitation word for word – summarize and allow for questions.)
- Take notes of any items that need to be addressed through an addendum and other



significant discussions.

- ❑ Depending on the circumstances, site inspections may be conducted prior to or after the solicitation review, but prior to the end of the conference. After site inspections all attendee's should return to conference room to ask any questions as a result of the site inspection. Summarize the conference, Confirm the issues to be addressed in an addendum. Confirm that answers to all documented questions will be provided in writing, if any. Remind attendees that verbal changes to the solicitation are not valid or binding until the changes are made by an addendum.
- ❑ Collect sign-in sheets. Note: *Usually attendees want copies of the sign-in sheets. If possible, make copies for attendees prior to the end of the conference.*

After the conference:

- ❑ Keep any recording of the conference in the contract file as official documentation of the meeting. The recording may or may not be transcribed.
- ❑ Purchasing Office and program staff will work together to prepare any addenda, including any written questions with answers.
- ❑ Purchasing Office will determine if there is sufficient time for potential respondent to prepare proposals before the submittal deadline or if the submittal deadline should be extended.
- ❑ Email, mail or fax any addenda to attendees.
- ❑ Provide any addenda to program staff.
- ❑ Post addendum on the ESBD, if required by University Rules.

Revised 12/28/2015

## APPENDIX 8 Sample Proposal Score Sheet

Evaluation for RFP [###-####-##### TITLE]

	% Points	Criteria for Selection	Vendor 1	Vendor 2	Vendor 3	Vendor 4
1	25%	The cost of goods and services; <b>25=Exceeds expectation, 15=Above average, 7=Meets expectation, 1=Does not meet expectation</b>				
2	25%	The quality of the Proposer's goods or services ; <b>25=Exceeds expectation, 15=Above average, 7=Meets expectation, 1=Does not meet expectation</b>				
3	15%	The reputation of the Proposer and of the Proposer's goods or services with respect to Universities or comparable clients; <b>15=Exceeds expectation, 9=Above average, 5=Meets expectation, 1=Does not meet expectation</b>				
4	15%	The total long-term cost to the University of acquiring the Proposer's goods or services ; <b>15=Exceeds expectation, 9=Above average, 5=Meets expectation, 1=Does not meet expectation</b>				
5	10%	The extent to which the goods or services meet the University's needs; <b>10=Exceeds expectation, 5=Meets expectation, 1=Does not meet expectation</b>				
6	10%	The Proposer's past relationship with the University <b>10=Exceeds expectation, 5=Meets expectation, 1=Does not meet expectation</b>				

**APPENDIX 9  
Sample Administrative Review Checklist**

**[Solicitation No.]**  
**[Solicitation Title]**

**[Respondent Name]**

	<u>Yes</u>	<u>No</u>
1. Execution of Proposal – Signed	<input type="checkbox"/>	<input type="checkbox"/>
2. HUB Subcontracting Plan	<input type="checkbox"/>	<input type="checkbox"/>
3. Submitted original and required # of copies	<input type="checkbox"/>	<input type="checkbox"/>
4. Addenda Acknowledged	<input type="checkbox"/>	<input type="checkbox"/>
5. Mandatory Pre-Bid Conference Attendance (if applicable) Proposal Content	<input type="checkbox"/>	<input type="checkbox"/>
6. Company Information		
Experience and Qualifications	<input type="checkbox"/>	<input type="checkbox"/>
Compensation and Fees	<input type="checkbox"/>	<input type="checkbox"/>
References	<input type="checkbox"/>	<input type="checkbox"/>
Licenses/Certificate	<input type="checkbox"/>	<input type="checkbox"/>

	<u>Yes</u>	<u>No</u>
<b>SOLICITATION RESPONSE</b>	<input type="checkbox"/>	<input type="checkbox"/>

Revised 01/08/2016

## APPENDIX 10

### Evaluation Team Guidelines and Purchasing Office Responsibilities

**These** are general guidelines for Institutions to use and may be customized to meet individual Institution needs. Institutions should establish internal policies and procedures related to solicitation response evaluation teams.

#### **Prior to the Evaluation Team meeting:**

Establish date and time for the team to meet. This should be done within one (1) week of publishing the solicitation. Reserve an adequate size conference room or ensure that the program office has done so. Review responses to ensure all are responsive, meet all minimum requirements and provide all required information to be considered for evaluation.

Prepare sufficient copies of the technical evaluation matrix for each team member (depending on the number of responses received).

Assemble copies of all responses for each team member. Remove pricing information from responses because scores for pricing are calculated by the Purchasing Office and are not typically provided to the evaluators.

Send Non-Disclosure Statement to each team member.

#### **Evaluation Team Meeting:**

Before sharing responses with team members, collect a signed Non-Disclosure Statement from each member. Each team member should also keep a copy of the statement for their records and as a reminder of the team member's responsibilities. For members not in attendance, the signed Non-Disclosure Statement will also be received prior to providing responses for evaluation. Check statement to ensure it is signed and has not been modified.

Distribute evaluation resources to each member, including:

- The solicitation and any addenda. Prior to this meeting, the members should become familiar with these documents.
- Copy of all responsive proposals received.
- Evaluation Matrix (appropriate number of copies – depending on the number of responses received).

Review the evaluation matrix to ensure each member understands how the matrix works and how the responses will be evaluated. Explain the scoring process. Team members should be reminded to compare the responses to the requirements set forth in the solicitation and not to each other.

Advise members that evaluations are subject to the Texas Public Information Act and should be aware of information that is written on the matrix. However, it is helpful in the de-briefing process if the members write in the comment section – especially if the score is unusually low or high. This allows respondents to know where their proposal's strengths and weaknesses were so the respondent may improve its responses on future solicitations.

Team members should consult with the Purchasing Office for any needed clarifications of a response. The Purchasing Office may need to will contact the respondent, obtain an explanation, and prepare a written response for the team members. All members will be provided a copy of the response to the request for clarification.

Generally, a representative of the Purchasing Office remains during the evaluation team meeting to answer any questions which may arise and to ensure proper procedures are followed. Sometimes, due to time constraints, remote location of team members or other circumstances, it is not possible for all members to be together for the evaluation. However, gathering all team members in one location for the meeting is the preferred method. If the evaluation team conducts their evaluation remotely, the Purchasing Office will provide a deadline for return of the evaluation scores to the Purchasing Office.

Scores will not be divulged between team members. Members may ask questions of the Purchasing Office if they are unable to find information, do not understand information in a proposal or require the technical assistance.

After evaluations are completed, all evaluation scores will be submitted to the Purchasing Office.

**After the Evaluation Team Meeting**

The Purchasing Office verifies and calculates technical scores, adds the technical scores to the price score, and calculates the total score.

The Purchasing Office (with any necessary input from the Institution's legal office) recommends negotiations, discussions and/or award.

*All team members will continue to refer any questions about the solicitation, the evaluation and award process to the Purchasing Office.*

Revised 06/24/2011

**APPENDIX 11**  
**Sample Reference Check Form**

Respondent Name:

Solicitation Number:

Goods/Services:

---

Reference Name:

Company Name:

Telephone Number:

---

**Introduction:** Hello, my name is **[caller's name]** with **[Institution name]**. We are currently evaluating vendor proposals for **[solicitation title]** and are checking vendor references. **[respondent name] provided us your name and number as a reference for [respondent name]**. Do you have a few minutes to answer some questions?

1. How long has your company done business with **[respondent name]**?
  
2. How many different projects has **[respondent name]** worked on for your company?
  
3. How many different contractors ...
  - a. Has your company used in the past?
  - b. Is your company currently using?
  
4. On a scale of 1 to 10, with 10 being completely satisfied and 1 being completely unsatisfied, how would you rate **[respondent name]'s**:

- a. Ability to perform the work?
- b. Ability to \_\_\_\_\_?
- c. Reliability?
- d. Ability to meet timelines or deadlines?
- e. Quality of work?

Rating

f. Personnel experience level?

Rating

g. Attitude regarding customer service?

h. Ability to resolve problems?

i. Overall performance?

5. On a scale of 1 to 10, with 10 being "absolutely would" and 1 being "absolutely would not," would you recommend **[respondent name]** to another Institution or company?

Rating

6. In your opinion, what are **[respondent name]**'s

a. Strengths?

b. Weaknesses?

7. Do you have any additional comments?

Total Rating

\_\_\_\_\_  
**[Signature of person conducting reference checks]**

Revised 12/28/2015



# APPENDIX 12

## Sample Best Value Award Justification

### BEST VALUE AWARD JUSTIFICATION

[Section 51.9335, Texas Education Code](#), states that an institution of higher education may acquire goods or services by the method that provides the best value to the institution. Section 51.9335 states that, in determining what is the best value to an institution of higher education, the institution shall consider specific evaluation criteria.

UT **[Identify institution name]** has determined that a purchase of **[Identify goods or services purchased]** from **[Identify vendor name]** will provide the best value to UT **[Identify institution name]** based on the institution's consideration of such evaluation criteria as documented below:

(1) The purchase price of the goods or services:

---

---

(2) The reputation of the vendor and of the vendor's goods or services:

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(3) The quality of the vendor's goods or services:

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---

(4) The extent to which the vendor's goods or services meet UT **[Identify institution name]**'s needs:

---

---

(5) The vendor's past relationship with UT **[Identify institution name]**:

---

---

(6) The impact on the ability of UT **[Identify institution name]** to comply with laws and rules relating to historically underutilized businesses and to the procurement of goods and services from persons with disabilities:

---

---

(7) the total long-term cost to UT **[Identify institution name]** of acquiring the vendor's goods or services:

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---

(8) the following other relevant factor(s) that a private business entity would consider in selecting such a vendor:

---

---

**[Use the following item (9) only if procurement is for construction or repair to real property.]**

(9) the use of material in construction or repair to real property that is not proprietary to a single vendor unless the institution provides written justification in the request for bids for use of the unique material specified:

---

APPROVED:

\_\_\_\_\_  
Name:

Title:

## **APPENDIX 13**

### **Sample Contract Terms**

OGC's *Agreement between University and Contractor Template* includes OGC's suggested terms and conditions that should be included in most Institution contracts.

OGC's *Agreement between University and Contractor Template* is posted at: [Contracts and Contracting Resources Website](#).

The Institution must consider whether these terms and conditions are appropriate and sufficient based on the particular circumstances related to the contract or whether additional terms and conditions are necessary. Please consult the Institution's legal counsel with questions regarding applicability of any of the sample terms and conditions.

If the goods and services being procured will be funded with federal money or included in the calculation of overhead charged to federal projects, consult with the Institution's legal counsel or the Institution's Office of Sponsored Research regarding the need for additional contract provisions required by federal law or the specific terms of the grant or sponsored research contract.

## APPENDIX 14 Sample Contract Monitoring Worksheet

DRAFT – SAMPLE CONTRACT MONITORING WORKSHEET <i>To be Included in Contract Monitoring Binder; References to Tabs are to Location in Binder</i>			Division: Information Services Division						
Contractor Type of Contract	Specific Monitoring Activities to Be Performed	Performance Method including information sources to be used	Responsible Individual for Each Monitoring Activity	Monitoring Activity Frequency	Monitoring Activity Documentation Method	Results of Monitoring Activity Communicated to	Results of Monitoring Uses (include follow up requirements)	Communicated to	Use
Acme Consultants, PC; Consulting Services									
	Review of Consultant's Quarterly Draft Reports for Contract Compliance [this is <i>only one example of what will be many monitoring activities</i> ]	Compare Draft Report to Contract Requirements	Jane Doe	Quarterly	E-mail Report	Betty Jo, IT Division Manager	Routine status reports by Betty Jo, IT Division Manager, to Exec Management; acceptance or rejection of draft report deliverables as provided in Contract; Review milestone invoices prior to approval for payment; Require redelivery of draft report deliverables; Terminate contractor for nonperformance; Solicit replacement services	Board of Regents, Office of Finance	Reallocate funds

Revised 1/8/2016

## APPENDIX 15 Sample Contract Close-Out Checklist

<b>Project Name</b>	
<b>Prepared by (Print)</b>	<b>Date Prepared</b>
<b>Customer</b>	<b>Contract</b>
<b>Contract Telephone/E-mail</b>	
<b>yes no n/a</b>	<b>All products and services required were provided to the buyer</b>
<b>yes no n/a</b>	<b>Documentation adequately shows receipt and formal acceptance of all contract terms.</b>
<b>yes no n/a</b>	<b>No claims or investigations are pending on this contract.</b>
<b>yes no n/a</b>	<b>Any buyer furnished property or information was returned to the buyer.</b>
<b>yes no n/a</b>	<b>All actions related to contract price revisions and changes are concluded.</b>
<b>yes no n/a</b>	<b>All outstanding subcontracting issues are settled.</b>
<b>yes no n/a</b>	<b>If a partial or complete termination was involved, action is complete.</b>
<b>yes no n/a</b>	<b>Any required contract audit is now complete.</b>
<b>Notes:</b>	