

## The University of Texas System

# Business Procedures Memorandum

43-04-98

# Consulting Contracts Policy and Procedures Guide

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## Background

Current law has established eleven oversight requisites for agencies using consultants, and since different sources have promulgated these requisites, the distinctions among them are not always obvious. The oversight requirements, along with informational and explanatory comments pertinent to their accomplishment, are provided in the [Attachment](#).

## Policy and Contract Award Requirements

It is the policy of [The University of Texas System](#) that all consulting contracts be awarded in accordance with the provisions of the following state statutes and relating rules and guidelines promulgated by the [Governor's Budget and Planning Office](#) and the [State Comptroller](#):

[Texas Government Code, Sections 2254.021 - 2254.040](#);

[Notice to State Agencies](#) - Consulting Services Contracts (current version dated January 30, 1995);

Governor's Budget and Planning Office Letter of November 17, 1993  
Regarding Requirements for Consultant Contracts; and

Current General Appropriations Act, Article IX, [Section 52](#) and [Section 92](#)

## Definitions

The definitions provided below are those found in the statutes which determine the review requirements for consultant contracts:

**"Consultant"** means a person that provides or proposes to provide a consulting service. The term includes a political subdivision but does not include the federal government, a state agency, or a state governmental entity.

**"Consulting services"** means the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Consulting services as used in [Texas Government Code](#)

[2254.021 - 2254.040](#) has generally been interpreted to mean services which include study and advice with respect to some aspect of an agency's operations or management. Most contracts which are not professional services or routine services are consulting services. It is possible, however, for a one-time non-routine service to be a true service, rather than a consulting service, so long as the elements of studying and advising the agency as to an aspect of agency operations or management are not present.

*"Major consulting services contract"* means a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000.

**The following definition has been provided to help alleviate the confusion that sometimes occurs in the employment of consultants and other providers of professional services.**

*"Professional Services"* as defined in [Texas Government Code, Section 2254.002](#) means those services performed within the scope of practice, as defined by state law, of accounting; architecture; land surveying; medicine; optometry or professional engineering, or provided in connection with the professional employment or practice of a person who is licensed as a certified public accountant; an architect; a land surveyor; a physician (including a surgeon); an optometrist or a professional engineer.

In addition to the professions listed above, [Texas Government Code, Section 2254.024](#) has exempted the following practitioners of professional services from the consulting service rules: a private legal counsel, an investment counselor, an actuary, a medical service provider or a dental service provider.

Services provided by the above professional practitioners are not part of nor subject to rules governing consulting services. See [Texas Government Code, Section 2254.003](#) regarding the selection of a provider for "professional services." Professional service contracts are subject to Regents' [Rules and Regulations Part One, Chapter I, Section 9](#); [Part One, Chapter III, Section 4](#); and [Part Two, Chapter IV, Sections 1, 3, 4, and 5](#). Contracts for architectural and engineering services related to a construction project, and other ancillary construction service contracts are subject to Regents' [Rules and Regulations Part Two, Chapter VIII](#).

### **When a Consultant may be used**

[Texas Government Code, Section 2254.026](#) states that agencies may use consultants only if:

1. there is a substantial need for the consulting services; and
2. the agency cannot adequately perform the services with its own personnel or obtain the services through a contract with a state governmental entity.

### **Consulting Contracts General Guidelines**

All consulting contracts exceeding \$15,000 shall be reviewed and approved by the appropriate Executive Vice Chancellor prior to the institution executing the requirements of the above statutes, rules or guidelines. An amendment, renewal, or extension of a major consulting services contract, or an amendment, renewal, or extension of a consulting services contract which is not a major consulting services contract, but will become one because of the amendment, renewal, or extension, must be reviewed and approved by the appropriate Executive Vice Chancellor prior to executing the requirements of [Texas Government Code 2254.030](#) ("Renewal; Amendment; Extension"). A copy of such contracts in the amount of \$15,000 or less shall be provided to the appropriate Executive Vice Chancellor for information upon award.

This policy applies to all consultant contracts entered into by [U. T. System Administration](#) or any component institution that is funded or paid from monies:

- appropriated by the Legislature
- derived from the exercise of the statutory duties of a state agency (institution of higher education)
- received from the federal government, unless a federal law or regulation conflicts with the application of [Texas Government Code, Sections 2254.021 - 2254.040](#)

All consulting service contracts required to be published in the [Texas Register](#) must be submitted to the [Texas Secretary of State](#) through [The University of Texas System Office of the Board of Regents](#).

None of the funds appropriated to an institution of higher education may be used to enter into a consultant service contract with any individual who has been employed previously by that institution within the past twelve months, current [General Appropriations Act](#). In addition, [Texas Government Code, Section 2254.033](#) imposes certain disclosure requirements for any proposed consultant who was previously employed during the preceding twenty-four months.

All consulting service contracts entered into by [U. T. System Administration](#) or [component institutions](#) shall be in accordance with the Code of Ethics and established purchasing/contracting practices and procedures as guided by [Part One, Chapter I, Section 9](#); [Part One, Chapter III, Section 4](#); and [Part Two, Chapter IV, Sections 1, 3, 4, and 5](#) of the Regents' [Rules and Regulations](#).

### **Intersystem Agreements**

Employees of one institution of [The University of Texas System](#) may serve as a consultant to another institution or agency of the state provided the [chief administrative officer](#) of each institution or agency approves the Intersystem Agreement contract in advance and forwards a copy of the approved contract to the appropriate Executive Vice Chancellor.

### **Docket Procedures**

All consultant contracts in the amount of \$250,000 or more, or with a foreign entity, should be approved by the Board of Regents via the institutional docket.

### **Attachment**

Provided by:

[Office of the Controller](#)

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[Return to The U.T. System Home Page](#)

[Return to the BPM Numerical Table of Contents](#)

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The University of Texas System Administration