
This policy supersedes any conflicting prior policies or procedures to the extent of such conflict.

I. PURPOSE AND SCOPE

The purpose of this policy is to establish a standardized framework for the review, approval, and execution of contracts at Texas Southern University (“TSU”) in accordance with applicable law and evolving state compliance requirements.

All contracts entered into by TSU are subject to this policy including all original contracts, amendments, alterations, modifications, corrections, changes, renewals, and extensions, unless specifically excluded by this or another policy adopted by the Board of Regents or another applicable governing body.

This policy supersedes any conflicting prior policies or procedures to the extent of such conflict.

II. DEFINITIONS

A. **Best Value.** Pursuant to Texas Education Code §51.9335, the University may acquire goods or services based on the method that provides "Best Value" to the University. Applicable procurement methods and evaluation factors are set forth in this policy and are consistent with the statutory requirements of Texas Education Code §51.9335. The Initiating Department shall maintain documentation sufficient to demonstrate that Best Value was considered in connection with each contract. Inquiries regarding Best Value determinations should be directed to the Purchasing Department prior to entering into a contract.

B. **Board.** The Texas Southern University Board of Regents.

C. **Consultant.** 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 (Texas Government Code §2254.021(3)).

D. **Consulting Service.** A consulting service is the practice of studying or advising the University, under a contract that does not involve a traditional employer-employee relationship, as defined by Texas Government Code §2254.021(1). To "study" involves a detailed consideration of University functions, such as financial status or administrative methods. To "advise" means to provide recommendations or identify options with respect to a specific course of action. Generally, a "consultant" delivers information or provides assistance that enables the University to take a

specific course of action. Under **Texas Government Code § 2254.038**, a contract involves both Consulting Services and other services, is classified as a consulting contract if the primary objective of the contract is the delivery of consulting services. Inquiries regarding whether a specific agreement meets this criteria should be directed to the Purchasing Department or the Office of General Counsel ("OGC").

- E. ***Contract or Agreement.*** A contract is a legally enforceable agreement between two or more parties creating an obligation to perform or refrain from performing a specific act. As used in this policy, references to "contracts" or "agreements" include, but are not limited to, agreements, terms and conditions, amendments, letters of agreement, letters of intent, statements of intent, memoranda of understanding, leases, inter-local agreements, interagency agreements, purchase orders and any other contract-related documents.
- F. ***Initiating Department.*** The University department or representative that initiates a contract request and/or otherwise has responsibility for such contract.
- G. ***LBB.*** The Legislative Budget Board which is a permanent joint committee of the Texas Legislature that has a wide range of responsibilities including developing budget and policy recommendations for legislative appropriations for all state agencies.
- H. ***Legal Management System (LMS).*** The current system used by Texas Southern University for the purposes of requesting, processing, and storing when provided, the contracts entered into by the University.
- I. ***Major Consulting Services Contract.*** As it relates to an institution of higher education, a Consulting Services Contract for which it is reasonably foreseeable that the value of the contract will exceed \$25,000 (Texas Government Code §2254.021(2)).
- J. ***Major Information System.*** (i) One or more computers that, in the aggregate, cost more than \$100,000.00; (ii) A service related to computers, including computer software, that costs more than \$100,000.00; or (iii) telecommunications apparatus or device that serves as a voice, data or video communications network for transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on the network and costs more than \$100,000.00.
- K. ***OGC.*** Texas Southern University's Office of General Counsel.
- L. ***President's Delegations of Authority.*** A summary of delegations of authority made by the President and available on the University's website and board office.

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- M. **Professional Services.** Services directly related to professional licensed practices such as accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing (Texas Government Code §2254.002(2)). Services provided by professionals outside the scope of their profession, (e.g., management-consulting services provided by accounting firms,) are not considered Professional Services for purposes of this policy.
- N. **Sponsored Research.** Includes research and development projects that usually involve the preparation of specialized contracts such as grants, sub-recipient agreements, subaward agreements or sub-contract agreements with other entities.
- O. **Approved OGC Contract Template.** An expedited template form consisting of contracts and other documents previously reviewed and approved by the Office of General Counsel for proper form and legality, including compliance with applicable state laws, constitutional requirements, and Board policies.
- P. **Substantive change.** A change that modifies the legal terms of a particular document. Any substantive change to a standard form agreement will render it non-standard. Examples of substantive changes include modifications to: party names, description of goods or services, dollar amount to be paid or received, effective date and term length. Questions about whether a particular modification constitutes a substantive change should be directed to the Office of General Counsel.
- Q. **University.** Texas Southern University.

III. POLICY PROVISIONS

- A. Texas Southern University is committed to executing contracts in compliance with applicable federal and state laws, regulations, agency advisory opinions, judicial and administrative determinations.
- B. The authority to enter into contracts on behalf of TSU must be expressly written pursuant to the policies of the Board of Regents and this policy. All contracts must contain a written statement that the person signing on behalf of TSU and on behalf of the Contractor has the authority to execute the agreement according to its terms on behalf of the parties.
- C. No person has the authority to bind TSU contractually except in accordance with this policy. Persons executing contracts without authority to do so or in violation of policy may be personally liable for damages related to the contract.
- D. The Board must approve certain contracts as noted below. The Board has delegated to the President the authority to negotiate, execute and administer all other

contracts or to further delegate such authority.

- E. Except as otherwise set forth in this policy, all contracts must be reviewed and approved by Purchasing, the Office of Institutional Compliance, the Chief Financial Officer and/or the Office of General Counsel ("OGC") prior to execution by the University.
- F. Amendments, changes, extensions or renewals to the original contract must be processed in the same manner as the original contract. A copy of the original contract should be included with the amendment, change, extension or renewal at the time the documents are processed for approval.
- G. All applicable administrative and legal reviews must be completed prior to execution of a contract and prior to commencement of any duties/actions by the parties pursuant to the contract.

IV. GENERAL PROVISIONS, CONTRACT PREPARATION AND PROCEDURES

- A. Each Initiating Department shall submit a completed Legal Management System (LMS) ticket in its entirety, attaching all applicable justification forms, and obtain appropriate signatures. A completed LMS ticket shall include documents required by the Office of General Counsel requires as follows:

Contracts/Agreements

- Correct Legal Name of Contractor
- Scope of Work/Service (detailed)
- Proposed Start Date and Proposed End Date
- Dollar amount (If Applicable); and/or Yearly Cost-Breakdown for multi-year Contract
- Detailed Billing Rates (If Applicable)
- Authorized Signator(s) (Individual[s] Authorized to Execute Binding Obligations on Contractor's Behalf)
- Additional and Necessary Counterparty-Provided Documentation

Grants Agreements

- EFCA Expense Request Form
- University Proposal Offer (If Applicable)
- Vendor Proposal or RFP (If Applicable)
- Award Notification Letter (If Applicable)
- No-Cost Extension (If Applicable)
- Professional/Consulting Services Agreement
- Scope of Work
- Subaward/Grant Agreement Letter
- Background Check Form
- Vendor Setup Form
- W-9 Form
- Authorized Signator(s) (Individual[s] Authorized to Execute Binding Obligations on Contractor's Behalf)

The Initiating Department must provide the Office of General Counsel with the contact information of all authorized signers for the contract, including those signing on behalf of University and those signing on behalf of the other party. OGC is authorized to reject submissions that lack any required documentation or do not provide sufficient information to enable a complete and informed legal review.

The Initiating Department shall retain a fully executed and legible copy of every contract/contract it executes in accordance with the University's record retention policies, and a copy shall be maintained by OGC as provided. Whenever a contract is executed using the vendor/counterparty's preferred method of execution, the initiating Department must provide OGC with a copy Unless otherwise specified in the particular contract or this policy, legible facsimile contracts and signatures are acceptable for meeting this requirement.

- B. The Initiating Department is responsible for the contract from from needs assessment through execution and continuing through completion of the contractor's performance. This responsibility includes being familiar with the contract in its entirety, including payment obligations, scope of services, duration and insurance. After execution of the contract, the Initiating Department is responsible for monitoring and ensuring performance in accordance with the provisions of the contract and reporting non-compliance to the Office of General Counsel.
- C. A fully executed contract must exist before payment can be issued by Accounts Payable, regardless of the payment amount. Payments, reimbursements, and/or expenses must be authorized by the contract. The Initiating Department is responsible for providing all relevant documents and information required by the Accounts Payable Department.
1. All contracts for expenditures shall be forwarded with appropriate attachments to the Purchasing Department for review.
 2. Upon completion of its review, the Purchasing Department shall forward the contract and supporting documents to the Office of Procurement for a due diligence review for all contracts of \$50,000.00 or more.
 3. The Office of Procurement will forward the contract, results of its due diligence review (if necessary) and any other supporting documents to the Chief Financial Officer on all contracts for expenditures. Additionally, the Office of Procurement will forward the results of its due diligence review to the Initiating Department.
 4. The LMS Workflow will determine if appropriate funding is available and forward the contract to the OGC for review and approval.

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5. The OGC will assign a contract number, maintain the database, and review the contract for legal form and sufficiency.
- D. The OGC may designate an Approved OGC contract Template, addendums and related processes to expedite contracts whereby further review and approval by OGC is not necessary prior to execution so long as: (i) there have been no substantive changes made to the standard form agreement; and (ii) the contract does not require OGC review pursuant to any of the special contracting requirements set forth elsewhere in this policy. Requests for a document to be designated as a standard form agreement should be directed to Office of General Counsel.
- E. All contracts, other than standard contracts approved in advance by the Office of General Counsel ("OGC") for amounts less than \$5,000.00, must be submitted to the OGC before execution for review and approval as to form and legal sufficiency. If the standard contract has substantive changes, it must be submitted to OGC for review regardless of the amount. (Standard Contracts are those identified as TSUOGC-S- (month/year)-(number) in the lower left-hand corner of the document). If the vendor provides a contract form, attach the University's standard contract addendum form before submitting to the OGC. Prior to submitting the contract to the OGC, the contract must be initialed by the Chief Financial Officer confirming the availability of funds.
- F. For sole source or proprietary acquisitions, the Initiating Department is responsible for ensuring that the sole source request is valid and complete a justification form stating the reason competing vendors could not provide the same or similar product or service.
- G. Grant and research contracts should be referred to the Office of Research prior to any review process.
- H. Any authority not expressly delegated by this policy remains with the President and/or Board of Regents
- I. Contracts reviewed and authorized before the adoption of this policy shall remain in full force and effect; however, any modification or extension of such contracts shall be reviewed and authorized in accordance with this policy.
- J. Before any procurement of goods and services that will exceed \$25,000, the agency/university may place a notification on the State Electronic Business Daily as maintained by the Texas Comptroller of Public Accounts.
- K. Pursuant to Texas Education Code§ 51.9335 (Contract Procurement

Requirements; Best Value), the University may acquire goods or services by the method that provides the Best Value to the University, including:

1. Competitive bidding;
2. Competitive sealed proposals;
3. Catalog purchase;
4. Group purchasing program; or
5. Open market contract.

- L. The institution shall consider the following when determining Best Value:
1. The purchase price;
 2. The reputation of the vendor and of the vendor's goods, materials and supplies;
 3. The quality of the vendor's goods, materials and supplies;
 4. The extent to which the goods, materials and supplies meet the institution's needs;
 5. The vendor's past relationship with the institution;
 6. The impact on the institution's ability to comply with laws and rules relating to historically underutilized businesses, as defined under Texas law, and the procurement of goods, and services from persons with disabilities;
 7. The total long-term cost to the institution of acquiring the vendor's goods, materials and supplies;
 8. Any other relevant factor that a private business entity would consider in selecting a vendor; and
 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 materials specified.
- M. The state auditor may audit purchase of goods or services by an institution of higher education that purchases goods and services.

V. CONTRACTS REQUIRING BOARD APPROVAL

- A. No person has the authority to bind the university contractually except in accordance with this policy. Complete, accurate and timely due diligence must be performed on any contract, agreement, transaction or other arrangement involving the commitment of financial or other university resources. Such due diligence should be designed to ensure that the university's interests are protected, that it receives value for money, and that there is transparency in decision-making.

In an open meeting, the board must approve:

1. Contracts for the purchase, gift or acquisition of real property;

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2. Contracts for the sale of real property or conveyance of any rights in real property, other than residential leases, and licenses which do not transfer any rights in real property;
 3. As lessee, all real estate leases, lease renewals and extensions, if the obligation of the lease is equal to or greater than the submittal threshold requiring Texas Higher Education Coordinating Board action;
 4. Contracts with any entity in which a member of the Board of Regents holds stock and/or serves as a director;
 5. Banking and investment agreements;
 6. Any single construction contract or procurement contract for any equipment, goods or services, not specified above, which is expected to exceed \$250,000 in a fiscal year or have a primary term longer than five (5) years;
 7. Sponsored research contracts and grants which require the university to provide matching funds expected to exceed \$250,000 in a fiscal year (other sponsored research contracts and grants do not require board approval)
 8. Any extension, modification, or renewal of an existing contract which is expected to exceed \$250,000 in a fiscal year;
 9. Any university sub-contract or sub-grant award which is expected to exceed \$250,000 in university expenditures in a fiscal year;
 10. Any series of contracts which are initiated in the same department for the same goods or services with the same party within a fiscal year, that, if combined in one contract, would require board approval or reporting;
 11. Any other contract the board might designate as having significant importance to require board approval.
- B. The President is authorized to approve all contracts not reserved for approval by the Board and may delegate authority to the extent such authority is delegated by the Regents to the President.
- C. The President, on behalf of the Board of Regents, is expressly delegated the authority to sign any contracts that the Board has officially approved and awarded.

D. The Board holds regularly scheduled meetings each year, as well as special-called meetings. In order to submit a contract for Board approval, the Initiating Department must send the contract and a completed Board Agenda Cover Sheet to the Office of Vice President for Finance at least ten (10) calendar days prior to the date of the Board meeting at which approval will be sought.

VI. AUTHORITY TO SIGN CONTRACTS NOT REQUIRING BOARD APPROVAL

The President may negotiate, execute, and administer all contracts and related necessary legal documents and instruments not requiring Board approval, or may delegate such authority to officers according to their areas of responsibility. All delegations of contracting authority must be made in writing, approved by the President and filed with the Board. Such delegations may be made in accordance with the President's Delegations of Authority. Nonetheless, all contracts and documents must be executed by an individual(s) with appropriate delegated signature authority.

VII. CONSULTING AND PROFESSIONAL SERVICES CONTRACTS

- A. Consulting Services Contracts. Consulting services means the service of studying or advising a state agency under a contract that does not involve the traditional employer and employee relationship. All Consulting Services contracts must be reviewed and approved by the Purchasing Department and the OGC before execution, regardless of contract amount. This policy applies to Consulting Services contracts that are funded with money: (i) appropriated by the Texas state legislature; (ii) derived from the exercise of the statutory duties of a state agency; or (iii) received from the federal government, unless a federal law or regulation provides otherwise (Texas Government Code §2254).
- B. There are numerous state requirements that must be met before and after entering into consulting contracts (including contract renewals, amendments and extensions for such services). These requirements include, but are not limited to: providing public notice of the need for Consulting Services and notices to state government agencies related to the Consulting Services Contract. The Initiating Department must work with Purchasing and/or the OGC to comply with these requirements and timeframes. Failure to comply with the state requirements will render the associated contract(s) void.
- C. Major Consulting Services Contracts are those in which it is reasonably foreseeable that the value of the contract will exceed \$25,000.00 (this is not a one-time cost but a cumulative amount for ongoing consulting services). The Initiating Department must work with the Purchasing and/or the OGC to comply with requirements and timeframes pertinent to Major Consulting Services contracts. Failure to comply with the state requirements will render the associated contract(s) void.

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- D. All Consulting Services contracts exceeding \$50,000.00 must be reported to the Legislative Budget Board ("LBB").
- E. For more information about which types of services are considered Consulting/Professional Services, refer to <https://fm.xcpa.texas.gov/fm/pubs/purchase/resources/index.php?section=definitions&page=definitions>.
- F. Professional Services Contracts. Professional Services are those within the scope of the practice, as defined by state law (e.g. accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, professional nursing), or those services provided in connection with the professional employment or practice of a person who is licensed or registered (e.g. certified public accountant, architect, landscape architect, land surveyor, physician, surgeon, optometrist, professional engineer, certified or licensed real estate appraiser, registered nurse). Guest lecturers, speakers, artists, entertainers, performers, musicians, veterinary services, educational/training services for state employees and other professional services fall within the types of services categorized as professional services.
- G. State law requires that selection and award of contracts for Professional Services be based on the professional's demonstrated competence, the professional's qualifications for the type of services to be performed and a fair and reasonable price (which may not exceed any maximum price provided by law) - rather than on the basis of competitive bids (Texas Government Code §2254). Failure to comply with these requirements will render the associated contract(s) void. All Professional Services contracts exceeding \$50,000.00, except for those for physician or optometric services, must be reported to the LBB.

VIII. OTHER CONTRACTS

- A. Contracts for Legal Services. All contracts for legal services must be initiated by the Office of General Counsel after receiving approval from the Office of the Attorney General for the State of Texas.
- B. Contracting with Historically Underutilized Businesses ("HUBs"). University contracts must comply with applicable Texas laws.
- C. Contracts for Major Information Systems. Pursuant to Texas Government Code §2054.008, the University must provide written notice to the LBB after entering into a contract for a Major Information System if the cost of the system exceeds \$1,000,000.00.

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- D. Research Contracts. Except as limited by the President's Delegations of Authority, the Provost and Vice President for Academic Affairs & Research has the authority to negotiate, execute and administer all contracts and grants pertaining to Sponsored Research contracts, including externally-funded research contracts, cooperative agreements, joint research projects and similar agreements. All such contracts shall be reported to the President and the Board.
- E. Agreements with State and Local Government Entities. The University may generally contract with another state agency or other government entity for the acquisition or provision of necessary and authorized services and resources using interagency agreements (Texas Government Code §771), inter-local agreements (Texas Government Code §791) or other appropriate agreements. These agreements may be subject to specific statutory requirements. Assistance may be requested from the Office of General Counsel concerning these types of agreements.