

The University of Texas at San Antonio



**CONTRACT
MANAGEMENT
HANDBOOK**

TABLE OF CONTENTS

<u>Chapter 1</u>	Introduction	4
1.1	Purpose	
1.2	Definitions	
1.3	Acronyms	
1.4	Training for Purchasing and Contracting Personnel	
1.5	Ethics Standards and Policies	
1.6	Conflict of Interest	
1.7	New Legislative Requirements Related to Ethics, Purchasing, and Contracting	
1.8	Disclosure of Interested Parties	
<u>Chapter 2</u>	Planning	20
2.1	Contract Management Team	
2.2	Communications Plan	
2.3	Determining Competitive Procurement Method	
2.4	Planning for Contract Content	
2.5	Information Security; Access to Electronic and Information Resources	
2.6	Record Retention	
<u>Chapter 3</u>	Preparing the Solicitation	41
3.1	Historically Underutilized Business (HUB) Requirements	
3.2	Contract Term	
3.3	Background Information	
3.4	Proposal Submission Requirements	
3.5	Evaluation of Proposals	
3.6	Solicitation Requirements	
3.7	Payment Types	
<u>Chapter 4</u>	Publication of the Solicitation	55
4.1	Advertising	
4.2	Solicitation Announcements	
4.3	Communication with Respondents	
4.4	Written Questions	
4.5	Pre-Proposal Conferences	
4.6	Solicitation Submission and Opening	
<u>Chapter 5</u>	Evaluation and Award	59
5.1	Evaluation Guide	
5.2	Evaluation Team	
5.3	Scoring Matrix	
5.4	Responsive Proposals	
5.5	Evaluation Team(s) Training	
5.6	Single Responses	
5.7	Proposal Evaluation	
5.8	References	
5.9	Oral Presentations/Discussions	
5.10	Best and Final Offers	
5.11	Negotiations	
5.12	Award	

<u>Chapter 6</u>	Contract Formation	67
6.1	Approach to Contract Formation	
6.2	Legal Elements of a Contract	
6.3	Drafting the Contract	
6.4	Planning for Contract Preparation	
6.5	Form of the Contract	
6.6	Contract Terms	
6.7	Authority to Sign Contracts	
6.8	Required Check of Vendor Hold Status	
<u>Chapter 7</u>	Contract Administration	77
7.1	Planning and Importance of SOW	
7.2	Performance Monitoring	
7.3	Contract Reporting Obligations	
7.4	Invoices and Payments	
7.5	Change Management Process	
7.6	Dispute Resolution Process	
7.7	Termination	
7.8	Contract Close-Out	
<u>Version History</u>	94

Appendices

<u>APPENDIX 1</u>	Contract Management Best Practices Matrix
<u>APPENDIX 2</u>	UTSA Procurement Training and Certification Program
<u>APPENDIX 3</u>	Summary of 2015 Procurement and Contracting Legislation
<u>APPENDIX 4</u>	Summary of UT Procurement Guidelines
<u>APPENDIX 5</u>	Goods and Services Exempt from Procurement Competition
<u>APPENDIX 6</u>	Exclusive Acquisition Justification Form
<u>APPENDIX 7</u>	Sample Non-Disclosure Statement
<u>APPENDIX 8</u>	Sample Solicitation Announcement
<u>APPENDIX 9</u>	Sample Pre-Proposal Conference Guidelines
<u>APPENDIX 10</u>	Sample Proposal Score Sheet
<u>APPENDIX 11</u>	Sample Administrative Review Checklist
<u>APPENDIX 12</u>	Evaluation Team Guidelines and Purchasing Office Responsibilities
<u>APPENDIX 13</u>	Sample Evaluation Team Written Instructions
<u>APPENDIX 14</u>	Sample Reference Check Form
<u>APPENDIX 15</u>	Protest Procedures
<u>APPENDIX 16</u>	Sample Contract Terms
<u>APPENDIX 17</u>	Guidelines for Establishing Risk in Procurement Projects
<u>APPENDIX 18</u>	Sample Contract Monitoring Worksheet

CHAPTER 1

INTRODUCTION

1.1 Purpose

The purpose of this Contract Management Handbook (Handbook) is to offer purchasing personnel, business contract officers, and other administrators recommendations on documenting existing procurement and contracting processes and practices in connection with the procurement of goods/services.

1.1.1 Transactions Not Covered by Handbook.

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. Nevertheless, this Handbook may provide helpful information useful in connection with contracts that are not governed by the Handbook, such as those listed below.

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, including professional architectural and engineering contracts.

➤ **Construction-related Contracts:** Construction and professional architectural and engineering contracts (“Construction Contracts”) are governed by specific statutory requirements and must be procured in accordance with the UT System Construction Contracting Guidelines promulgated by the Construction Law Specialty Area within UT System Office of General Counsel (“OGC”). The Construction Contracting Guidelines, as well as Construction Contract agreements and related policies and procedures, are located on OGC’s website at <http://www.utsystem.edu/offices/general-counsel/construction-law-0>.

1.1.2 Applicable Laws; University Rules.

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.

1.1.3 Core Processes.

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.

1.1.4 Coordination of Disciplines and Roles

Fully implemented contract management requires coordinating and administering the four core processes. Depending on the risk of a procurement, contract management may also involve coordination of a variety of distinct disciplines and roles, including:

- Executive Management;
- Project Management;
- Planning;
- Program Staff (subject matter experts and monitors);
- Contractor Interaction;
- Purchasers;
- Accounting and Budget;
- Legal;
- Audit; and
- Quality Control/Assurance.

1.1.5 Overview of Handbook Content and Purpose. 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 (if applicable) 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. On any legal questions that arise with contracts, the Institution's representative for the particular contract should consult with (as applicable) either the Institution's Business Contracts Office, Legal Office, or the UT System Office of General Counsel.
- 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 should be considered.
- 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, IFB, 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](#) (all Institutions except UTMDACC), [73.115](#) (UTMDACC) and [74.008](#) (UTMB)).

Best Value Invitation for Bids (IFB): Best value 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](#) (all Institutions except UTMDACC), [73.115](#) (UTMDACC) and [74.008](#) (UTMB)).

Bid: An offer to contract with the state, submitted in response to an invitation for bids (IFB). Bids are usually non-negotiable.

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.

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](#) or [73.115](#) apply are 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 management-level individual with primary responsibility for implementation and operation of the project. The extent and degree of executive sponsorship and participation should be directly related to the level of risk associated with the procurement. For most contracts, the executive sponsor will simply be the division or program director with overall project responsibility. In rare instances, of very high-risk contracts, the executive sponsor may be the Vice President or even executive head of the Institution.

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 in which the Institution participates, such as Novation, Premier, Western States Contracting Alliance, and U.S. Communities Government Purchasing Alliance; or (3) the UT System Supply Chain Alliance.

Handbook: The University of Texas 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](#). (<https://comptroller.texas.gov/purchasing/vendor/hub/>).

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:

Receives compensation from the Business Entity for the person's participation;

Communicates directly with the Institution on behalf of the Business Entity regarding the contract; and

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.*

Program Staff: Typically the requesting department and Executive Sponsor. Dependent on the procurement or contract, Program Staff may also include other Institutional subject matter experts (SMEs).

Project Team: Program Staff and the Purchasing Office. Dependent on the procurement or contract, the Project Team may also include SMEs, and staff in the Business Contracts Office, HUB Office, the Legal Office, Risk Management, IT, and other institutional stakeholders.

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).

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.

SME(s): Subject matter experts on the scope and related business requirements of a particular procurement or contract.

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 <https://www.utsystem.edu/offices/board-regents/regents-rules-and-regulations>; the policies of UT System at <https://www.utsystem.edu/sites/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

IFB: Best Value Invitation for Bid (also known as Invitation to Bid or ITB)

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

SMEs: Subject Matter Experts

SOW: Scope of Work

TAC: Texas Administrative Code

TPSS: Texas Procurement and Support Services Division of CPA

1.4 Training for Purchasing and Contracting Personnel

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 all personnel who process competitive procurements of goods or services or administer and manage competitive procurement contracts 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.

➤ **UTSA Procurement Training & Certification Program.** UTSA's specific requirements for procurement training and certification are located in [APPENDIX 2, UTSA Procurement Training & Certification Program](#).

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](#)

[OGC Ethics Home Page](#)

1.6 Conflict of Interest

To avoid conflicts of interest, Institutions should require 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. Specifically, solicitation documents should require that debarred vendors and principals of debarred vendors (i.e. owner, proprietor, sole or majority shareholder, director, president, managing partner, etc.) be identified to ensure such vendors/principals are not awarded, extended or renewed any contract. Vendors should also be required to update that information throughout the term of the contract resulting from the solicitations.

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, the annual statement will be filed no later than April 15th (for the previous calendar year period) on a form prescribed by the entity.

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, Chapter 2263

OGC Ethics Home Page

1.7 New Legislative Requirements Related to Ethics, Purchasing & Contracting

The passage of Senate Bill 20 in the 84th Legislature (SB 20) has established a number of new provisions related to ethics and purchasing as described below. In addition, a brief *Summary of 2015 Procurement and Contracting Legislation* is attached as [APPENDIX 3](#).

1.7.1 Ethics Requirements from Senate Bill 20

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.

1.7.2 Ethics Requirements from Section 51.9337 of the Texas Education Code

Section 51.9337 of the Texas Education Code establishes additional, critical, ethical requirements. Section 51.9337 of the Texas Education Code establishes a number of ethics requirements that the Board of Regents must adopt. Best value purchasing authority held by UTSA under Texas Education Code, §§[51.9335](#) is conditional on satisfying the requirements of new §51.9337.

1.7.3 Ethics Requirements from Senate Bill 20

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 (2nd) anniversary of the date the officer's or employee's service or employment with the state agency ceased.

1.7.4 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 4.1](#) of this Handbook), monitoring (see [Section Chapter 7](#) of this Handbook), reporting (see [Section 1.7](#) of this Handbook), risk analysis and management (see [Chapter 7](#) of this Handbook).

1.7.4.1 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).

1.7.4.2 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.

1.7.4.3 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 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.

1.7.6 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 for the procurement of goods or services (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?

[Senate Bill 20 - 84th Legislature](#)

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

[Texas Education Code §51.9335](#)

[Texas Education Code §51.9337](#)

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

[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](#)

[OGC Ethics Home Page](#)

[APPENDIX 3 - 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.

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 training for the process, a link to FORM 1295, and other related information.

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 46.3 \(“Disclosure of Interested Parties” Regulations\)](#)

[Texas Ethics Commission “Disclosure of Interested Parties” Web Page](#)

[Texas Ethics Commission Form 1295, Certificate of Interested Parties](#)

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

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 the contractor. If the procurement cannot be handled simply through the development of a straight-forward IFB and purchase order, these steps can be complex and there are many opportunities for error to be introduced into the process. Proper planning, particularly for complex procurements that will require development of a contract signed by both parties, will reduce or eliminate the risk of error.

During the planning phase each of the following elements of contract management should 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 a simple fee for service and more complex cost reimbursement types of relationships.

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

2.1 Contract Management Team

For purchases requiring competitive procurement, each contract initiative should involve the Project Team to assist in the contract management process.

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. For certain contracts, the Executive Sponsor may need to be a high level officer at the Institution.

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

For purchases requiring competitive procurement, the contract team should have a reasonable understanding of the scope of services or specifications related to the procurement contract.

Certified purchasers will be familiar with this Handbook. 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.

Program Staff and SMEs will provide input as to the technical requirements and serve as the subject matter experts for the procurement. Generally, Program Staff are 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 Management

On procurements above the competitive threshold, the Executive Sponsor and Program Staff will coordinate with the Purchasing Office at the early stages of procurement development to determine the appropriate level of risk analysis for the procurement. The contract risk analysis typically includes: 1) risk identification, 2) risk evaluation, 3) risk mitigation and contingency planning and 4) risk monitoring. Contract management 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.

There is not an objective or mathematical formula that can be used to identify or quantify the risk associated with a particular contract. Routine procurements of goods and services will have minimal risk, and will be treated accordingly. 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.

The table below provides examples of the various degrees of risks associated with specific procurements:

CONTRACT FACTOR	LOW RISK	HIGH RISK
COMPLEXITY	Landscaping Services	Software Development Services implementing new financial system or <i>permitting vendor access to Institution records or record systems containing category 2 or 3 information as described on the Data Security Office Website at https://utsacloud-public.sharepoint.com/Pages/Security/Security/PoliciesAndStandards/Standard-for-Data-Classification.aspx</i>
DOLLAR AMOUNT	\$500	\$5,000,000
PAYMENT METHODOLOGY	Firm Fixed Price	Cost plus contracts
EXPERIENCE OF INSTITUTION STAFF	Office Supplies	Outsourcing of Information Technology Functions
IMPACT TO PUBLIC OR INSTITUTION	Janitorial Services	Outsourcing of Debt Collection Services
TIME CONSTRAINTS OR CONTRACT DURATION	14 day delivery of paper	Implementation of new program to meet deadline of legislative mandate

At the beginning of the procurement phase, the Purchasing Office will conduct a preliminary risk assessment to make an initial determination about the level, type and amount of management oversight and resources required to plan and implement the procurement (including the contract).

Simply put, as the risk associated with a particular procurement increases, the level and degree of executive management's sponsorship, participation and oversight should be increased by a corresponding level. High risk procurements (including cost-plus contracts, outsourcing and complex software development procurements) should involve significant Institution executive management sponsorship, participation and oversight. A low risk contract, such as routine purchases of goods/services, does not typically require active participation of an Executive Sponsor or involvement from executive management.

Risk assessment is an ongoing process. For very complex, long-term contracts, risk may need to be reviewed and re-evaluated by (as applicable) the contract team, Program Staff, Executive Sponsor, Purchasing Office, or SMEs on a periodic 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 (including Standards 1, 21, and 22)

Chapter 7 - Contract Administration

2.2 Communications Plan

On any competitive procurement, the Purchasing Office should oversee and facilitate all information communicated to the contractor-community regarding the potential procurement opportunity.

For very complex significant procurements, the Purchasing Office should develop a plan to manage and control internal and external communication. After identifying internal and external stakeholders (Program Staff and other subject matter experts, oversight entities, etc.), the Purchasing Office, with the assistance of Executive Sponsor, Program Staff and others, should determine the type, content and frequency for reporting status.

2.3 Determining Procurement Method

The Best Value Statutes authorize Institutions to acquire goods/services (not professional services [except for UTMDACC]) 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 §73.115 \(MD Anderson\)](#)

[Texas Education Code §74.008 \(UTMB\)](#)

[Texas Education Code §51.9337](#)

[Texas Government Code, Chapter 2254](#)

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

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

The Purchasing Office, with the assistance of Program Staff and SMEs (as required), will base value estimates on best business practices, state fiscal standards, Applicable Laws and University Rules.

Multiple orders of goods/services issued under a contract, such job orders under a master agreement that are issued on an as-needed basis, 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](#)

2.3.2 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 are strongly encouraged within this range.
>\$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.

2.3.3 Competitive Procurement Exceptions

In limited circumstances, some purchases may not be subject to competitive procurement requirements, or they may not require completion of competitive procurement processes. These circumstances, such as those related to Exclusive Acquisitions and Exempt Procurements, are more particularly described below. Contracts completed by a GPO should, by nature, have already resulted from a competitive procurement, although the procurement may or may not have met all UT requirements (i.e. HUB). The Institution's use of GPOs should be completed in accordance with UT System requirements as described below.

An exemption from competitive procurement processes does not exempt the purchase from HUB requirements if the value of the purchase exceeds \$100,000.

2.3.3.1 Exempt Procurements. Certain goods and services are exempt from competitive procurement requirements as more particularly described in [APPENDIX 5](#), Goods & Services Exempt from Procurement Competition.

2.3.3.2 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.

2.3.3.3 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, a written exclusive acquisition justification (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 written exclusive acquisition justification 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 6.

Where can I go for more information?

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

[Texas Education Code §73.115 \(MD Anderson\)](#)

[Texas Education Code §74.008 \(UTMB\)](#)

[Texas Government Code §2155.067](#)

[Texas Government Code §2155.063](#)

[APPENDIX 4 – Sample Exclusive Acquisition Justification](#)

2.3.3.4 Purchases from Persons with Disabilities

Applicable Laws (including the Best Value Statues) require Institutions (except UTMDACC) to comply with Applicable Laws related to the Purchases from Persons with Disabilities program. Institutions must report any exceptions taken.

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.

Where can I go for more information?

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

[Texas Education Code §73.115 \(MD Anderson\)](#)

[Texas Education Code §74.008 \(UTMB\)](#)

[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 \(ref. also entire Chapter 122\)](#)

2.3.3.5 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 2.3.2](#)), 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 at [UT System Office of Business Affairs](#).

- 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 Premier, and the GPO has made a multiple award, the Institution should 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 Institution proposes to use a contract procured by Premier, the Institution should 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.*

- \$1.0 million for UTPB, UTRGV, UTT and UTHSCT;
- \$2.0 million for UTA, UTD, UTEP, UTSA; and
- \$3.0 million for UTAUS, UTHSCH, UTHSCSA, UTMB, UTSWMC, and UT System.
- \$5.0 million for UTMDACC

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 Not Necessary 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), 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:

- \$1.0 million for UTPB, UTRGV, UTT and UTHSCT;
- \$2.0 million for UTA, UTD, UTEP, UTSA; and
- \$3.0 million for UTAUS, UTHSCH, UTHSCSA, UTMB, UTSWMC, and UT System.
- \$5.0 million for UTMDACC

- **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.

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 3 – Summary of 2015 Procurement and Contracting Legislation

2.3.3.6 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 2.3.2](#)). 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.

2.3.4 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 located 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 \(Institutions except MD Anderson\)](#)

[Texas Education Code §73.115 \(MD Anderson\)](#)

[Texas Education Code §74.008 \(UTMB\)](#)

2.3.5 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.

2.3.5.1 Best Value Invitation for Bids (IFB)

The best value competitive sealed bid method uses the IFB solicitation document. The IFB 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 IFBs and determine best value to the Institution.

2.3.5.2 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 these templates [OGC Sample Docs](#) (UT Authentication Required).

2.3.5.3 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 IFB and the RFP formal solicitation methods is that negotiations are allowed under the RFP method, but not under the IFB. 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 these templates [OGC Sample Docs](#) (UT Authentication Required).

Where can I go for more information?

***Texas Government Code, Chapter 2254, Subchapter A, Professional Services
“Sample Documents” web page at OGC Contracting & Procurement Practice Group web site (UT Authentication Required)***

Formal Procurement Methods

Procurement Method	Use When	Advantages	Disadvantages
Best Value IFB	<p>Requirements for goods/services <u>must</u> 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 <u>made</u> 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 (> 50%); <u>however</u>, all criteria mandated by the Best Value Statutes <u>must be</u> considered.</p> <p>Does not permit negotiations.</p> <p>Does not encourage innovation.</p>
RFQ [Required by Applicable Laws for professional services.]	Selection is made based on qualifications of the professional in accordance with Subchapter A, Chapter 2254, Texas Government Code	Emphasizes the competency of the proposed contractors.	Contractor is <u>selected</u> before price is negotiated.
RFP	<p>When factors other than price <u>are</u> evaluated.</p> <p>Ability to negotiate is desirable.</p> <p>Vendor is <u>expected</u> 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 IFB.</p> <p>Evaluations are more complex and subjective than for an IFB.</p>

2.3.6 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 gage 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.

An RFI templates located at [OGC Sample Docs](#) (UT Authentication Required).

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.

Where can I go for more information?

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

[Texas Education Code §73.115 \(MD Anderson\)](#)

[Texas Education Code §74.008 \(UTMB\)](#)

[Texas Government Code, Chapter 2254, Subchapter A, Professional Services](#)

["Sample Documents" web page at OGC Contracting & Procurement Practice Group web site \(UT Authentication Required\)](#)

2.4 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. For such complex projects, the Purchasing Office will request Program Staff or SMEs (as applicable) to identify and document potential integration risks so that a strategy for mitigating or managing those risks may be developed.

2.4.1 Needs Assessment

The purpose of a needs assessment is to ensure the Project Team plans for the correct contract objective. A clear definition provided by Program Staff of the contract objectives and purpose will assist the contract management team in developing the SOW, preparing the solicitation, negotiating and drafting contracting documents, and verifying the performance of the contractor. 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 Project Team 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. Program Staff or SMEs (as applicable), with the assistance of the Purchasing Office, should document any 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 the Program Staff play a key role in planning and developing the SOW and during contract administration (including acceptance of deliverables and contract close-out).

2.4.2 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.

2.4.3 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.

2.4.4 Research for Competitive Solicitations

The Purchasing Office may assist Program Staff or SMEs with (1) 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, and (2) for significant and high-risk procurements, document the strengths, weaknesses, problems and the lessons learned in the interviews. The Purchasing Office or Program Staff may use the Internet 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 competitive 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.

While researching information for development of a competitive procurement, the Purchasing Office may wish to contact potential contractors to discuss the procurement. This is an acceptable practice as long as the Institution requests information from more than one contractor and advises prospective contractors up front that the Institution's interest at this point is strictly for research or estimating the necessary budget and that any formal requests for pricing or other information will be made through an open competitive procurement process. The request for information should not favor any potential respondents over others, but should identify the Institution's needs.

2.4.5 NOT UTILIZED

2.4.6 Cost Estimates

During the planning stage of the procurement, Program Staff should 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.

If necessary, Program Staff or the Purchasing Office 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 as described in Section 2.4.4.

2.4.7 Typical Lead Time for Procurement and Selection of Contractor

The table below is provided to assist Institutions and Program Staff in the procurement planning process. Procurement timeframes will vary significantly depending on the complexity of the procurement and the cooperation and responsiveness of the proposer.

The below timelines are for selection of a specific vendor/contractor and issuance of a purchase order. The timelines do not include the time necessary for negotiation and completion of a formal, bilateral contract (e.g. signed by UTSA and Contractor). If the Institution or contractor requires a formal contract, then the lead time will need to be adjusted.

Procurement Method	Typical Procurement Timeline
Informal	5 - 7 Days
Formal IFB	21 - 30 Days
Formal RFP/RFQ	30 - 45 Days
GPO	7 - 14 Days
EAJ	7 - 21 Days

To complete a procurement, contract formation and execution in a timely manner, Program Staff should plan as far ahead as possible for their business needs.

2.4.8 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.

2.4.8.1 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:

- 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.
- 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 DIR developed [project classification method](#), or one developed by 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.
- 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

2.4.8.2 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 using appropriated funds:

- 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.

2.4.8.3 Special Procurement Considerations for Technology Contracts

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

- 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 2.3.3.4](#) of this Handbook.
- 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 Contracting & Procurement Practice Group website.
- 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 IFB 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.
- 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 the UT 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)).

- 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) with appropriated funds, 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.

- Similar requirements apply if Institutions purchase or lease using appropriated funds 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.

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](#) 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, Title 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 – Project Management Practices Project Classification Method](#)

[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 Bulletin 2006-1 at OGC Contracting & Procurement Practice Group web site](#) (UT authentication required)

[OGC Contracting & Procurement Practice Group web site](#) (some areas require UT authentication)

2.5 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.

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 16 – Sample Contract Terms](#)

[Section 6.6 – Contract Terms](#)

2.6 Record Retention

Each Institution must retain in its records each contract entered into by the Institution and all contract solicitation documents related to the contract.

For contracts of goods and services exceeding the competitive limit, the Purchasing Office must maintain a central procurement file containing the relevant procurement information. For competitive procurements, the file must include all proposal responses, the proposal scoring sheet summarizing the scores for all proposals, the best value documentation for the successful proposal, the notice of award (if applicable), and the contract. If the goods/services were secured through use of a GPO, the file must contain GPO Contract Information, GPO Quotation(s) from supplier (suppliers if more than one), Copy of Purchase Order, HUB documents if not included in the GPO contract. If the goods/services were not competitively procured, the Purchasing Office will also maintain documentation evidencing the Institution's need for the goods/services, and the exclusive acquisition justification.

An Institution may destroy the contract and solicitation documents only after the seventh (7th) anniversary of the date: (a) the contract is completed or expires; or (b) all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents are resolved.

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 2.3.2](#) of this Handbook), after the Institution completes any required procurement planning activities, the Purchasing Office will coordinate the preparation of the solicitation document(s). Purchasing personnel involved with drafting the solicitation must be aware of Applicable Laws and University Rules related to the proposed procurement.

NOTE: If the Institution receives grant money to pay for goods/services, the Institution must consider the nature of the relationship with the resulting contractor. Will the relationship be a vendor relationship or a sub-recipient relationship? For guidance on this relationship determination See [OMB Circular A-133, Section 210](#). If the relationship will be that of a sub-recipient, then federal guidelines and cost principles must be followed. The Uniform Grant Management Standards published by CPA at <http://comptroller.texas.gov/procurement/catrad/ugms.pdf> provides additional guidance. If the relationship is a sub-recipient relationship, the contract will be handled by the applicable Research Service Center rather than by the Purchasing Office.

Where can I go for more information?

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

In addition, before Institution employees are involved in evaluating a discretionary procurement solicitation, Purchasing Office will obtain signed non-disclosure statements and conflict of interest statements from those employees. A *Sample Non-Disclosure Statement* is attached as [APPENDIX 7](#).

Where can I go for more information?

[APPENDIX 7 – 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 exceed \$100,000, 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 over \$100,000, 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.

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 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 may need to provide potential respondents with all appropriate background information to assist respondents' understanding of the procurement.

The solicitation should detail any relevant background data and work previously performed on which the anticipated SOW will build. Previously performed work should be made available to respondents during the solicitation phase of the procurement. The solicitation should also specify whether respondents may rely on the accuracy of any background data or work previously performed or whether the data or work is provided for informational purposes only. If provided for informational purposes only, notify respondents if they 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 a listing all of the required information that respondents must submit with their proposal. Incorporating the listing of required submittal information into one section will assist respondents with confirming that all required documentation is submitted. Additionally, any recommended or required proposal formats should be specified in the solicitation, such as page number limitations, size of paper, and number of 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 consider the following mandatory evaluation criteria to evaluate proposals for goods/services:

- 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”).
- 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.

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 including 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 \[including UTMB\]\)](#)

[Texas Education Code, §73.115 \(MD Anderson\)](#)

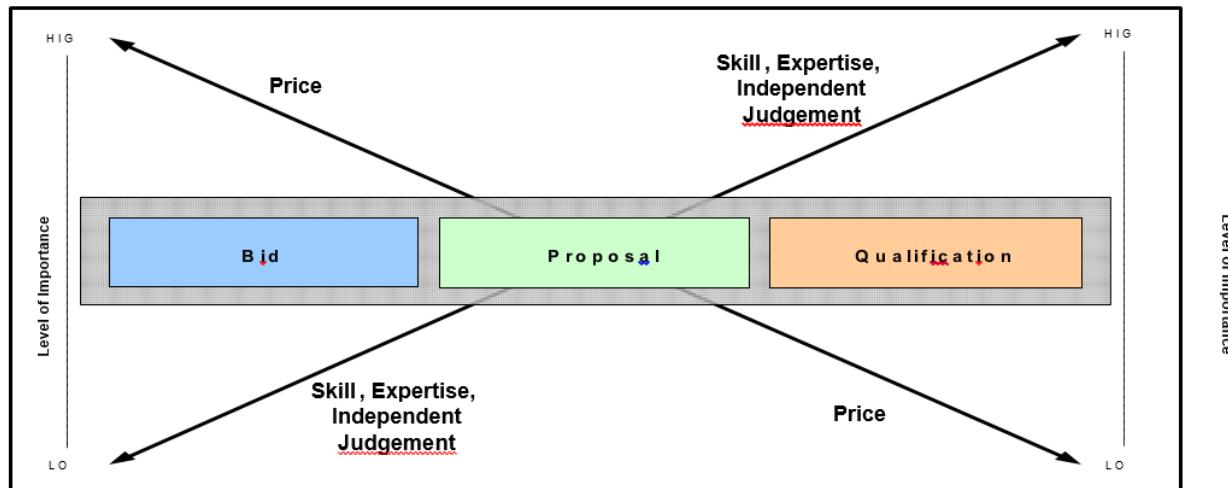
[Texas Education Code, §74.008 \(UTMB\)](#)

[CPA Vendor Performance Tracking System web page at Texas Comptroller web site](#)

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 for procurements that may exceed \$100K. 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 any minimum qualifications required for contractor. For example, the solicitation may 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 Statement of Work

The Statement 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: Avoid unneeded “extra” features that could reduce or eliminate competition and increase cost. Attempt to limit specifications to those that satisfy the necessary and intended purpose of the good or service. For procurements of goods, for example, the Institution may desire to identify at least three (3) commercially available brands, makes, or models (whenever possible) that will meet the Institution’s requirements.

FLEXIBLE: Avoid inflexible or narrow specifications which prevent the acceptance of a response that could offer greater performance for fewer dollars. For procurements of goods, for example, the institution may desire to 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. If required by the Institution, 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 may need to provide for inspection and testing. If so, 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.

3.6.4.12 Additional Considerations

Listed below are additional issues which members of the contract management team should consider 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 Institutions 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 \(including Standards 1, 21, and 22\)
“Scope of Work Issues” Training Presentation at OGC Contracting & Procurement Practice Group web site \(UT Authentication required\)**](#)

[**APPENDIX 16 – 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:
Cost Reimbursement	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 Note 1 below).
Cost Plus Incentives	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.
Fee For Service	Contracts where a fee <u>can be established</u> 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.
Firm Fixed Price	Contracts where a firm fixed price can be <u>established</u> 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.
Firm Fixed Price with Escalator	Contracts where a firm fixed price can be established for goods/services to be provided, including <u>longer term</u> 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.
Progress Payments	Contracts where the SOW is <u>completed</u> in phases or stages. Examples: Consulting services and construction.	Pre-established deliverables. Deliverables must be measurable (see Note 2 below).
Time and Materials with Fee Cap	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 <u>subject to</u> maximum fee cap. Also consider establishing fixed labor fees for specific units of labor such as "installation of 120 volt outlet."

Note 1: When including travel costs as an allowable expense within a contract, Institutions may reference the state CPA published [Travel Allowance Guide](#)

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 6.8 – Required Check of Vendor Hold Status

Section 7.4 – Invoices and Payments

CHAPTER 4

PUBLICATION OF THE SOLICITATION

4.1 Advertising

Institutions are not required by Applicable Laws to post solicitations to the Electronic State Business Daily (ESBD) (an Internet based website for posting state procurement opportunities). However, some Institutions have adopted policies or procedures requiring use of the ESBD. Institutions must comply with any University Rules related to use of the ESBD. The ESBD is available on the Internet, [ESBD website is http://esbd.cpa.state.tx.us](http://esbd.cpa.state.tx.us)

When marketing a competitive procurement, 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 (higher education, generally [including UTMB])

Texas Education Code §73.115 (MD Anderson)

Texas Education Code §74.008 (UTMB)

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. A *Sample Solicitation Announcement* is attached as [APPENDIX 8](#).

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

Where can I go for more information?

[APPENDIX 8 – Sample Solicitation Announcement](#)

4.3 Communication with Respondents

All communication with potential respondents should be made only through the purchasing office or the HUB office. The solicitation should provide only purchasing office and HUB office points of contact with acceptable forms of communication such as email and address. Although purchasing staff or HUB staff 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?

[Sample Solicitation Templates on “Sample Documents” web page of OGC Contracting & Procurement Practice Group web site \(UT Authentication required\)](#)

[OGC Contracting & Procurement Practice Group website](#)

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 may 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 with the solicitation as they become available.

Where can I go for more information?

[Sample Solicitation Templates on “Sample Documents” web page of OGC Contracting & Procurement Practice Group web site \(UT Authentication required\)](#)

[OGC Contracting & Procurement Practice Group website](#)

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 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.

The Purchasing Office should take written notes related to the questions asked by potential respondents for future reference. Certain conferences could be of such complexity that the Purchasing Office might consider recording the conference for future reference.

Sample Pre-proposal Guidelines are attached as [APPENDIX 9.](#)

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?

[Sample Solicitation Templates on “Sample Documents” web page of OGC Contracting & Procurement Practice Group web site](#) (UT Authentication required)

[OGC Contracting & Procurement Practice Group website](#)

[APPENDIX 9 –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?

[Sample Solicitation Templates on “Sample Documents” web page of OGC Contracting & Procurement Practice Group web site](#) (UT Authentication required)
[OGC Contracting & Procurement Practice Group website](#)

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 Guide

During the planning stage for the procurement the contract management team should develop an evaluation guide, which identifies the evaluation team, the detailed scoring matrix, the process for evaluation of responses and award of any contracts, and an anticipated evaluation schedule. With a well-developed evaluation guide, the evaluation team simply follows the guide to ensure a smooth process.

5.2 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 selected by Program Staff, with direction from the Purchasing Office and approval by executive management, as appropriate. 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 and facilitate the evaluation process. The evaluation team 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 most evaluation teams 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.

5.3 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 evaluation team 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 10](#).

Where can I go for more information?

[Chapter 3 – Preparing the Solicitation](#)

[APPENDIX 10 - Sample Proposal Score Sheet](#)

5.4 Responsive Proposals

Prior to opening proposals requiring HSPs, the HUB office will review the HSPs for compliance with HUB requirements. If an HSP 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 applicable Purchasing Office personnel, in coordination with Program Staff and the evaluation team, are 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 11](#).

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

Where can I go for more information?

[APPENDIX 11 - Sample Administrative Review Checklist](#)

5.5 Evaluation Team(s) Training

In advance of receiving responses, the evaluation team leader may 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. A sample document for Evaluation Team Guidelines and Purchasing Office Responsibilities is attached as [APPENDIX 12](#).

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 7](#).

The team leader 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 team leader 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.

Sample Evaluation Team Written Instructions are attached as [APPENDIX 13](#).

Where can I go for more information?

APPENDIX 7—Sample Non-Disclosure Statement

APPENDIX 12 – Evaluation Team Guidelines and Purchasing Office Responsibilities

APPENDIX 13 – Sample Evaluation Team Written Instructions

5.6 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 may want to re-review the solicitation for any unduly restrictive requirements.

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.

5.7 Proposal Evaluation

Once responses have been reviewed and found to be responsive by the purchasing office, the evaluation team leader 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. For example, if a response recommends the use of a software product one of the team members is not familiar with, the member should discuss the pros/cons of this software with a technical expert if the member is allowed to do so by the evaluation guide; otherwise, if not allowed to conduct independent conversations, all questions must be presented to the team leader, who 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 in accordance with the evaluation guide.

Once the evaluations are complete, the team leader will collect all of the evaluation score sheets and the responses. The team leader 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

team leader should conduct a meeting with all team members to discuss the situation to ensure the criteria was clear to all team members 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 10](#).

Where can I go for more information?

[APPENDIX 10 - Sample Proposal Score Sheet](#)

5.8 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 14](#).

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 should also use the CPA Vendor Performance Tracking System at http://comptroller.texas.gov/procurement/prog/vendor_performance 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 14 - Sample Reference Check Form](#)

5.9 Oral Presentations/Discussions

Oral presentations or discussions are conducted at the option of the Institution. If conducted, the solicitation should state approximately when oral presentations or discussions will occur. 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. A prepared script will ensure consistency. Since some respondents believe there is an advantage to the order in which they present, it is best to draw names for the presentation order. This will ensure impartiality of the process.

5.9.1 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:

Evaluation Scores - Scenario 1	Evaluation Scores - Scenario 2	Evaluation Scores - Scenario 3
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.

5.10 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. After consideration of all BAFO responses, the Institution may choose to reduce the number of respondents with which to negotiate to the competitive range.

5.11 Negotiations

Before negotiating with respondents, Institutions should closely review the terms of the solicitation to confirm that negotiation is permitted. The IFB 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.

5.11.1 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.

5.11.2 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 necessary, 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?

["Training" web page on OGC Contracting & Procurement Practice Group web site \(UT Authentication required\)](#)

[OGC Contracting & Procurement Practice Group website](#)

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.

5.12.1 Award Documentation

The Institution will document a best value award rationale and maintain the documentation in the contract file.

When discretionary procurement methods are utilized such, as an RFP or RFQ, best value is determined and documented utilizing a scoring matrix with weighted criteria that coordinates with Section 51.9335 of the Texas Education Code. A final matrix condensing the Evaluation Team's evaluations is created, and must be approved by the position level within the Purchasing Office that is authorized to approve the procurement. A summary and recommendation document is also utilized to describe the details of the discretionary procurement.

For non-discretionary procurements including IFBs, and exclusive acquisition and exempt procurements, the summary and recommendation document is generally utilized to describe the details of the procurement. A bid tabulation is also utilized to document the best value determination. IFBs are primarily weighted to criteria of cost, delivery, and ability to meet specifications. For straight-forward, low risk bids in which the bid tabulation clearly describes the reason for award, a formal summary and recommendation document may not be required, subject to the discretion of the Institution's Primary Procurement Officer. For an exclusive acquisition, the Exclusive Acquisition Justification Form (**ref. APPENDIX 6**) is also utilized to document the best value determination. The determination must be must be approved by the position level within the Purchasing Office that is authorized to approve the procurement.

In all procurements, an award rationale documenting the procurement methodology must be recorded in the electronic purchasing system (i.e. Peoplesoft, SciQuest).

5.12.2 Notifications

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

5.12.3 HSP

If the procurement resulted in an HSP that included subcontracting, the HUB office should be informed of the contract award in order to track all subcontracting associated with the contract.

5.12.4 Protest of Solicitation or Award

Any actual or prospective bidder, offeror, proposer, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest such grievance to the Institution's Purchasing Office. All protests will strictly adhere to the UT System Protest Procedures attached as **Appendix 15**, Protest Procedures.

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. Conflicts over contracts arise primarily from ambiguity in the SOW, specifications, or business obligations. 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. Program Staff should provide the person who drafts the contract with information related to the subject matter and concerns of the parties in enough detail for the drafter to (1) reasonably anticipate potential areas of disagreement and confusion, and (2) specifically address those areas in the contract. For major contracts, the contract drafter should be experienced enough to recognize any reasonably obvious "holes" in the subject matter and business obligations.

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 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. Or, 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:

- An Offer;
- An Acceptance (in strict compliance with the terms of the offer);
- Legal Purpose/Objective;
- Mutuality of Obligation (also known as the “meeting of the minds”);
- Consideration; and
- 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 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.

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 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.

6.2.6 Mutuality of Obligation

Mutuality of obligation is also known as a “meeting of the minds.” Mutuality of obligation refers to the parties’ mutual understanding of and assent to the terms of their agreement. The parties must agree to the same thing, in the same sense, at the same time. The determination of a meeting of their minds, and thus offer and acceptance, is based on the objective standard of what the parties said and did and not their subjective state of mind. Unexpressed subjective intent is irrelevant. In determining whether mutual assent is present, a court looks to the communications between the parties and to the facts and circumstances surrounding those communications. The offer must be clear and definite, just as there must

be a clear and definite acceptance of all terms contained in the offer. Where a meeting of the minds is contested, the determination of the existence of a contract is a question of fact. If a court determines that one party reasonably drew the inference of a promise from the other party's conduct, that promise will be given effect in law.

To be enforceable, the parties must have agreed on the essential terms of the contract. Full agreement on all contractual terms is the best practice and should be the norm. However, parties may agree upon some contractual terms, understanding them to be an agreement and leave other non-essential contract terms to be agreed upon later. Use caution when leaving contract terms to be agreed upon in the future because when an essential term is left open for future negotiation there is nothing more than an unenforceable agreement to agree. Such an agreement is void as a contract.

6.2.7 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.

6.3 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:

- Administrative provisions;
- Financial provisions;
- Risk allocation provisions;
- Scope of work (including deliverables); and
- Contract term, termination and dispute resolution provisions.

In certain contracts, such as a contract for consulting services or software-related technology, provisions related to Work product or intellectual property ownership rights are common.

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 OGC review (if required) 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 Standard Contracts](#)

[OGC Model Contracts and Agreements](#)

[OGC General Procedure Contract Checklist](#)

[Sample Solicitation Templates on "Sample Documents" web page of OGC Contracting & Procurement](#)

[Practice Group web site \(UT Authentication required\)](#)

[OGC Contracting & Procurement Practice Group web site](#)

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 any required OGC 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 Standard Contracts](#)

[OGC Model Contracts and Agreements](#)

[OGC General Procedure Contract Checklist](#)

[Sample Solicitation Templates on "Sample Documents" web page of OGC Contracting & Procurement](#)
[Practice Group web site \(UT Authentication required\)](#)

[OGC Contracting & Procurement Practice Group web site](#)

6.5 Form of the Contract

Evidence of an agreement or a contract may be documented in different formats, including a formal bilateral contract, a purchase order, or an exchange of correspondence. Regardless of title, if the agreement contains the required legal elements of a contract, then it is a contract.

As stated above, purchase orders are 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.

The method of contracting at Institutions usually takes the form of either a “four-corner” contract or a “layered” multi-document contract. 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. A “layered” contract means a contract that contains several documents that are contained in documents that are separate from the contract. A layered contract occurs, for example, when a purchase order resulting from a bid incorporates a contractor’s response to the bid. When reviewing a contract all terms and conditions should be reviewed, whether in one document or several documents.

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.

6.6 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 Contracting & Procurement Practice Group web site. 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 contract provisions that are either (1) essential and should be included in all contracts; or (2) are required depending on the scope of the contract; or (3) optional, but incorporating these provisions could be “best practice” depending on the complexity of the contract or specific facts and circumstances. The provisions below are labeled (1) or (2) in coordination with the above categories. *Sample Contract Terms* are attached in [APPENDIX 16](#).

Consult with the Institution's Business Contracts Office or Legal Office regarding additional contract terms that may be required by Applicable Laws and University Rules for particular situations.

1) Essential Provisions:

- Breach of Contract Claims
- Contractor's Obligations
- HUB HSP Requirements for goods/services exceeding \$100K
- Contract Amount; Payment Terms
- Default and Termination
- Ethics Matters; No Financial Interest (Particularly on Procurements Exceeding the Competitive Limit)
- Governing Law
- Loss of Funding (Dependent on Funding Source and Length of Term)

2) Payment of Debt or Delinquency to the State

- State Auditor's Office
- Scope of Work
- Schedule
- Term of Contract
- *Texas Family Code* Child Support Certification
- **Essential Provisions, Dependent on Scope and Negotiated Contract Terms**
- Access by Individuals with Disabilities (EIR)
- Adherence to University Rules
- Confidentiality and Safeguarding of University Records; Press Releases; Public Information
- Contractor Recordkeeping
- EIR Environment Specifications
- External Terms
- FERPA Compliance
- Indemnification
- Insurance
- Limitations
- Ownership and Use of Work Material
- Payment Card Industry Standards
- Relationship of the Parties
- **Responsibility for Individuals Performing Work; Criminal Background Checks**
- **Tax Certification**
- Technology Security Requirements
- Use of Marks

3) Best Practice Provisions

- Assignment and Subcontracting
- Binding Effect
- Captions
- Enforcement
- Entire Agreement; Modifications
- Force Majeure
- Group Purchasing Organization (GPO)
- Limitation of Liability

- Notices
- Order of Precedence of Contract Documents
- Quality Assurance
- Severability
- State of Texas Computer Equipment Recycling Program Certification
- Survival of Provisions
- Undocumented Workers
- Waivers

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 \(including Standards 1, 21, and 22\)](#)

[OGC Standard Contracts](#)

[OGC Model Contracts and Agreements](#)

[OGC General Procedure Contract Checklist](#)

[Sample Solicitation Templates on "Sample Documents" web page of OGC Contracting & Procurement Practice Group web site](#) (UT Authentication required)

[OGC Contracting & Procurement Practice Group web site](#)

[APPENDIX 16 – Sample Contract Terms](#)

6.7 Authority to Sign Contracts

Signatures of delegates with written authority to bind the Institution are the way through which a contract usually becomes a binding obligation of the Institution. This section describes how that delegated authority is established, and the responsibilities associated with holding the delegation.

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

6.7.1 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](#) 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](#)

[Texas Government Code §2261.254](#)

[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](#)

[Contract Review Procedures at OGC Contracting & Procurement Practice Group web site](#)

[OGC Contracting & Procurement Practice Group web site](#)

6.7.2 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.

6.7.2.1 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

6.7.2.2 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 OGC, 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 Business Contracts Office or Legal Office directly.

6.7.2.3 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\(a\) & \(q\)](#)

[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](#)

[UT System Administration Delegation Signature Authority Form for Expenditure of Funds](#)

[OGC General Procedure Contract Checklist](#)

6.8 Required Check of Vendor Hold Status

Not earlier than the seventh (7th) 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).

In addition, prior to awarding a federally-funded contract with a value of 25,000.00 or more, UTSA must verify the contractor is not registered on the federal list of Parties Excluded from Federal Procurement Programs. The verification should be done through UTSA’s Visual Compliance program unless the Office of the Vice President for Research provides direction to utilize another verification method. A copy of the verification must be included in the procurement file.

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](#)

CHAPTER 7

CONTRACT ADMINISTRATION

Contract administration and management 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.

Contract administration and oversight includes the following four (4) processes:

- Planning
- Monitoring Performance
- Payment Approval
- Contract Close-out

Depending on the specific issues and circumstances surrounding a contract, contract administration may also include one or more of the following three (3) processes:

- Change Management
- Dispute Resolution
- Termination

The processes referenced above are all discussed in more detail in this Chapter.

7.1 Planning and Importance of SOW

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 ensure appropriate resources are available for the contract administration team to perform essential contract administration processes.

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.

Effective contract administration begins before the solicitation is issued, with the development of a clear and concise SOW. The SOW is the roadmap for contract administration.

To properly plan for contract administration, the Program Staff should thoroughly understand the business components of the solicitation and the business requirements and obligations within 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 any 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

"Scope of Work Issues" Training Presentation on OGC Contracting & Procurement Practice Group web site (UT Authentication required)

7.1.2 Communication

Communication is a critical factor in successful contract administration. It is essential for contract administrators to (1) understand the essential provisions of the contract, (2) communicate contractual obligations to appropriate relevant stakeholders involved, and (3) monitor contract performance over the entire term of the contract.

7.1.3 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 necessary access to useful information in past and present contracts.

7.1.4 Master Contract Administration File

Ideally, Program Staff administering the contract should maintain a contract administration file. The contract administration file can be highly beneficial when responding to questions and resolving contract issues, if any. Throughout the life of the contract, the contract administration file should include the following:

- A copy of the current contract, all amendments, and all other documents incorporated into the contract by reference;
- Certain prior contracts with the same contractor if those contracts offer valuable historical data;
- If the goods/services were competitively procured, contractor's proposal.
- A list of contractor's work product deliverables required to be completed by Contractor.
- An inventory of Institution furnished property or services;
- An inventory of all Institution information required to be furnished to contractor under the contract;
- A copy of the post-award conference summary, if conducted;
- A copy of relevant correspondence related to the contract;
- Contractor work product data and report submittals;
- A copy of any 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 required by the contract;
- Documentation of any critical meetings with contractor;
- Documentation of any critical Institution internal meetings related to the contract;
- Documentation of deliverables completed and contractor work product submittals required under the contract;
- A copy of all contractor invoices and supporting documentation, including information regarding prompt payment discounts, contract deductions and fee adjustments;
- Copies of any contract audits; and
- Copies of the HSP and revisions, if any
- Copies of HUB Progress Assessment Reports, if any. (HUB Progress Assessment Reports must also be maintained by the HUB Coordinator)

Note: The Purchasing Office must also maintain a central procurement file for competitive solicitations containing the relevant procurement information as described in Section 2.6.

7.1.5 Risk Management

To help manage contract risk for complex major contracts, the Institution should complete a preliminary risk analysis 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 personnel to assist with the contract management process.

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 major contract. Effective risk analysis helps focus contract monitoring resources on contractors with the highest risk of noncompliance.

7.1.5.1 Assessing Risk in Procurement Methodology and Contract Establishment

Identifying the risk associated with a particular procurement project typically includes a subjective analysis based on professional expertise and experience. The nature and level of risk associated with each procurement can vary widely, and depends largely on the scope of work and complexity of services. [APPENDIX 17](#) contains guidelines for establishing the risk that may be associated with a particular procurement project.

7.1.5.2 Assessing Risk in Contract Administration.

Assessing risk in a contract does not end with execution of the contract, but can continue through contract administration. Depending on the complexity of the contract, analyzing risk during contract administration can be a dynamic process that may need to be updated periodically to reflect the actual results of the contractor's performance. 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. For example, if a contractor has fallen significantly behind schedule in delivering goods/services, the level of contractor monitoring should be updated to indicate that elevated risk. Likewise, if a contractor is well ahead of schedule in delivering goods/services, the contract monitoring program should be updated to indicate that lower level of risk. Analyzing risk factors in contract administration is primarily related to assessing 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; and
- Contractor's experience performing the specific work.

7.1.5.3 Sample Risk Assessment in Contract Administration.

For complex major contracts, the Institution might consider the benefit of quantifying the risks associated with a contract. One method of quantifying the risks is to assign weights to each of the significant risk factors that have been identified. 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.

When rating a contractor on risk factors, consider using a three-point scale, where 3 is high risk, 2 is medium risk and 1 is low risk. In the example below, the level of necessary contract administration is assessed using risk factors such as (1) contract dollar value, (2) contractor's past performance, and (3) contractor's experience. The below chart a simple example for illustration purposes only. When a contract dictates a quantifiable contract administration assessment, the institution may choose to have more than three risk factors.

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 = 1.7
#2	\$75K	1	.2	New to type of work	3	1.5	New – no findings	1	.3	.2 + 1.5 + .3 = 2.0
#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 = 2.3

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. In this particular scenario, safety is the most important criteria (weight) used to determine the level of necessary contractor monitoring during the contract term.

7.1.6 Summary of General Contract Management Responsibilities

Generally, Program Staff are tasked with primary contract administration and any reporting or other necessary actions following contract formation. On contracts developed from competitive solicitations, the Purchasing Office must include Program Staff in the development of the contract and use reasonable efforts to assure Program Staff understand the importance of their involvement in the following contract development roles. These roles directly impact the efficiency of contract administration, and can include:

- Developing the contract management team.
- Participating in developing the solicitation and drafting the sample contract.
- Coordinating with the Business Contracts Office, the Legal Office, or OGC, 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.

- Designation of contractor's official point of contact.
- Assuring the proposal from the awarded Contractor meets the intended requirements, in accordance with the solicitation.
- Assuring the developed contract meets the intended requirements, in accordance with the solicitation.
- Communicating with contractor when applicable and relevant Institution departments.

In addition, the Purchasing Office or (as applicable) the Business Contracts Office should use reasonable efforts to assure Program Staff understand the importance of their involvement in the following contract monitoring and administration roles, particularly on complex contracts.

- Serving as the Institution's representative to the contractor for operational aspects of the contract.
- Consulting with the HUB office regarding HSP changes, Progress Assessment Report submissions and HUB reporting.
- Facilitating any necessary amendments to the contract to be completed and documented by either the Purchasing Office or the Business Contracts Office.
- Managing any Institution property (including computers, telephones, equipment, furniture, and identification badges) used by contractor when performing its duties and obligations under the contract.
- Identifying and resolving general issues with contractor in a timely manner.
- Identifying and contacting the Purchasing Office or the Business Contracts Office in a timely manner regarding any significant disputes with contractor.
- Maintaining appropriate contract administration records (see Section 7.1.4).
- Documenting significant contract events.
- Monitoring contractor's progress and performance of the SOW to ensure goods/services conform to contract requirements.
- Inspecting and approving the final goods/services. Approval should be documented in writing.
- Monitoring the Institution budgeting and accounting process to ensure sufficient funds are available to pay contractor.
- Verifying accuracy of invoices and authorizing payments consistent with contract terms.
- Performing contract close-out process, including ensuring the contract file contains all necessary contract administration documentation.

7.1.7 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 Purchasing Office should identify a single point of contact from the Program Staff that will facilitate (or approve) business operation decisions and facilitate the contract administration process. For complex contracts, the Program Staff representative, in consultation with the Executive Sponsor and the Purchasing Office, may need to assign roles and responsibilities to each member of the Project Team for certain tasks listed in Section 7.1.6.

NOTE: The Purchasing Office should establish training for Program Staff that includes clear instructions that Program Staff do *not* have authority to:

- Instruct contractor to start work before the contract is fully executed;
- 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, Program Staff who take these actions are acting outside the course/scope of their employment.

7.1.8 Post Award Conference

For complex service contracts, the Institution may desire to 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 can ensure that contractor personnel who were not involved in the procurement, but will be responsible for contract administration, understand the contract requirements. A post-award 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 service contract will require a formal post-award conference, and post-award conferences for procurements of goods may only be necessary for long-term master agreements with scheduled or on-going needs. However, for most service contracts 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 service contracts, a telephone call by a member of the Program Staff to contractor may be sufficient.

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

- Type of contract;
- Level of risk associated with the contract;
- 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.

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.

For complex contracts, the Institution should consider the benefit of using a contract monitoring worksheet. A *Sample Contract Monitoring Worksheet* is attached as [APPENDIX 18](#).

7.2.1 Monitoring Program

Most contracts will not 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?
- Were the invoiced good/services used by contractor to fulfil the contract?
- 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?

On cost reimbursement contracts, 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*.

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 highly complex or have a very 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.

7.2.3.2 Desk Review

A desk review includes a review of reports submitted by contractor to the Institution. A desk review compares contractor's actual performance against contract requirements to confirm contractor is performing in accordance with the contract requirements. Depending on the contract, a desk review may also include comparing:

Contractor's actual expenditures to the Institution-approved budget to confirm contractor is complying with the approved budget.

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.

Contractor's reports to reports from other contractors performing similar work.

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.*

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.

7.3 Contract Reporting Obligations

Contract reporting obligations include contractor reports to the Institution contract administrator. Depending on the type of contract, reporting obligations can also include (1) Institution contract administrator reports to executive management, and (2) Institution reports to other state agencies.

There are generally three report types: Status Reports, Activity Reports, and Vendor Performance Reports. All serve useful functions, particularly for long-term contracts or complex service contracts.

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

Upon termination or expiration of a contract, an Institution should consider the benefit of filing 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 Program Staff believe that the invoice exceeds contractor's progress, the Program Staff 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 6.8](#) 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. The Purchasing Office or Business Contracts Office staff facilitating any 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 Material 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 change to the scope of the solicitation and may not be allowed because the revised scope was not originally subjected to fair competition. In defining a material change, a good question to ask is whether the original solicitation responses would have been significantly different if the proposed changes to the SOW were included in the original solicitation.

Material changes to the SOW are not measured by the number of changes made to the original specifications. Rather, material 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, 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.

To permit a material change as described above 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 material changes to the contract SOW. The specific method of competition may vary based on the type of goods/services needed.

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. Depending on the impact or significance of a particular substantive change, the change may need to be considered a material change as defined in Section 7.5.1. 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:

- Accelerate the delivery schedule;
- Direct that the work under the contract be performed in a manner that differs from the contract requirements;
- Delay accepting or rejecting deliverables without contractual basis;
- Delay reviewing invoices and approving payment contractual basis; and
- Substantively 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 substantive, significant 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, Program Staff must contact the Purchasing Office or Business Contracts Office (as applicable). The Purchasing Office or Business Contracts Office will generally coordinate with or defer to the Institution's legal counsel on any request for contract termination.

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; all 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 procedure. For complex contracts, however, the process 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.

Where can I go for more information?

[Section 2.5 – Records Retention](#)

VERSION HISTORY

Release/ Revision Date	Contract Management Handbook Version	Description
February 26, 2016	Original OGC Draft	Contract Management Handbook
January 13, 2016	Version 1 for Posting	Contract Management Handbook
January 25, 2016	Version 2 for Posting	Contract Management Handbook

APPENDICES

APPENDIX 1

CONTRACT MANAGEMENT BEST PRACTICES MATRIX

COMPONENT	POOR	AVERAGE	BEST PRACTICE
Processes	<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 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 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>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>
Organization	<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 in the development or finalization of the contract process</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>Project Team member 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 Project Team members.</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>Project Team members 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>
Technology	<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</p> <p>Amendments can be approved, uploaded, and tracked online</p>

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

APPENDIX 2
UTSA PROCUREMENT TRAINING AND CERTIFICATION PROGRAM
(SEE ATTACHED 6 PAGES)

APPENDIX 3

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

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

September 23, 2015 Revised

HB 1295 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.

APPENDIX 4
SUMMARY OF UT PROCUREMENT GUIDELINES
(SEE ATTACHED PAGE)

UT Procurement Guidelines – Effective November 1, 2015 (Bid, Quote & Proposal Requirements for Goods & Services)

Contact Value or PO Amount	Informal Bid	Formal Bid/Proposal (ITB/RFP)	State Contract (DIR/TXMAS/Other)	GPO (Alliance/Premier)	GPO (E&I, TCPN, Other)	Exclusive Acquisition Justification (EAJ)	BOR Approval Requirement	Reporting Requirement
<\$15,000	NA	NA	One (1)	One (1)	One (1)	NA	NA	Transparency Report
\$15,000 - \$50,000	Three (3)	NA	One (1)	One (1)	One (1)	One (1)	NA	Transparency Report
\$50,000 - \$1M	NA	ITB/RFP	Three (3) ¹	One (1)	Three (3) ¹	One (1)	NA	Transparency Report LBB Report ³
>\$1M	NA	ITB/RFP	Three (3) ¹	Alliance – One (1) Premier – Three (3) ¹	Three (3) ¹	One (1)	Yes ²	Transparency Report LBB Report ³ BOR Quarterly Report
>=\$10M								Notify Dr. Kelley

¹ Quote/Proposal Notes

- If only two suppliers in a category, document & proceed
- If only one supplier in a category:
 - EAJ not required for Alliance, Premier, E&I, DIR, TXMAS
 - All other GPO contracts:
 - Confirm & document that valid procurement was completed, or
 - Complete EAJ

² Board of Regent Approval Notes

- Current exemptions under Regents Rule 10501 apply
- Proposed thresholds for Group Purchase exemption:
 - Tier I - \$1.0M (UTPB, UTRGV, UTT, UTHSCT)
 - Tier II - \$2.0M (UTA, UTD, UTEP, UTSA)
 - Tier III - \$3.0M (UTAUS, UTHSCH, UTHSCSA, UTMB, UTSWMC, UTMDA, UT System)

³ Legislative Budget Board Reporting Requirements		Fund Source	Threshold	Timing	Attachments	Attestation
Major Info Systems - Institutions and Higher Ed > \$1 million (Sec 2054.008, Gov. Code)		All	\$1M	10 days after execution	Not Required	No
Professional Services > \$14k (Sec 2254.006, Gov. Code)		All	\$14,000	10 days after execution	Not Required	No
Purchases or Sales > \$50k (Sec 7.04(b), Article IX, GAA)		Appropriated	\$50,000	Monthly	Not Required	No
Purchases > \$10 million (Sec 7.12, Article IX, GAA)		Appropriated	\$10M	10 days after execution	Not Required	Yes
Non-competitive purchases > \$1 million (Sec 7.12, Article IX, GAA)		Appropriated	\$1M (EAJ)	10 days after execution, but 3days prior to payment	Not Required	Yes
Emergency purchases > \$1 million (Sec 7.12, Article IX, GAA)		Appropriated	\$1M (EAJ)	10 days after execution, but 3days prior to payment	Not Required	Yes

APPENDIX 5

GOODS AND SERVICES EXEMPT FROM PROCUREMENT COMPETITION

THE UNIVERSITY OF TEXAS AT SAN ANTONIO
PURCHASING OFFICE OPERATING PROCEDURES

ISSUED DATE: 10/21/2008
REVISED DATE: 06/27/2012

GOODS AND SERVICES EXEMPT FROM COMPETITION

1. General Policy

UT System Policy #UTSI59 states that the primary procurement officer of each institution and System Administration will promulgate procedures to facilitate and expedite the purchasing function. Before entering into a contract, The University of Texas at San Antonio (UTSA) requires all purchases comply with the *Rules and Regulations* of the Board of Regents of the System and all U.T. System and UTSA policies and procedures.

Chapters 771 and 2155, *Government Code*, the Texas Comptroller's Office *State of Texas Procurement Manual* ("Procurement Manual") and the Texas Comptroller's Office *State of Texas Purchase Policies and Procedures Guide* (Comptroller Guide) expressly exempt certain purchases from competitive procurement requirements. In addition, UTSA has been determined that there are commodities and services purchased by UTSA users on a regular or continuing basis where competitive procurement methods are not practical or do not add value. Therefore, the goods or services listed below may be purchased without undertaking a competitive procurement process and without the need for a sole source justification.

2. Professional Judgment

Notwithstanding this policy, UTSA departments and departmental purchasers ("User(s)") should utilize competitive procurement processes for the goods or services listed below any time the User determines a competitive procurement to be in the best interest of UTSA.

UTSA Users should always use their best professional judgment and utilize ethical practices when selecting a vendor.

3. HUB Subcontracting Requirements

With limited exceptions, purchases to a vendor for goods and services with an expected value of \$100,000 or more require the vendor to provide a Historically Underutilized Business ("HUB") Subcontracting Plan documenting that the vendor (i) has utilized its best efforts to select HUBs as subcontractors and will use the documented subcontractors in completion of the purchase; or (ii) will perform all services under the purchase without subcontracting. *Therefore, prior to completing any exempt procurement listed below that could reasonably be expected to exceed \$100,000, the User must contact UTSA's Historically Underutilized Business Manager to ensure compliance with all HUB requirements.*

4. Exempt Procurements:

- Purchases of publications directly from the publisher ¹
- Subscriptions; allowable membership fees; training conference registration fees; allowable accreditation and professional license fees and renewal fees ²
- Goods purchased by UTSA for subsequent retail sale by a UTSA auxiliary enterprises (for example, items for the Institute of Texas Culture's gift shop) ³
- Travel Expenses reimbursed under Texas Comptroller's *State of Texas Travel Allowance Guide*
- Interagency Cooperation Agreements (but not Inter-local Cooperation Agreements) ⁴
- Original Existing Artwork
- Artists commissioned to complete art projects for UTSA⁵
- Performances by theater groups or entertainers where UTSA pays the fee for the performance ⁶
- Museum exhibits where UTSA pays the exhibit fee ⁷
- Demonstration and Speaking Fees ⁸
- Hotels and venues for UTSA sponsored events, including development activities, when a state venue is not available ⁹
- Allowable U.S. Postal Service postage (excluding courier and overnight delivery services) ¹⁰
- Water and Electric Services provided by a regulated public utility, so long as those services are not deregulated
- Allowable advertisements, including advertisements related to UTSA marketing initiatives, that are placed in written publications, on billboards, in radio or television broadcasts, and in other multimedia venues ¹¹
- Catering Services selected from University's approved list of catering providers in accordance with University's recommended procedures for selection of catering services
- Travel transportation tickets purchased in accordance with University's procedure on the "[Purchase of Travel Transportation Tickets from Sources other than System-Contracted Travel Agencies](#)" listed as Attachment 1 to this Policy.
- Library books, periodicals, subscriptions, educational databases, and other related library materials, purchased by Library or on behalf of the Library
- Any other purchase expressly exempted from competitive purchasing requirements by State law, regulation, or code

¹ Section 2155.139(a), TEX. GOV. CODE

² Texas Comptroller of Public Accounts, *Expend It* web page at <https://fmx.cpa.state.tx.us/ftn/pubs/purchaselindex.php>

³ 2155.141, TEX. GOV. CODE

⁴ Chapter 771, TEX. GOV. CODE

⁵ As approved by UTSA Public Art Commission.

⁶ Joint sponsorship events completed in accordance with Section 9.37.VIII of University's Handbook of Operating Procedures are not considered procurements.

⁷ Id.

⁸ Texas Comptroller of Public Accounts *Expend It* web page

⁹ Sections 2113.001 and 2113.106, TEX. GOV. CODE

¹⁰ Texas Comptroller of Public Accounts *Expend It* web page

¹¹ Texas Comptroller of Public Accounts *Expend It* web page

ATTACHMENT 1

TO APPENDIX 5

PURCHASE OF TRAVEL TRANSPORTATION TICKETS FROM SOURCES OTHER THAN SYSTEM-CONTRACTED TRAVEL AGENCIES

Purpose. This policy establishes the method to purchase travel transportation tickets directly related to attendance at official UTSA functions and programs from sources other than The University of Texas System system-wide travel agency contracts [Contracted Travel Agents](#).

2. Limitation. [This policy only applies to the purchase of transportation tickets](#). This policy does not apply to the purchase of travel-related services, such as travel scheduling, travel advising, or travel booking and arrangement services. Travel services must be secured through the [Contracted Travel Agents](#) or through competitive procurements facilitated by the Purchasing Office.

3. Best Value. When purchasing transportation tickets, UTSA departments must ensure that UTSA receives best value in accordance with Section 51.9335 of the *Texas Education Code*, which is summarized in the note below.¹ UTSA departments must document in writing the reason for the best value selection, and maintain the documentation in accordance with UTSA's Records Retention policies.

4. Review and Evaluation of Transportation Ticket Sources.

4.1 Minimum Requirement of Three (3) Sources. Prior to purchase of a transportation ticket, UTSA departments must review transportation ticket prices from at least three (3) sources.

4.2 Review of Contracted Travel Agencies & HUBs.

4.2.1 General Requirements. When reviewing transportation ticket sources and prices, UTSA departments must include in their review at least two (2) quotes from Historically Underutilized Businesses ("HUB(s)"), one of which should be from a Contracted Travel Agent which is a HUB. If it is not possible for the UTSA department to receive a quote from each of these types of sources, the UTSA department must document the reason(s) in writing and place the documentation in the procurement file. Questions about the [UTSA HUB Program](#) should be directed to the HUB Program Manager at 458-6491.

4.2.2 Additional HUB Requirements for Purchases over \$100,000. Prior to proceeding with any transportation ticket purchase that could reasonably be expected to exceed \$100,000, the UTSA department must contact UTSA's Historically Underutilized Business Manager at 458-6491 to ensure compliance with all [HUB requirements](#).

4.3 Alternative Ticket Sources. After completion of the review described above, the UTSA department may evaluate quotes from commercial consolidators, other travel agencies, or directly from the transportation provider (collectively, "Alternative Ticket Sources"). If the department is able to secure best value from an Alternative Ticket Source, the department may proceed with purchasing the tickets from the Alternative Ticket Source.

¹ When determining best value, Section 51.9335 of the *Texas Education Code* requires that UTSA departments consider (1) purchase price; (2) reputation of the vendor and of the vendor's goods or services; (3) quality of the vendor's goods or services; (4) the extent to which the goods or services meets UTSA's needs; (5) vendor's past relationship with UTSA and/or components of UT System; (6) long term cost to UTSA of acquiring the vendor's goods or services; and (7) other relevant factors that a private business entity would consider in selecting a vendor.

5. Required Documentation for Purchase from Alternative Source. If a department purchases a ticket from an Alternative Ticket Source, the department must secure and maintain the following documentation:

- (i) quotes and related information secured from Contracted Travel Agent(s), HUBs, and other transportation ticket providers in accordance with Paragraph 4;
- (ii) quotes and related information secured from Alternative Ticket Source(s);
- (iii) written best value determination explaining why the selected source provided the best value to UTSA.

Prior to receiving approval of any payment request under this policy, the UTSA department must provide UTSA's Disbursements & Travel Services Department with verification of the department's adherence to this policy. Verification must comply with procedures established by the Disbursements & Travel Services Department. FAILURE TO PROVIDE THE REQUIRED VERIFICATION MAY RESULT IN A REJECTED REQUEST AND NOTIFICATION TO THE APPLICABLE VICE PRESIDENT'S OFFICE.

APPENDIX 6

EXCLUSIVE ACQUISITION JUSTIFICATION FORM

(SEE ATTACHED 5 PAGES)

APPENDIX 7

SAMPLE NON-DISCLOSURE STATEMENT

[NOTE: THIS document is aN EXAMPLE and iS intended FOR SOLELY FOR general information.]

The University of Texas _____

NON-DISCLOSURE STATEMENT

Procurement of _____

Participant Name and Title: _____

Team Leader _____ :

- I am acting at the request of The University of Texas _____ (“University”) as a participant in the development and/or award of a contract in connection with the subject procurement. By signing below, I affirm the following:
- I have not been the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, service, or any other form of compensation from or in connection with any potential vendor.

Note any exceptions: _____

- I will not disclose or otherwise divulge any information pertaining to the contents or status of this procurement and its development to anyone other than the team leader or other team members without prior authorization from the team leader.
- I agree to perform any and all tasks related to the solicitation in an unbiased manner, to the best of my ability, and with the best interest of University paramount in all decisions.
- I understand that, prior to the signing of a contract resulting from this solicitation or a decision by UTS not to award such a contract, all information pertaining to the development of or evaluation of the responses to the solicitation is confidential. Prior to such a decision, I will not discuss any such information with anyone other than relevant [institution] staff or [institution’s] procurement, legal, and/or management staff. I will take all steps necessary to protect the confidentiality of any response or offer in my possession during this period of time.
- I will promptly notify the team leader of any event or circumstance that may affect the accuracy of this statement.

Signature & Date

APPENDIX 8

SAMPLE SOLICITATION ANNOUNCEMENT

Solicitation Announcement

Date: < > [IFB/RFP] No.: < > Class < > Item < >

The <INSTITUTION NAME> will be publishing an/a [Invitation for Bids/Request for Proposals] for <enter goods/services description> at <service location(s)>.

[Bid/Proposal] forms and specifications for these [goods/services] will be furnished to any company desiring to submit a [bid/proposal]. To request a solicitation package, please fill out the information below and return to the address, scan to e-mail or fax number indicated.

To ensure that you receive the solicitation package in a timely manner, please return the following request to <INSTITUTION NAME> by <DATE>.REQUEST FOR SOLICITATION:

Vendor ID No.	
Company Name:	
Company Address: (Include city, state, ZIP)	
Contact Name:	
Telephone No.:	
Fax No.:	
Email:	

Return completed form to:

<INSTITUTION NAME
ADDRESS
EMAIL
FAX NO.
CONTACT NAME>

NOTE: IF YOU FAX OR EMAIL A REQUEST DO NOT MAIL ORIGINAL.

APPENDIX 9

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 attendees 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 10

SAMPLE PROPOSAL SCORE SHEET

[NOTE: THIS DOCUMENT IS A SAMPLE AND IS NOT AN OGC STANDARD FORM OR TEMPLATE.]

THIS DOCUMENT IS INTENDED AS GENERAL INFORMATION AND AS AN EXAMPLE ONLY.]

PROPOSAL SCORE SHEET

RESPONDENT: _____

RFP NO. _____

TOTAL SCORE: _____
(out of _____ [Option: 100] possible points)

Threshold Criteria:

YES / NO Ability of University to comply with Laws regarding HUB

YES / NO Ability of University to comply with Laws regarding Persons with Disabilities

Scored Criteria:

Score	Points Allotted	Evaluation Criteria
_____	_____	Cost of Goods/Services
_____	_____	Reputation
_____	_____	Quality of Goods/Services
_____	_____	Extent to Which Goods/Services Meet University Needs
_____	_____	Past Relationship with Respondent
_____	_____	Total Long Term Cost
_____	_____	[Option:] Use of Material in Construction or Repair to Real Property that is not Proprietary to a Single Vendor unless University provides Written Justification for Use of Unique Material Specified
_____	_____	[Option:] List any other criteria added by University that private business would consider
_____	_____	[Option:] Exceptions to Terms and Conditions
_____	_____	= Total [Option: 100]

APPENDIX 11

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	<input type="checkbox"/>	<input type="checkbox"/>
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"/>

Yes No

SOLICITATION RESPONSIVE

--	--

Revised 01/08/2016

APPENDIX 12

EVALUATION TEAM GUIDELINES AND PURCHASING OFFICE RESPONSIBILITIES

These are general guidelines for Institutions to use 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 (2 copies for each member) 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.

Hand out evaluation package to each member. Package includes:

Evaluation Team Written Instructions (see [APPENDIX 11](#)).

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).

Pencils

Review the Written Instructions with the team (see [APPENDIX 11](#)).

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.

APPENDIX 13

SAMPLE EVALUATION TEAM WRITTEN INSTRUCTIONS

[NOTE: THIS DOCUMENT IS A SAMPLE AND IS NOT AN OGC STANDARD FORM OR TEMPLATE.
THIS DOCUMENT IS INTENDED AS GENERAL INFORMATION AND AS AN EXAMPLE ONLY.]

_____, 20____

MEMORANDUM

TO: Proposal Evaluation Team:
[List Evaluation Team Members]

FROM:

SUBJECT: Request for Proposal (RFP) - Selection of Vendor to _____ for The University of Texas
_____, RFP No. _____, issued _____, 20_____

[NOTE: This is only a sample and may be revised by each UT institution, as appropriate.]

In response to the RFP, The University of Texas System received proposals from the following Respondents:

_____;

_____;

_____; and,

_____.

Under cover of this memo, I am forwarding one (1) copy of each proposal received in response to the RFP to each member of the Proposal Evaluation Team for review and evaluation. I have also enclosed one (1) copy of the RFP Evaluation Criteria and the related Score Sheet. Please make copies of the Score Sheet as needed. A copy of the RFP and the related contract may be accessed on the following web site:

Please comply with the following instructions in connection with the proposal evaluation process:

Electronic Information Resources

If the RFP includes the purchase or development of electronic and information resources (EIR), including software applications and operating systems, web sites, telecommunications products, video and multimedia products, desktop and portable computers and self-contained/closed equipment that includes EIR, the Proposal Evaluation Team must evaluate the proposed EIR for 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](#) (UTS150) before scoring proposals or selecting a successful proposal. The Proposal Evaluation Team will need to work with the institution's Accessibility Coordinator and Accessibility Coordinator Team for EIR Remediation (ACTER) to assure compliance with UTS150.

Proposer References

References may be contacted by one designated Proposal Evaluation Team member. The designated member may share the information gathered from references with the Proposal Evaluation Team.

The designated member should prepare a Reference Contact Sheet for each reference that includes: name of the proposer, first and last name of reference, name of company, contact telephone number and email address (if available), date and time of call and list of questions. The designated member should ask each reference for each proposer the same questions and record the questions and responses on a separate Reference Contact Sheet for each reference. All questions should relate to the RFP specifications and requirements. If a reference

is obtained via email, a copy of the email must be retained. Copies of all Reference Contact Sheets and reference emails must be submitted to [the Purchasing Office].

Contact with Vendors

The Proposal Evaluation Team should not contact proposers. All contact with proposers should be handled through [the Purchasing Office]. If a proposer contacts a member of the Proposal Evaluation Team, the contact should be carefully documented and forwarded to [the Purchasing Office].

Scoring Proposals

Each member of the Proposal Evaluation Team should (1) review each proposal separately against the Evaluation Criteria and the requirements of the RFP, and (2) complete a Score Sheet in connection with each proposal, **before _____, _____, 20____**.

Proposals should not be scored by comparing one proposal side-by-side with another proposal. Review and score one proposal, then move on to the next proposal.

Initial conclusions regarding the proposals should be reached independently and impartially. Members of the Proposal Evaluation Team should not communicate with other team members regarding the proposals until the Proposal Evaluation Team meets at the offices of _____ on _____, 20____, to discuss the selection of the successful proposal.

All Score Sheets must be completed before the meeting of the Proposal Evaluation Team. The first item of business at the meeting of the Proposal Evaluation Team will be the collection of one (1) copy of a complete set of Score Sheets from each member of the Proposal Evaluation Team. Therefore, please bring at least two (2) copies of your set of Score Sheets to the meeting.

Once collected, the individual scores recorded on the Score Sheets for each proposal must be totaled and averaged. Proposals will then be discussed and a successful proposal selected.

Texas Public Information Act and RFP Documentation

Please be aware that Score Sheets and other documentation related to the RFP may be subject to disclosure pursuant to the *Texas Public Information Act*. However, proposals, information contained in proposals, pricing and scoring may not be shared with proposers or parties outside of the University unless proper procedures are followed. If a written or verbal request for any information is received, please forward the request to [the Purchasing Office] *immediately*.

Score Sheets, Score Totals and Recommendation for Award

All individual and group Score Sheets and score totals should be submitted to [the Purchasing Office], along with a written Recommendation for Award that is based on the Score Sheets. The Recommendation for Award should summarize why the Evaluation Team selected the successful proposal. If competing proposals did not satisfy the RFP requirements, the written recommendation should also identify the deficient proposals and specify which RFP requirements those proposals did not satisfy.

If you have any questions or comments regarding the proposal review and scoring process, please do not hesitate to call me at _____ . Thank you for your assistance with this very important matter.

Enclosures:

Proposals
Evaluation Criteria
Score Sheet

CC: _____

Revised 12/28/2015

APPENDIX 14

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:

	Rating
a. Ability to perform the work?	<input type="text"/>
b. Ability to _____?	<input type="text"/>
c. Reliability?	<input type="text"/>
d. Ability to meet timelines or deadlines?	<input type="text"/>
e. Quality of work?	<input type="text"/>
f. Personnel experience level?	<input type="text"/>
g. Attitude regarding customer service?	<input type="text"/>
h. Ability to resolve problems?	<input type="text"/>
Overall performance?	<input type="text"/>

1. 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

2. In your opinion, what are **[respondent name]**'s
 - a. Strengths?
 - b. Weaknesses?
3. Do you have any additional comments?

Total Rating

[Signature of person conducting reference checks]

Revised 12/28/2015

APPENDIX 15

PROTEST PROCEDURES

THE UNIVERSITY OF TEXAS AT SAN ANTONIO
PURCHASING OFFICE POLICIES AND PROCEDURES

ISSUED DATE: 10/1/2001
REVISED DATE:

PROTEST PROCEDURES

GENERAL INFORMATION

The time limits required of the vendor in the protest and dispute resolution procedure are as stated. If a vendor fails to follow a procedural step within the time limits provided, the protest/dispute is considered withdrawn.

Protests, Disputes, Resolutions

- a) Any actual or prospective bidder, offeror, proposer, or contractor (Bidder) who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest such grievances to the University's Assistant Director of Purchasing, or acting representative (Primary Purchasing Officer). Such protests must be in writing and received in the office of the Primary Purchasing Officer within 10 working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements of this policy and shall be resolved in accordance with the procedure set forth below.
- b) In the event of a timely protest under this section, and appealed prior to award, the University shall not proceed further with the solicitation or with the award of the contract unless the Primary Purchasing Officer, after consultation with the using department, makes a written determination that the award of the contract without delay is necessary to protect the best interests of the University.
- c) A formal protest must contain:
 1. a specific identification of the State or University requirements that the action complained of is alleged to have violated;
 2. a specific description of each act alleged to have violated the State or University requirements identified in subsection (c)(1);
 3. a precise statement of the relevant facts;
 4. an identification of the issue or issues to be resolved; and
 5. argument and authorities in support of the protest.
- d) If the protest is not resolved by mutual agreement, the Primary Purchasing Officer will issue a written determination on the protest.
 1. If the Primary Purchasing Officer determines that no violation of rules or statutes has occurred, he or she

shall so inform the protesting party and the using department by letter which sets forth the reasons for the determination.

2. If the Primary Purchasing Officer determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he or she shall so inform the protesting party and the using department by letter which sets forth the reasons for the determination and the appropriate remedial action.
3. If the Primary Purchasing Officer determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he or she shall so inform the protesting party and the using department by letter which sets forth the reasons for the determination and the appropriate remedial action, which may include declaring the contract void.

- e) The Primary Purchasing Officer's determination on a protest may be appealed by the protesting party to the Vice President of Business Affairs (VPBA) of the University. An appeal of the Primary Purchasing Officer's determination must be in writing and must be received in the VPBA's office no later than 10 working days after the date of the Primary Purchasing Officer's determination. The appeal shall be limited to review of the Primary Purchasing Officer's determination.
- f) The Primary Purchasing Officer shall have the authority prior to the appeal to the VPBA, to settle and resolve the dispute concerning the solicitation or award of a contract.
- g) A protest or appeal that is not filed timely will not be considered.
- h) A decision issued in writing by the VPBA is final.

APPENDIX 16

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](#), note *UT Authentication Required*.

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 17

GUIDELINES FOR ESTABLISHING RISKS IN PROCUREMENT PROJECTS

Purpose

These Guidelines are intended to assist purchasing officers when analyzing risk vs. efficiency factors on procurement projects, and determining certain procurement methods to balance risk v. efficiency.

CMH and Procurement Checklist. These Guidelines should be used as a supplement to the Contract Management Handbook (“CMH”) and the Purchasing Office Procurement Checklist.

Nature of Procurement Risk. Identifying or quantifying the risk associated with a particular procurement does not come from an objective or mathematical formula. Risk determination is typically a subjective analysis based on professional expertise and experience. The nature and level of risk associated with each procurement can vary depending on the type of procurement and the business relationship between UTSA and the contracting party. Any risk analysis must also consider the possible risk impact vs. the probability of the risk occurrence. These Guidelines are intended only as tool to determine methodologies, approaches, and priorities, and are subject to Purchasing Office Management directives, as well as all applicable state and System procurement requirements.

Note on Formal, Bilateral Contracts: If the procurement is anticipated to result in a need for a bilateral contract (signed by UTSA and contractor), consult with the Business Contracts Office (“BCO”) prior to soliciting the procurement. BCO will assist in ensuring the appropriate terms and conditions are included in the procurement and/or assisting with incorporating an appropriate sample agreement is included and incorporated into the agreement. BCO can also assist in development of the scope of work (“SOW”) and ensuring the SOW should translates easily to the contract.

Construction and Real Estate. These Guidelines do not apply to construction-related transactions or real estate transactions. Follow the applicable UT System policies for these transactions.

(See Next 3 Pages for Risk Categories and Approaches)

RISK LEVELS

Level 4 (Highest Risk)

- (i) **Categorization.** Level 4 procurements are procurements that include goods or services signifying a likely high level of risk to UTSA. A procurement with subject matter engaging any of the following issues generally signifies a Level 4 Procurement:
- (a) procurements with a total value over \$100,000²;
 - (b) procurements requiring review by UT System Office of General Counsel ("OGC) under the [OGC Procurement Review Procedures](#), including OGC Special Procedure Contracts³
 - (c) possible transfer of [UTSA Category I](#) data to a third party, particularly FERPA-related data.
 - (d) procurement of goods or services that could include a substantial impact to students;
 - (e) procurement of goods or services that include any substantial safety or health risk;
 - (f) procurement of goods or services that include substantial risk to UTSA property; and
 - (g) issues related to copyright or publication rights, or related to UTSA providing its intellectual property;
- (ii) **Level 4 Action.** Level 4 procurements typically require a very high level of coordination, review, and input from experts on the Project Team. Experts from the Project Team should be identified to assist in the development of a Level 4 procurement. These experts should be actively involved during applicable stages of the procurement process as described in detail in the CMH, particularly in the development of the SOW, questions for solicitation respondents, and the criteria for selection. The SOW and questions to respondents must coordinate directly with the criteria and allow for a clear evaluation process (see SOW comments below). Most importantly, Level 4 procurements require all aspects of the scope and the obligations of the parties to be clearly and accurately defined.

Scope of Work: *The majority of contracting disputes and issues arise from an ambiguous SOW. The SOW in a Level 4 procurement should be very clear and avoid any ambiguous language. The SOW must coordinate smoothly with the evaluation criteria and allow the procurement evaluation process to proceed in accordance with the requirements in the CMH. A good SOW should translate easily to the contract. The SOW should provide an accurate method to rate the contractor on whether the contractor successfully completed its obligations. Never include passive voice in a SOW. In addition to the Purchasing Office Management and SMEs, the Business Contracts Office management can provide expertise on scope drafting.*

Level 3 (Elevated)

- (i) **Categorization.** Level 3 procurements are procurements with a value over \$50K to \$100K that do not fall into any

² Procurements over \$100K do not necessarily signify a Level 4 risk if other risks are not involved with the procurement. Procurement management and Project Team staff should be consulted to determine if additional risks are present.

³ If the procurement only requires review by OGC under UTS103 Unrelated Business Income Tax (revenue generating, revenue sharing and cost avoidance procurements) and for no other reason, the procurement does NOT qualify as a Level 4 procurement unless it meets other Level 4 requirements. If a possible UBIT procurement does not meet other Level 4 requirements, proceed according to standard processes, including the UBIT requirements, checklists, and the risk levels described in this document.

of the Level 3 categories, but include specific risks that must be addressed. These specific risks may include:

- (a) possible transfer of UTSA Category II data to a third party

Standards for Data Classification

- (b) services that include possible safety or health risks (an unlikely risk or no substantial risk);
- (c) services with moderate potential risk to UTSA property;
- (d) procurements involving third-party solicitation on campus;
- (e) goods or services from a single source awarded without competition;
- (f) procurements that may result in a signed agreement between parties;
- (g) services with an unspecified value and a contract period in excess of 4 years;
- (h) procurements requiring restrictive or closed specifications; and

Procurements for the purchase or sale of goods or services from any employee of U.T. System Administration or an institution.

- (ii) **Level 3 Action.** Level 3 procurements require the SOW and the obligations of the parties to be defined as clearly and accurately as practical. Address the specific risk category above in detail according to policy, and consult with BCO if necessary.

As mentioned above, *the SOW must coordinate smoothly with the evaluation criteria and allow the procurement evaluation process to proceed in accordance with the requirements in the CMH*. Identify any possible concerns with the SOW and ensure the Program Staff clearly understands and approves the SOW. If Purchasing staff believe the SOW submitted with the purchase request requires clarifications, consult with applicable members of the Project Team (such as SMEs or BCO), Purchasing Office management, or purchasing Staff as necessary.

Scope of Work: *The detail of scope is another area of risk analysis that does not have a magical formula, and which requires a subjective analysis based on professional expertise and experience. As mentioned above, the majority of contract disputes and issues arise from an ambiguous scope. The higher level of risk, the more the scope should be analyzed and developed. Experts from the Project Team should be identified to assist in the development of a Level 3 procurement, and these experts should be actively involved during applicable stages.*

Level 2 (Moderate)

(i) **Categorization.** Level 2 procurements are procurements with a value up to \$50K that do not fall into any of the Level 2 categories, but include specific risks that must be addressed, such as those listed in Level 3.

(ii) **Level 2 Action.** Address any concerns (including SOW concerns) in the purchase request that may impact the procurement evaluation process (see info in Level 4 and Level 3). Address any other SOW concerns as clearly and accurately as reasonably practical based on the risk level of the procurement. Point out to Program Staff any additional business concerns in the request and defer to department as to whether the department would like assistance with addressing the concerns. Coordinate and or draft the scope accordingly utilizing applicable members of the Project Team. Address the specific risk in detail according to policy, and Purchasing Management directives.

Level 1 (Minor)

(i) **Categorization.** Level 1 procurements are procurements with a total procurement value of \$15K to \$100K that do not include any of the non-monetary risks associated with procurement levels 3-4.

(ii) **Level 2 Action.** Address any concerns that may impact the procurement evaluation process (see info in Level 4 and Level 3), including any aspects of the SOW within the request that may not align with the evaluation process. Ensure Program Staff understand and accept the SOW. Point out to department any business concerns that are readily apparent in the purchase request, and defer to the department as to whether the department would like assistance revising the specific areas of concern.

Negligible Risk; Procurements under the Competitive Procurement Limit

Procurements with a total contract value under the competitive procurement limit are typically completed by UTSA departments. Departmental procurements should be facilitated only by those individuals that have attended the Purchasing Office Training. All Departmental procurements should be completed in accordance with the Purchasing Office Training.

Related Procedures:

Purchasing Office Procurement Checklist

APPENDIX 18

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</i> <i>one example</i> <i>of what will</i> <i>be many</i> <i>monitoring</i> <i>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