OP 72.08: Use of Consultant Services

DATE: September 10, 2013

PURPOSE: The purpose of this OP is to establish policies and procedures for the use of consultants to ensure that Texas Tech University (TTU) is in compliance with Texas Government Code, §§ 2254.021 - 2254.040, and Section 07.12.2, Regents’ Rules.

REVIEW: This OP will be reviewed in November of odd-numbered years by the managing director of Procurement Services with substantive revisions forwarded to the vice president for administration & finance and chief financial officer (VPA&F/CFO).

POLICY/PROCEDURE

1. Definitions

   a. For the purposes of this OP, a consultant is an individual or an entity that performs or proposes to perform a consultant service.

   b. Consultant service is the practice of studying or advising on an existing or a proposed operation or project of TTU under a contract that does not involve the traditional relationship of employer and employee.

   c. A major consulting services contract is a contract for which it is reasonably foreseeable that the value of the contract will be equal to or exceed $25,000 per annum.

   d. This policy is not applicable to the employment of the following practitioners of professional services listed under Texas Government Code, § 2254.002(2) and § 2254.024:

      • certified public accountant
      • architect
      • landscape architect
      • land surveyor
      • physician (including surgeon)
      • optometrist
      • professional engineer
      • real estate appraiser
      • registered nurse
      • private legal counsel
      • investment counselor,
      • actuary
      • medical or dental service providers (refer to OP 72.20, Professional Services)
It also is not applicable to persons given faculty appointments, guest lecturers, guest speakers, guest performers, research participants, or other persons performing services other than consulting services.

2. **Policy**

Consultants may be used only if there is a substantial need for the consulting service and the service cannot be performed adequately with TTU personnel or by contracting with another state agency.

When the use of a consultant is authorized, the consultant shall be selected on the basis of demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services. When other considerations are equal, preference should be given to a private consultant whose principal place of business is within the state or who will manage the consulting engagement entirely from one of its offices within the state. Fees may not exceed any maximum provided by law.

3. **Request and Justification for Use of Consultants**

   a. When it is determined that a substantial need exists for a consulting service that cannot be satisfied by use of TTU personnel or by contracting with another state agency, the appropriate administrator will prepare a *Request to Use Consultant Services* form (Attachment A) and forward it through administrative channels to the appropriate divisional vice president (DVP) for approval.

   b. If the DVP approves the request, the documents should be forwarded to Procurement Services.

4. **Consulting Contract Procedures**

   a. Consulting contracts paid from **institutional funds** should follow the procedures outlined in OP 72.09, Purchase of Goods and Services. In accordance with Section 07.12.2(d), *Regents’ Rules*, approval is required for any consulting contract with an initial consideration of more than $25,000 and for all modifications increasing that contract.

   b. Board of Regents’ approval is also required for any modification to a consulting contract where the initial consideration was $25,000 or less and the modification will cause the total consideration to exceed $25,000.

   c. For contracts that provide for the services of a consultant with an initial consideration of $25,000 or less, prior notice of the proposed contract must be provided to the chair of the Board and the chair of the Finance and Administration Committee. In addition, a report of the contract shall be provided in an Information Agenda item at the next Board meeting. The department shall submit Attachment B: *Under $25,000 Consulting Contract Notice to BOR Chairs* to Procurement Services.

   d. Consulting contracts paid from **funds appropriated by the legislature**, derived from the exercise of the statutory duties of a state agency or received from the federal government to the extent that federal laws or regulations do not conflict with this policy, are to be processed under the procedures shown as follows.
Departments shall follow the procedures set forth in section 4 of this OP. In addition, the following requirements must be followed:

(1) More than $25,000 (major consulting contract)

   (a) Submission and Approval

   The department must submit the fully approved *Request to Use Consultant Services* form to Procurement Services at least 90 days before the service is to begin and at least 45 days prior to the next available Board of Regents’ meeting to allow for inclusion of the item in the Regents' agenda ([http://www.texastech.edu/bor/](http://www.texastech.edu/bor/)).

   (b) Notification

   Before contracting with a consultant, the managing director of Procurement Services shall notify the Legislative Budget Board and the governor's Budget Planning Office of TTU's intent to contract with a consultant and shall supply the Legislative Budget Board and the governor's Budget and Planning Office with information demonstrating that TTU has complied or will comply with this OP and the relevant state statutes.

   (c) Finding of Fact

   A finding of fact must be obtained from the governor's Budget and Planning Office before the managing director of Procurement Services may proceed with the contract. To obtain a finding of fact that a need exists for the service to be purchased and report the required information demonstrating compliance with this OP, the managing director of Procurement Services will forward the information from the *Request to Use Consultant Services* form to the Governor's Office for approval or waiver in advance of awarding the consulting contract. The Governor's Office will annotate and return a copy of the report to the managing director of Procurement Services in each case when the required finding of fact or waiver is made.

   (d) Solicitation of Proposals

   The managing director of Procurement Services will submit the following information to the secretary of state for publication in the *Texas Register* at least 30 days before contracting with a private consultant:

   - An invitation for consultants to provide offers of consulting services by bid or request for proposal;
   - Name of the individual who should be contacted by a consultant who intends to make an offer;
   - Closing date for the receipt of offers; and
   - The procedure by which TTU will award the consulting services contract.
(e) Notification after Entering into a Major Consulting Contract

No later than the 20th day after entering into a major consulting contract, the managing director of Procurement Services shall file the following information with the secretary of state for publication in the Texas Register:

• A description of the activities that the consultant will conduct;
• The name and business address of the consultant;
• The total value and the beginning and ending dates of the contract; and
• The due dates of documents, films, recordings, or reports that the private consultant is required to present to TTU.

5. Continuation of Previous Contracts

If the desired consulting service relates to a service previously performed by a consultant, this must be stated in the invitation for offers filed with the secretary of state. If the intent is to award the contract for the consulting service to the incumbent consultant, unless a better offer is submitted, this also must be disclosed in the invitation for offers.

6. Renewal, Amendment, or Extension of Contracts

When TTU intends to renew, amend, or extend a consulting services contract, the procedures to be followed will be determined by the value of the contract, the individual or entity with whom TTU is contracting, and type of funding. The process detailed in this OP shall be followed for any renewal, amendment, or extension of a consulting contract.

7. Final Reporting

The administrator will provide the managing director of Procurement Services with copies of all documents, films, recordings, and reports provided by the consultant for any major consulting contract. The managing director will then file these copies with the Texas State Library and will be prepared, upon request, to provide copies of this same data to the governor's Budget and Planning Office and the Legislative Budget Board.

In addition, the administrator will prepare a report to be submitted to the managing director of Procurement Services regarding actions that were taken in response to the recommendations of each consultant employed. The managing director shall furnish this report to the VPA&F/CFO, who will provide the report to the governor's Budget and Planning Office and the Legislative Budget Board as part of the biennial budgetary hearing process. This section does not apply to contracts paid by institutional funds.

8. Contracts

The managing director of Procurement Services will prepare the contract for the consultant service after a determination has been made on what form of contract is appropriate for the consultant service involved. This will be based upon the information provided in the attachment plus information from the successful bid/proposal, if applicable. The managing director will have the contract approved and signed by all necessary parties.
9. **Conflicts of Interest**

Any officer or employee of TTU who has a financial interest in an association, partnership, firm, or corporation that submits an offer to provide consulting services to TTU, or who is related within the second degree by consanguinity or affinity to an individual having the financial interest shall report the financial interest to the managing director of Procurement Services and the VPA&F/CFO of TTU not later than the 10th day after the day on which the association, partnership, firm, or corporation submits the offer.

The second degree of consanguinity includes the employee’s parents, children, brothers, sisters, grandparents, and grandchildren. The second degree of affinity includes the employee’s spouse, the spouse’s children and parents, the spouses of the employee’s children and parents, the brothers, sisters, grandparents, and grandchildren of the employee’s spouse, as well as the spouses of the employee’s brothers, sisters, grandparents, or grandchildren.

This section applies to all consulting services contracts including renewals, amendments, and extensions of those contracts.

10. **Restrictions**

An individual who offers to perform a consulting service for TTU and who has been employed by TTU or another state agency at any time during the two years preceding the making of the offer shall disclose in the offer the nature of the previous employment with TTU or the other state agency, the date of termination of the employment, and the annual rate of compensation for the employment at the time of termination. If TTU accepts the offer from an individual described in the previous sentence, the managing director of Procurement Services shall include this information in the material provided to the secretary of state for publication.

A person's offer or proposal to provide consulting services to TTU may not be accepted if:

a. The person received compensation from the agency to participate in the preparation of the specifications or request for proposals on which the offer is based; and

b. The person would receive compensation from the agency for providing consulting services to the agency.

11. **Void Contract**

If TTU or any employee contracts for consulting services or renews, amends, or extends a consulting services contract or any consultant contracts to perform a consulting service for the institution without complying with the provisions of this OP, the contract, renewal, amendment, or extension is void and payment, regardless of funding type, may not be made to the consultant per Texas Government Code 2254.034.

12. **Dividing Contracts**

A consulting services contract or a renewal, amendment, or extension of a consulting services contract may not be divided into more than one contract, renewal, amendment, or extension in order to avoid the requirements of this policy.
13. **Mixed Contracts**

If a contract involves both consulting services and other types of services, then this policy applies if the primary objective of the contract is the purchase of consulting services.

14. **References**


b. Section 07.12.2(b), Regents’ Rules

Attachment A: *Request to Use Consultant Services*

[http://www.depts.ttu.edu/afism/AFISMFormRepository/ProcurementDept/PurchasingAndContracting/OP%2072.08A.pdf](http://www.depts.ttu.edu/afism/AFISMFormRepository/ProcurementDept/PurchasingAndContracting/OP%2072.08A.pdf)

Attachment B: Under $25,000 *Consulting Contract Notice to BOR Chairs*