



TEXAS TECH UNIVERSITY™

Operating Policy and Procedure

OP 72.22: Contracting Policies

DATE: October 21, 2009

PURPOSE: The purpose of this Operating Policy/Procedure (OP) is to establish policies for the development, negotiation, and approval of all contracts and agreements between Texas Tech University and other parties.

REVIEW: This OP will be reviewed in November of even-numbered years by the managing director of Purchasing and Contracting and the assistant vice president for procurement services (AVPPS) with recommended revisions forwarded to the chief operating officer and senior vice president for administration and finance by (COO/SVPAF) December 15.

POLICY/PROCEDURE

1. General Policy

- a. This OP provides the overall policy related to contracts and agreements between Texas Tech University (TTU or university) and other parties, except for research and sponsored projects.
- b. Every university employee is responsible for compliance with this OP and related procedural OPs. The AVPPS has overall responsibility for ensuring compliance with the Contracting policies and procedures, as well as state of Texas and federal regulations.
- c. As a state agency, the university is expected to use all funds, regardless of source, in the most prudent manner possible. Expenditures should directly support the institution and its objectives. Expenditures that do not have a clear business purpose or do not support the institution's objectives are explicitly prohibited.
- d. All university contracts must be able to stand the tests of: (1) public scrutiny in matters of prudence and probity; (2) full and complete access by all concerned parties and encouragement of competition; and (3) demonstrated fiduciary responsibility in the spending of public monies. The objective of the contracting process is to conduct university business in a manner that enhances competition and fairness and results in best value or, if appropriate, the optimal balance of overall benefits to the university.
- e. The contracting and purchasing functions overlap in their scope and processes. When a contract is required as part of a purchase (e.g., mandated by the supplier or university requirement in order to safeguard its interest), the contract itself becomes part of the purchase transaction and will be completed in accordance with established purchasing policies. This OP provides the policy for contracts that fall outside the scope of a purchase transaction.

2. **Approval and Execution of Contracts**

No person has the authority to commit TTU for any purpose (e.g., enter into contracts or agreements) except as authorized in Section 07.12, Regents' Rules (see attachment) and OP 10.02, Delegation of Authority by the President.

3. **Types of Contracts**

The following provides an overview of some of the more common types of contracts that fall within the scope of this OP:

a. **Athletic-specific Contracts**

These contracts consist of services that would not be utilized by any other university department, such as athletic trade-outs, sponsorship agreements, and game contracts. Athletic contracts that are procurement-related are subject to procurement regulations and must follow university policies.

b. **Auxiliary Contracts**

These contracts allow a vendor the right to provide on-campus services in exchange for royalty commissions or other consideration.

c. **Consultant Agreements**

The state of Texas defines a consulting service as "the service of studying or advising a state agency under a contract...with respect to some aspect of an agency's operations or management." Both the state and the university have special reporting requirements for consultant agreements. See also OP 54.08, Use of Private Consultants, for detailed requirements.

d. **Environmental Health & Safety (EH&S) Agreements**

These contracts include such services as recycling, soil and air quality testing, asbestos abatement, disaster recovery, and chemical disposal. All EH&S agreements, contracts, and/or purchases require involvement and approval of the university's EH&S department.

e. **Extended Education Agreements**

These contracts involve the provision of non-credit courses. Similar to auxiliary contracts, the vendor provides training services in exchange for royalty commissions or other consideration paid to the university.

f. **Hotels, Resorts, and Conference Centers**

These contracts are for the provision of rooms or other services for the purposes of hosting guests, special events, etc. The contract should be based on the vendor's ability to satisfy the university's needs at reasonable cost and in conformance with contractual requirements and regulations.

g. Human Resources Agreement

These contracts will often necessitate the involvement of the university's Human Resources Department and include such projects as provision of professional counseling, temporary personnel agreements, and management technology.

h. Independent Contractors

These contracts are for specific services provided by independent contractors. Status as an independent contractor must be determined before the contract is entered into and work is begun. See OP 62.37, Establishing Employee/Independent Contractor Status, for further requirements.

i. Interagency Cooperation Agreements and Inter-local Agreements

These contracts are agreements with state, city, or county governing bodies or independent school districts.

j. Marketing and Advertising Agreements

These contracts include many "no charge" agreements in which a vendor provides the university with consideration in exchange for advertising rights or marketing acknowledgements. As a government agency, the university is restricted from any practice that could be considered advertising or solicitation for a particular vendor. The ability for any organization to use the university's logos, marks, or name is very limited and requires special review and consideration.

k. Renovation, Construction, and Architect/Engineering Agreements

All requests for physical and structural changes, including architectural and engineering requests, must be routed through the university's Operations Division. Major renovation and construction (\$2,000,000 and above) will be handled by TTU System's Facilities, Planning, & Construction (FP&C). If it is deemed beneficial to contract these services to a contractor, proper competitive procurement procedures will be followed.

l. Space Leases

All leases of space require a lease agreement detailing the rights and the responsibilities of both parties. If the university is the lessee, there will usually be a purchase order issued to encumber and make rental payments.

m. Sponsored Research and Sponsored Projects

Research grants and contracts are monitored and controlled by the Office of the Vice President for Research (pre-award) and the Office of Sponsored Programs Accounting and Reporting (SPAR) (post-award). Purchases and agreements for routine services that are funded with grant accounts are processed the same as other such transactions, but they may require another level of approval to confirm the appropriateness of the transaction on that particular grant or contract.

n. Technology Procurements, Software, and/or Database Licenses

Any project involving software database licenses in which a formal contract is involved and is valued at \$500 or more should have Procurement Services involved at the earliest possible stages of development. Additional approvals will be required from the university's or the system's information systems technology department.

o. University-provided Services

These contracts cover all situations whereby the university is being paid to provide services.

p. Additional Contracts

These include all other contracts including, but not limited to, authors and writers, advertising and promotional services, catering, and faculty and staff training.

4. Responsibility

a. Procurement Services' Office of Purchasing & Contracting Responsibilities

The roles and/or responsibilities of the Purchasing & Contracting Office include:

- (1) Ensuring contracts are reviewed and signed by the appropriate personnel, except for contracts dealing with Research Services, FP&C construction, and United Spirit Arena performances;
- (2) Serving as the repository for university contracts, except for contracts dealing with Research Services, FP&C construction, and United Spirit Arena performances;
- (3) Verifying that bonds and insurance coverage are provided as required by the contract or university policy;
- (4) Verifying that contracts are in compliance with state and federal laws and university policies;
- (5) Ensuring departments have the necessary funding for expense contracts, and are aware and agree to future commitments;
- (6) Assisting departments with ensuring that each contract is performed in accordance with the terms and conditions of the contract;
- (7) Notifying departments when contracts are expiring and ensure proper closeout or renewal;
- (8) Closing out agreements upon completion; and
- (9) Assisting departments in monitoring and enforcing contracts.

b. Departments' Responsibilities

Every contract should be assigned to a departmental administrator whose responsibilities include, but are not limited to, the following:

- (1) Ensuring that all university and purchasing requirements are met and that all best value practices are utilized prior to submitting a contract for review and signature. The contractor should not be authorized to proceed, nor should payment be approved, until the contract is fully executed (signed by all parties).
- (2) Verifying that the contractor or vendor complies with all or the terms and conditions of the agreement;
- (3) Ensuring that all services have been received in accord with the stated specifications prior to authorizing payment;
- (4) Ensuring that all revenue generated pursuant to the terms of the contract is received and deposited into an appropriate university account; and
- (5) Ensuring the collection, review, and maintenance of any required certificates of insurance, workers' compensation insurance, and performance bond.

Attachment: Section 07.12, Regents' Rules