



## TEXAS TECH UNIVERSITY

### Operating Policy and Procedure

#### **OP 72.08: Use of Consultant Services**

**DATE:** November 14, 2023

**PURPOSE:** The purpose of this Operating Policy/Procedure (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 §§ 2254.021–2254.041](#), and Section 07.12.4.c, *Regents' Rules*.

**REVIEW:** This OP will be reviewed in November of odd-numbered years by the Assistant Vice President and Chief Procurement Officer with substantive revisions forwarded to the Senior Vice President for Administration & Finance and Chief Financial Officer (SVP/AF/CFO).

#### **POLICY/PROCEDURE**

##### **1. Definitions**

- a. Consultant – An individual or firm that provides consulting services to an institution and does not involve the traditional relationship of employer and employee ([Texas Government Code § 2254.021 \(3\)](#)). A consultant does not include the federal government, a state agency, or a state governmental entity. Consultants often rely on their outsider's perspective to provide objective recommendations. They generally bring formal frameworks or methodologies to identify problems or suggest more effective or efficient operations by evaluating core areas, recommending best practices, reviewing techniques, guiding technology adoption and implementation, developing strategies, and pursuing opportunities for improvement. Deliverables are often in the form of recommendations.
- b. Consulting Services – The services of studying and advising an institution per Texas Government Code § 2254.021. Consulting services must comply with the TTU System Board of Regents Chapter 07, [Regents' Rules](#).
- c. Contract Administrator – The Contract Administrator (CA) is the department-level individual responsible for adherence to all provisions contained within a contract and for managing the performance of a contract. The CA is a customer of the procurement process and is typically a stakeholder within the department responsible for ensuring the contracted goods or services comply with the contract and/or purchase order. The CA will be responsible for the proper implementation of all contract specifications and contract requirements. Ideally, the CA will be named prior to the beginning of the procurement process and be involved in defining the scope of work.
- d. Contractor – An entity or individual that has a contract to provide goods or services to the system or any component institution.

- e. Major Consulting Services Contract – A consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$100,000 and that modifications will increase the consideration (*Regents' Rules 07.12.3.e*).
- f. Minor Consulting Services Contract – A consulting services contract that is less than the major consulting services contract threshold.
- g. Procurement (Procure) – Purchasing, renting, leasing, or otherwise acquiring any goods and services, including all functions that pertain to the acquisition through contract closeout.
- h. 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, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, professional nursing, or forensic science. Services provided by professionals outside the scope of their profession (e.g., consulting services provided by accounting firms) are not considered professional services.
- i. Request for Proposal (RFP) – A solicitation requesting submittal of a proposal in response to the required specifications and usually includes some form of a cost proposal. The RFP process allows for negotiations between a proposer and the issuing institution.
- j. Service(s) – The furnishing of labor, time, and effort by a contractor, which may involve, to a lesser degree, the delivery or supply of goods.

## 2. Applicability

This policy is not applicable to the employment of the practitioners of professional services listed under Texas Government Code [§ 2254.002\(2\)](#) and [§ 2254.024](#). See [OP 72.20, Professional Services](#).

It also is not applicable to persons given faculty appointments, guest lecturers, guest speakers, guest performers, training services, or research participants.

## 3. Policy

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

Consultant services are subject to the Procurement Services rules provided for in [OP 72.09, Procurement of Goods and Services](#).

## 4. Request and Justification for Use of Consultants

- a. When it is determined that a substantial need exists for consulting services that cannot be satisfied by use of TTU personnel or by contracting with another state agency, the appropriate administrator will contact Procurement Services to initiate the solicitation process and determine any additional compliance requirements.

- b. If the estimated value of the consulting services is greater than \$100,000, the *Request for Solicitation Process* form shall be submitted to [strategic.acquisitions@ttu.edu](mailto:strategic.acquisitions@ttu.edu).

## 5. Board of Regents Approval

- a. Consulting contracts paid from **institutional funds** must comply with Section 07.12.4.e, *Regents' Rules*. Upon recommendation of the Chancellor, board approval is required prior to the execution of a consulting services contract with an initial consideration in excess of \$100,000 and prior to the execution of all modifications that increase the consideration of such a contract.
- b. Upon recommendation of the Chancellor, a consulting services contract with an initial consideration in excess of \$100,000 may be executed prior to approval by the board if:
  - (1) The contract includes a provision that limits the total amount to be paid to the consultant to \$100,000 or less unless and until such time as the board has approved the contract; and
  - (2) The Chair of the Finance and Administration Committee authorizes a proposal submitted to them by the Chancellor's designee, regarding the execution of the contract in advance of the approval by the board.
- c. Consultant Contracts with an Initial Consideration of \$100,000 or Less
  - (1) Board approval is not required, but the Vice Chancellor and Chief Financial Officer, in consultation with the Chancellor, presidents, and the SVPAF/CFO, shall review consulting contracts of \$100,000 or less prior to execution of the contract by the Chancellor or President, as appropriate.
  - (2) A report of the contract shall be provided as an information agenda item at the next board meeting.
  - (3) Approval of the board is required prior to execution for any modification to a consulting contract where the initial consideration was \$100,000 or less and the modification will cause the total consideration to exceed \$100,000.

## 6. Consulting Services Contract Requirements for Appropriated Funds

Consulting services contracts paid from **funds appropriated by the legislature** (Funds beginning with 11, 12, or 14 have additional compliance requirements in accordance with [Texas Government Code 2254](#). Funds beginning with 13 generally do not allow consulting services.), derived from the exercise of the statutory duties of the institution 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 the previous sections of this OP. In addition, the following requirements must be followed:

More than \$25,000:

a. Submission and Approval

The department must submit the fully approved *Request to Use Consultant Services* form (Attachment A) to Procurement Services at least 180 days before the services are to begin.

b. Notification

If applicable, before contracting with a consultant utilizing appropriated funds, the Assistant Vice President and Chief Procurement Officer 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

If applicable, a finding of fact must be obtained from the governor's Budget and Planning Office before the Assistant Vice President and Chief Procurement Officer may proceed with the contract. To obtain a finding of fact that a need exists for the services to be procured and report the required information demonstrating compliance with this OP, the Assistant Vice President and Chief Procurement Officer 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 services contract. The governor's office will annotate and return a copy of the report to the Assistant Vice President and Chief Procurement Officer in each case when the required finding of fact or waiver is made.

d. Solicitation of Proposals

The Assistant Vice President and Chief Procurement Officer 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:

- (1) An invitation for consultants to provide offers of consulting services by request for proposal;
- (2) Name of the individual who should be contacted by a consultant who intends to submit a response to the request for proposal;
- (3) Closing date for the receipt of proposals; and
- (4) The procedure by which TTU will award the consulting services contract.

e. Notification after Entering into a Consulting Services Contract Utilizing Appropriated Funds

No later than the 20th day after entering into a major consulting services contract, the Assistant Vice President and Chief Procurement Officer shall file the following information with the secretary of state for publication in the *Texas Register*:

- (1) A description of the activities that the consultant will conduct;

- (2) The name and business address of the consultant;
- (3) The total value and the beginning and end dates of the contract; and
- (4) The due dates of documents, films, recordings, or reports that the private consultant is required to present to TTU.

f. Applicability

Section 6 does not apply to a major consulting services contract to be entered into by TTU if the institution includes in the invitation published under [Texas Government Code § 2254.029](#) a finding by the Chief Executive Officer of TTU that the consulting services are necessary and an explanation of that finding.

g. Final Reporting

The contract administrator will provide the Assistant Vice President and Chief Procurement Officer with copies of all documents, films, recordings, and reports provided by the consultant for any major consulting services contract. The Assistant Vice President and Chief Procurement Officer 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 contract administrator will prepare a report to be submitted to the Assistant Vice President and Chief Procurement Officer regarding actions that were taken in response to the recommendations of each consultant employed. The Assistant Vice President and Chief Procurement Officer shall furnish this report to the SVPAF/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.

## 7. 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 the type of funding. The process detailed in this OP shall be followed for any renewal, amendment, or extension of a consulting services contract.

## 8. Contracts

The Procurement Services Office will prepare the contract for the consultant services after a determination has been made on what form of contract is appropriate for the consultant services involved. This will be based upon the information provided in the attachment plus information from the successful proposal, if applicable. The Procurement Services office will have the contract reviewed, approved, and signed by all necessary parties.

## 9. Conflicts of Interest

Any officer or employee of TTU who has a financial interest in an entity, 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 Assistant Vice President and Chief Procurement Officer and the SVPAF/CFO of TTU immediately after the association, partnership, firm, or corporation submits the proposal.

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 consulting services 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 proposal 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 to the Assistant Vice President and Chief Procurement Officer.

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

- a. The person received compensation from TTU to participate in the preparation of the request for proposals on which the offer is based; and
- b. The person would receive compensation from TTU for providing consulting services.

## **11. Void Contract**

If TTU or any employee contracts for consulting services or renews, amends, or extends a consulting services contract or any consultant enters into a contract 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, 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 procurement of consulting services.

## **14. References**

- a. [Texas Government Code, Chapter 2254](#)

- b. [Section 07.12.4.e, Regents' Rules](#)

[Attachment A: Request to Use Consultant Services](#)