TEXAS TECH UNIVERSITY SYSTEM

Contract Management Handbook
2022 Revisions

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SECTION I - INTRODUCTION

A. Purpose

As an agency of the State of Texas, the Texas Tech University System ("TTUS" or "System") is governed by the System Board of Regents ("Board"). System contract policy is established pursuant to Texas Education Code, § 51.9335 which grants authority to acquire Goods or Services to institutions of higher education. To exercise this authority, an institution of higher education must comply with Texas Education Code § 51.9337 which requires the Board to establish certain standards, and in particular, "*a contract management handbook that provides consistent contracting policies and practices and contract review procedures, including a risk analysis procedure*…" (§ 51.9337(b)(3)). In accordance with Texas Education Code § 51.9337(d), each component Institution shall establish contract review procedures and a contract review checklist that must be approved by the Institution's legal counsel before implementation.

TTUS has developed this Contract Management Handbook ("Handbook"), the purpose of which is to comply with statutory requirements, and coordinate with TTUS *Regents' Rules*, TTUS System Regulations, and System Component Institutions' Operating Policies and Procedures. (Links follow and Definitions are found in Section I.F.)

Texas Tech University System Board of Regents Rules:

http://www.texastech.edu/board-of-regents/regents-rules.php

Texas Tech University System Regulations (specifically 7.03):

https://www.texastech.edu/offices/cfo/regulations.php

Texas Statutes

http://www.statutes.legis.state.tx.us/

Texas Administrative Code (to the extent applicable)

https://texreg.sos.state.tx.us/public/readtac$ext.viewtac

Texas Tech University System Regulations

http://www.texastech.edu/offices/cfo/regulations.php

Texas Tech University Operating Policies and Procedures

http://www.depts.ttu.edu/opmanual/

Texas Tech University Health Sciences Center Operating Policies

https://www.ttuhsc.edu/simulation/operating-policies.aspx

Angelo State University Operating Policies

http://www.angelo.edu/opmanual/

Texas Tech University Health Sciences Center El Paso Operating Policies

https://elpaso.ttuhsc.edu/opp/

Midwestern State University Operating Policies

https://public.powerdms.com/MidwesternState/tree/

B. Order of Control

Pursuant to TTUS *Regents' Rules,* in the event there is a conflict with language of this Handbook, applicable federal or State Statutes or regulations shall prevail, followed by TTUS *Regents' Rules*, TTUS System Regulations, Institutional Operating Policies and Procedures, and this Handbook. In the event of conflict, Institutional staff should consult with the Office of General Counsel for assistance.

See *Regents' Rules* Chapter 07 - Fiscal Management regarding contract policies and procedures, and *Regents' Rules* Chapter 03 - Personnel relating to conflicts of interest.

C. Contract Standards

Various types of Contracts may be subject to different statutory standards, practices, processes, and strategies for successful implementation.

Any reference in this Handbook to a statute, *Regents' Rule*, or other controlling authority means as it is currently in effect or as it may be amended. Institutional staff shall stay abreast of the most recent legislative and regulatory requirements and adopt the necessary provisions in a timely manner.

D. Contract Management Handbook

Pursuant to Texas Education Code § 51.9337(b)(3) and all applicable statutes, this Handbook is intended to serve as a general guideline for the Contract Management process, to establish best practices, and to detail most, but not all, statutory and regulatory requirements. TTUS has intentionally developed this Handbook to detail requirements unique to higher education.

The nature and level of risk associated with each step in the process varies depending on factors including, but not limited to: dollar amount, the type of Goods or Services being requested, the type of Contract, the funding source(s), and the Vendor. The purpose of the Handbook is to outline the requirements of Procurement and Contract compliance. Please note that this Handbook is intended to be used as general guidance; the nature of each Contract or Procurement, including the identity of each Vendor or Contractor, warrants individual review.

This Handbook will assist System and Institutional personnel involved in Contract Management. It is not possible to address all issues that may arise during Contract Management. For complex or unusual Contracts, personnel should seek assistance from the Office of General Counsel and other pertinent Institutional experts depending on the circumstances as early as possible in the Contract Management process.

While this Handbook was developed to establish required Contract practices for the System, each Institution has different Operating Policies and Procedures related to the Institution's specific needs.

In general, this Handbook:

1. Provides best practices for System Contract Management.
2. Describes the duties of a Contract Manager and Contract Administrator, including guidance to negotiate a Contract, award a Contract, and monitor Vendor and Subcontractor performance and compliance with Contract terms.
3. Supplements but does not replace existing statutory requirements, *Regents' Rules*, TTUS System Regulations, or Institutional Operating Policies and Procedures. Each Institution is independently responsible for using sound business practices in accordance with applicable federal and State laws and regulations (including but not limited to compliance with applicable statutes, the Texas General Appropriations Act, Texas Attorney General Opinions, executive orders and other directives from the Governor), and System Regulations.
4. Is not intended to be a Handbook on Contract law or constitute legal advice. Where legal principles are discussed, these are general principles which may have exceptions. Always consult the Office of General Counsel for legal advice concerning Contracts.
5. Includes model Contract provisions, distinguishing between essential, recommended, and optional Contract provisions.
6. Summarizes the requirements of the *Regents' Rules* for Contract approvals.

Texas Tech University System reserves the right to interpret, change, modify, amend, or rescind this Handbook, in whole or in part, at any time.

E. Training

System or Institution officers and employees authorized to execute Contracts for the System or Institution or to exercise discretion in awarding Contracts, are required to receive training, including training in ethics, selection of appropriate Procurement methods, and information resources purchasing technologies. Texas Education Code §51.9337(b)(5) and Texas Government Code § 656.051(c).[1]

It is the individual officer's or employee's responsibility to comply with the training requirements. The Comptroller has established and administers a system of training, continuing education, and certification for Institutional purchasing personnel. Institutional purchasers and Contract Management personnel must receive training to the extent required by the Comptroller under Texas Government Code § 656.051. Such employee who is required to receive training may not participate in Institutional purchases unless the employee has received the required training or received equivalent training from a national association recognized by the Comptroller. Texas Government Code § 656.051.

F. Definitions (the *National Institute of Governmental Purchasing: Public Procurement Dictionary of Terms* was used as a reference for certain definitions used in this Handbook).

Addendum: A written change, addition, alteration, correction, or revision to a Solicitation document or a Contract.

Amendment: An agreed addition to, deletion from, correction, or modification of a Contract signed by all authorized parties. An Amendment may include a renewal or extension of a Contract.

Assignment: An authorized legal transfer of contractual rights from one party to another party.

Award: The act of accepting an offer, thereby forming a Contract between TTUS and a vendor.

[1] Texas Government Code § 656.052 outlines information pertaining to the training and certification of Managers. However, this section explicitly does not apply to institutions of higher education. As such, the training and certification outlined under this section (656.052) is not required. Each Component Institution, in evaluating its own unique contract needs, may voluntarily choose to require their Institutional procurement personnel to participate in the Comptroller-administered training and certification program(s) or to develop their own unique program(s) specific to their needs.

Best Value: Factors to be considered in determining best overall value for the System or the Component Institution in accordance with Texas Education Code § 51.9335 (b).

Bid: An Offer to Contract submitted in Response to an Invitation for Bid. The term Bid may also be referred to as a Response.

Bid Security: May refer to a bid bond or bid deposit**.** A bid bond is an insurance agreement, accompanied by a monetary commitment, by which a third party accepts liability and guarantees that a Bidder will not withdraw a Bid during the Invitation for Bid process. A bid bond may also be required in a Request for Proposal process. A bid deposit is a deposit required of Bidders to protect TTUS in the event a low Bidder attempts to withdraw its Bid or otherwise fails to enter into a Contract with TTUS.

Bidder: An individual or Contractor who submits a Response to an Invitation for Bid**.** The term includes anyone authorized to act on behalf of the individual or other entity that submits a Bid, such as agents, employees, and representatives. See also Respondent.

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.

Competitive Solicitation: The process of inviting and obtaining Responses from competing Vendors in response to advertised competitive Specifications, by which an Award is made based on Best Value. The process contemplates giving potential Vendors a reasonable opportunity to compete, and requires that all Vendors be placed on a level playing field. Each Respondent must respond to the same advertised Specifications, terms, and conditions. Competitive sealed bidding is the process of advertising an Invitation for Bid ("IFB"), the evaluation of the submitted Bids, and awarding of the Contract. Competitive sealed proposals include the process of advertising a Request for Proposals (RFP), the evaluation of submitted Proposals, and awarding of the Contract.

Consulting Services: The Services of studying and advising an Institution per Texas Government Code § 2254.021. Consulting Services must be approved by the TTUS Board of Regents per *Regents' Rules* Chapter 07. See also Section V.K. of this Handbook. An individual or firm that provides these Consulting Services to an Institution and does not involve the traditional relationship of employer and employee will be defined as a Consultant.

Contract: A legally binding written agreement executed between the System or an Institution and a third party in which the parties agree to perform in accordance with the obligations therein. Contracts include, but are not limited to: letter agreements, co-operative agreements, memorandums of understanding ("MOU"), Interagency Contracts, Interlocal Contracts, easements, licenses, leases, and Purchase Orders. *Regents' Rules* Chapter 07. Component Institutions may require formal review and signature on other related legal documents (e.g., Non-disclosure agreements).

Contract Administration: Following the award of a Contract, the department level actions to oversee full compliance with all of the terms and conditions contained within a Contract.

Contract Administrator: The Contract Administrator is the department level individual responsible for adherence to all provisions contained within a Contract and for managing the performance of a Contract. The Contract Administrator (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.

Contract Management: The complete Contracting process from Planning through Contract Administration and concluding with Contract Close-out.

Contract Manager: A person employed by TTUS or a component institution who has significant Contract Management duties. This person is the Procurement/Purchasing/Contract Office representatives which may differ in

organization structure at each institution, but the term shall include all related offices at the respective Institutions. The Contract Manager is charged with reviewing procurement transactions and contracts for compliance with Statutes and institutional operating policies and TTUS Regents' Rules.

Contractor: An individual or legal entity that has a Contract to provide Goods or Services to the System or any Component Institution. For purposes of this Handbook, Contractor is used interchangeably with the term "Vendor."

Debarment: An exclusion from contracting or subcontracting on the basis of any cause set forth in statute or Comptroller rules, or institutional policies commensurate with the seriousness of the offense, performance failure, or inadequacy to perform.

Deliverable: A unit or increment of work required by the Contract, including such items as Goods, Services, reports, or documentation.

Electronic State Business Daily (ESBD): An online directory, administered by the Comptroller, that publishes solicitations for the purpose of informing potential Vendors of procurement opportunities and provides public notice of Contract awards.

Emergency: A purchase made when 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.

Goods: Supplies, materials, or equipment as defined in Texas Government Code § 2155.001. Goods do not include Services or real property.

Historically Underutilized Business (HUB): A for-profit entity with its principal place of business in the State of Texas that is at least 51% owned by a Black American, Hispanic American, woman, Asian Pacific American, Native American, or disabled veteran as defined in Texas Government Code § 2161.001. See also Texas Comptroller HUB website.

Informal Solicitation: An unsealed, competitive Solicitation used to obtain Offers submitted verbally or in writing for purchases. Each Institution shall establish informal solicitation thresholds and publish those limits in the Institution's Operating Policies and Procedures manual.

Institution(s): The Texas Tech University System (TTUS) and its components including: Texas Tech University (TTU), Texas Tech University Health Sciences Center (TTUHSC), Angelo State University (ASU), Texas Tech University Health Sciences Center at El Paso (TTUHSC El Paso), Midwestern State University (MSU), and any future components that may be added to the System through statutory enactment. Under TTUS, these may be referred to as "Component Institutions" as well.

Institutions of Higher Education: Institutions of higher education as defined by Texas Education Code, § 61.003(8).

Invitation for Bids (IFB): A Procurement process used when the requirements are clearly defined, Negotiations are not necessary, and price is the major determining factor for selection.

Negotiation(s): 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."

Originating Department: The System or Institutional department from which a Solicitation or Procurement is originated.

Payment Bond: A bond solely for the protection and use of Payment Bond beneficiaries who have a direct contractual relationship with the prime Contractor or a Subcontractor to supply labor or material.

Performance Bond: An instrument executed, subsequent to award, by a successful Proposer or Bidder that protects an Institution from loss due to the Vendor's inability to complete the Contract as agreed.

Procurement Office: The office designated by the Institution to purchase Goods or Services and oversee compliance with federal, State, and Institutional Procurement Operating Policies and Procedures. For purposes of this Handbook, the phrase "Procurement Office" also encompasses "Purchasing Office" and "Contract or Contracting Office" or other offices with similar functions. References in this Handbook shall be consolidated to the single term "Procurement Office" and that shall include the functions required of the offices defined here. In general, this Handbook does not cover sponsored projects grants and contracts and does not cover the procurement and contract responsibilities of the TTUS Office of Facilities, Planning, and Construction. Each Institution may have additional exceptions to the Handbook which should be documented by the Institution.

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 these professions are not considered Professional Services. See Handbook Section V.L.

Proposal: A Response to a Request for Proposals (RFP) and intended to be used as a basis to negotiate a Contract award. May be used interchangeably with "Offer."

Proposal Opening: The public (in-person or virtual) opening of Proposals, in which the names of the Respondents to a Solicitation are publicly read and recorded. No prices are divulged at a Proposal Opening as these types of Solicitations are subject to Negotiations.

Proposer: An individual or legal entity submitting a Proposal in response to a Request for Proposal (RFP). The term includes anyone authorized to act on behalf of the individual or legal entity that submits a Proposal, such as agents, employees, and representatives. See also Respondent.

Proprietary Purchase: A Good or Service produced or marketed by a Contractor having the exclusive right to manufacture or sell it.

Purchasing Personnel (or Procurement Personnel or Contract Personnel): Includes an employee of a state agency who makes decisions on behalf of the state agency or recommendations regarding: (A) contract terms or conditions on a major contract; (B) who is to be awarded a major contract; (C) preparation of a solicitation for a major contract; or (D) evaluation of a bid or proposal. Texas Government Code § 2262.004.

***Regents' Rules*:** Rules established by the TTUS Board of Regents that govern the System and all Component Institutions. http://www.texastech.edu/board-of-regents/regents-rules.php.

Renewal: The process where an existing Contract is renewed for an additional time period in accordance with the terms and conditions of the original Solicitation or Contract.

Request for Information (RFI): A general invitation requesting information for a potential future Solicitation. The RFI is typically used as a research and information gathering tool for preparation of a Solicitation.

Request for Proposal (RFP): A Solicitation requesting submittal of a Proposal or Offer in response to the required Specifications and usually includes some form of a cost Proposal or Offer. The RFP process allows for Negotiations between a Proposer or offeror and the issuing Institution.

Request for Qualifications (RFQ): A Solicitation document requesting submittal of Qualifications in response to the scope of Services required.

Request for Quote (Quote): A Solicitation document requesting pricing on informal purchases as determined by each Component Institution's chief procurement officer.

Responsible: A Respondent who is fully capable to meet all of the financial and technical requirements of a Solicitation and any subsequent Contract.

Responsive: The Respondent has complied with all material aspects of the Solicitation, including submission of all required documents in accordance with the Specifications.

Respondent: An individual or legal entity submitting a Response to a Solicitation.

Scope of Work (SOW): A detailed, written description of the conceptual requirements contained within the Specifications.

Service(s): The furnishing of labor, time, and effort by a Contractor or Auxiliary Enterprise, including for a Construction Project, which may involve to a lesser degree, the delivery or supply of Goods.

Solicitation: A method or process used to obtain Responses for the purpose of gathering information or entering into a Contract.

Solicitation Conference: A meeting chaired by the Procurement Office which is designed to help potential Respondents understand the requirements of a Solicitation. May also be known as a Pre-Bid Conference, Pre-Solicitation Conference, or Pre-Proposal Conference.

Specification(s): Description of the requirements for Goods or Services, including the Scope of Work, to be fulfilled by a Contractor.

State: The State of Texas.

Statute: A law enacted by a legislature.

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.

Vendor: An individual or business or governmental entity that has a Contract to provide Goods or Services to an Institution. Used interchangeably with the term "Contractor."

G. Institutional Procurement and Contracting Operating Policies

Each Institution shall develop and maintain Operating Policies and Procedures to guide Procurement and Contract Management processes. The following provides a reference to applicable operating policies for each Institution.

Texas Tech University System Regulations

01.01 Enterprise Risk Management – Standards of Practice
01.03 Foreign Source Disclosure – Standards of Practice
01.04 Unmanned Aircraft Systems
01.06 Continuity of Operations
01.07 Review of Health Care Services Contracts
01.10 ERP, Enterprise, and Mission Critical Systems

Texas Tech University System Regulations (Cont.)

07.01 Public Records
07.02 Outside Counsel
07.03 Contracting

Texas Tech University (TTU)

72.01 Equipment Purchases Requiring Building and/or Building System Modification
72.02 Contracting Procedures
72.04 Contract Administration
72.07 Leasing Land, Space, and Facilities
72.08 Use of Consultant Services
72.09 Procurement of Goods and Services
72.11 Payment of Purchase Orders
72.12 Historically Underutilized Businesses
72.14 Geophysical Surveys
72.15 Purchasing/Leasing Motor Vehicles
72.16 Memberships
72.17 Procurement of Independent Contractors
72.18 Lease Purchase of Equipment and Other Commodities
72.20 Professional Services
72.23 Licensing and Use of TTU Registered Names, Logos, and Trademarks
72.24 Auxiliary Enterprise Contractors
74.10 Export Control
76.07 Purchasing Approval and Flying of Unmanned Aircraft Systems on Texas Tech Property

Texas Tech University Health Sciences Center (TTUHSC)

50.03 Financial and Fund Manager Responsibilities
54.01 Contracting Authority and Policy
54.02 Contracting Procedures
54.04 Professional Services - Contracting
54.05 Use of Private Consultants
67.04 Use of "Texas Tech University Health Sciences Center" Name for Individual and Private Business Purposes and Licensing: Use of Indicia, Logo and Symbols
72.01 Purchasing Supplies, Equipment and Services
72.02 Guidelines for Proprietary Purchasing
72.04 Equipment Purchased for Sponsored Federal Projects
72.06 Leasing of Space and Facilities
72.07 Lease Purchase of Equipment and Other Commodities
72.08 Independent Academic Services
72.11 Purchasing/Leasing Motor Vehicles
72.13 Historically Underutilized Businesses
72.17 Purchasing of Pharmaceuticals

Angelo State University (ASU)

30.01 Contracting Policy and Procedures
30.02 Contracting Authorities and Policies
30.03 Contract Administration
30.04 Auxiliary Enterprise Contractors
30.05 Use of Private Consultants
30.06 Professional Services
54.02 Historically Underutilized Businesses
54.03 Purchase of Food
54.04 Purchase of Goods and Services

Texas Tech University Health Sciences Center at El Paso (TTUHSC El Paso)

54.01 Contracting Authority and Policy
54.02 Contracting Procedures
54.03 Use of TTUHSCEP Name for Private Business Purposes and Licensing
54.04 Professional Services - Contracting
72.01 Purchasing Supplies, Equipment and Services
72.02 Guidelines for Proprietary Purchasing
72.04 Equipment Purchased for Sponsored Federal Projects
72.07 Lease Purchase of Equipment and Other Commodities
72.08 Independent Academic Services
72.11 Purchasing/Leasing Motor Vehicles
72.13 Historically Underutilized Businesses
72.17 Purchasing of Pharmaceuticals

Midwestern State University (MSU)

30.01 Approval and Execution of University Contracts
30.03 Consultants
30.04 Professional Services

SECTION II – ETHICAL STANDARDS AND POLICIES

A. General

Texas Education Code §51.9337(b) requires the Board of Regents to establish a code of ethics for Institutional officers and employees, including provisions governing authority to execute Contracts or exercise discretion in awarding Contracts. For further information, refer to *Regents' Rules* Chapter 02 and Chapter 03 and each Institution's Operating Policies and Procedures (listed below).

System and Institution personnel involved with Procurement must adhere to the highest level of professionalism in discharging their official duties. The nature of Procurement functions makes it critical that everyone in the 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 process. Consequently, the credibility of a Procurement program requires the establishment of a clear set of guidelines and rules. Such guidelines and rules are designed to prevent actual and potential Contractors from influencing State agency employees or officials in discharging their official duties. Furthermore, these guidelines and rules will help prevent the System or Institution employees' or officials' independent judgment from being compromised.

B. Conflicts – Rules and Policies

System Institutions shall have policies governing conflicts of interest, conflicts of commitment, and outside activities ensuring that the primary responsibility of officers and employees is to accomplish the duties and responsibilities assigned to that position. Texas Education Code § 51.9337(c)(2).

Following are links to *Regents' Rules*, TTUS Regulations, and Institutional Operating Policies and Procedures related to conflict policies and ethical standards:

Texas Tech University System

Regents' Rules
System Regulation 01.05 Ethical Conduct and Required Training

Texas Tech University and TTU System

Operating Policy 10.11 *Ethics Policy*
Operating Policy 10.20 *Conflict of Interest and Commitment Policy*
Operating Policy 32.07 *Other Employment, Faculty Consulting, and Public Offices*
Operating Policy 70.31 *Employee Conduct, Discipline, and Terminations*
Operating Policy 72.03 *Conflicts of Interest Relating to Purchasing, Payments, and Contracts*

Texas Tech University Health Sciences Center

Operating Policy 10.05 *Conflict of Interest and Commitment Policy*
Operating Policy 52.06 *Standards of Conduct and Ethics Guide*
Operating Policy 73.09 *Financial Conflicts of Interest in Research*

Angelo State University

Operating Policy 02.09 *Conflict of Interest and Commitment*
Operating Policy 06.05 *Conduct of University Faculty*
Operating Policy 06.22 *Conflict of Interest*
Operating Policy 52.02 *Ethics Standards and Conduct Policy*
Operating Policy 56.02 *Misconduct in Research*
Operating Policy 56.08 *Disclosure of Significant Financial Interests that may Represent Conflicts of Interests*

Texas Tech University Health Sciences Center at El Paso

Operating Policy 10.05 *Conflict of Interest and Commitment Policy*
Operating Policy 52.06 *Standards of Conduct and Ethics Guide*
Operating Policy 73.09 *Financial Conflicts of Interest in Research*

Midwestern State University

Operating Policy 02.37 *Institutional Compliance and Ethics Program*
Operating Policy 02.40 *Conflict of Interest, Conflict of Commitment, and Outside Employment and Activities*
Operating Policy 52.20 *Ethics Policy for Employees of Midwestern State University*

C. Ethics Training

See Section I of this Handbook - Introduction, part E – Training, and Texas Government Code § 656.051.

D. Standards of Conduct of Officers and Employees

As State officers or employees, each System and Institutional officer or employee is expected to comply with the applicable ethical standards and policies, as well as all federal, State, and local laws, as the officer or employee will be subject to disciplinary action for a violation of those laws. Texas Education Code § 51.9337(c)(1). A violation by an officer or employee may subject the individual to disciplinary action and any applicable civil or criminal penalty if the violation constitutes a violation of another Statute or rule.

In accordance with Texas Government Code Chapter 572, Subchapter C, § 572.051, Standards of Conduct and Conflict of Interest Provisions, a State officer or employee shall not:

1) 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;
2) 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 officer's or employee's position;
3) 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 the officer's or employee's official duties;
4) Make personal investments or engage in other activities, including having a direct or indirect financial or other interest, engaging in a business transaction or professional activity, or incurring any obligation that could reasonably be expected to create a substantial conflict with the proper discharge of the officer's or employee's duties related to the public interest;
5) Intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised their official powers or performed official duties in favor of another; or
6) Act as an agent for another person or entity in the negotiation of the terms of an agreement relating to the provision of money, services, or property to the TTU System or Component Institution.

E. Ethical Behavior

In accordance with *Regents' Rule* 03.01.2, officers and employees shall:

1) Obey all federal, state, and local laws or be subject to disciplinary action for a violation of those laws;
2) Put forth honest effort in the performance of their duties;
3) Not make unauthorized commitments or promises of any kind purporting to bind TTUS or any of its Component Institutions;
4) Not use their public office for private gain;
5) Act impartially and not give preferential treatment to any private or public organization or individual;
6) Protect and conserve public property, including all Institutional resources, and not use it for anything other than authorized activities;
7) Promptly disclose waste, fraud, abuse, and corruption to appropriate authorities;
8) Adhere to all laws, regulations, and policies that provide equal opportunity for all persons regardless of sex, sexual orientation, gender identity, gender expression, race, national origin, religion, age, disability, status as a covered veteran, genetic information, or other legally protected categories, classes, or characteristics;
9) Endeavor to avoid any action(s) that would create the appearance that they are violating the law or the ethical standards of TTUS;
10) If involved in Procurement for TTUS, disclose to TTUS in the manner prescribed by the Institution Operating Policy any actual or potential conflict(s) of interest that is known by the employee or official with respect to any Contract with a private Vendor or Bid for the purchase of Goods or Services from a private Vendor by TTUS at any time during: (i) the Procurement process, from the initial request for Bids for the purchase of Goods or Services from the private Vendor until the completed final delivery of the Goods or Services; or (ii) the term of the Contract with a private Vendor; however, for a Contract for the purchase of Goods or Services solicited through a Purchase Order, this subsection only applies if the amount of the Purchase Order exceeds $25,000; and
11) Participate in regular training concerning ethical standards and policies of TTUS.

F. Disclosure of Potential Conflicts by Institution Officials and Employees; Prohibited Contracts

1) Institutional Procurement of Goods or Services is subject to Texas Government Code, Chapter 2261, Subchapter F - *Ethics, Reporting, and Approval Requirements for Certain Contracts*, which also applies to related Contracts and Contract Management activities. Institutional employees and officials involved in Procurement for the Institution must disclose to the Institution, as required by State law, *Regents' Rules*, TTU System Regulation, or Institution Operating Policies and Procedures or other applicable policies, any potential Conflict of Interest that is known by the employee or official with respect to any Contract or purchase of Goods or Services from a Contractor by the Institution. Texas Government Code § 2261.252(a).

2) Under Texas Government Code § 2261.252(b), if any of the following Institution employees or officials or certain family members of employees or officials have a financial interest in a private Vendor, the Institution as a State agency is unable to enter into a Contract for the Purchase of Goods or Services with the person:
   (a) a member of the agency's governing body (i.e. TTUS Board of Regents);
   (b) the governing official (i.e., the TTUS Chancellor), executive director (i.e., the Institution Presidents), general counsel (i.e. Vice Chancellor and General Counsel), chief procurement officer, or Procurement director of the agency (i.e., Institution); or
   (c) a family member related to an employee or official described by (1) or (2) within the second degree by affinity or consanguinity.

   There is a financial interest under Texas Government Code § 2261.252(c), if the employee or official:
   (a) 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
   (b) could reasonably foresee that a Contract with the person could result in a financial benefit to the employee or official.

G. Conflict of Interest: Disclosure, Representations, and Warranties by Potential Contractors and Respondents; Employment of Current and Former Institution Employees

1) To avoid conflicts of interest, Institutions shall request all potential Contractors and Respondents to disclose, in their Response to Solicitations and during the term of any resulting Contract, any actual or potential conflicts of interest in their proposed provision of Goods or Services or other performance under any Contracts resulting from the Solicitations.

   When applicable, and in accordance with Texas Government Code §§ 2252.908(e)-(f), potential Contractors and Respondents shall submit a disclosure certificate of interested parties on the form prescribed by the Texas Ethics Commission, and Institutions shall acknowledge receipt of the certificate, both of which shall be accomplished through the website available at: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

   An Institution shall not enter into a Contract with a Contractor or Respondent which requires Regents' approval prior to execution or has a value of at least $1 million without the requisite disclosures by potential Contractor(s) or Respondent(s). Texas Government Code § 2252.908. This requirement does not apply to the following:
   (a) A contract where the governing body has properly delegated authority to execute the Contract and the governing body does not participate in selecting the Contractor (Texas Ethics Commission, Chapter 46); or
   (b) A sponsored research Contract of an Institution; an Interagency Contract of an Institution; or a Contract related to health and human services if the value cannot be determined at time of execution and any qualified Contractor is eligible for the Contract (Texas Government Code §2252.908(c)).

2. In Responses, potential Contractors and Respondents are required to:

   (a) Represent and warrant that Contractor's or Respondent's provision of Services or other performance under the Contract will not constitute an actual or potential Conflict of Interest and represent and warrant that it will not reasonably create even the appearance of impropriety;

(b) Disclose any current or former employees who are current or former employees of the Institution;
(c) Disclose any proposed personnel who are, or are related to, current or former employees of the Institution;
(d) Represent and warrant that Contractor or Respondent has not given and will not give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant, employee, or representative of the Institution in connection with the Solicitation or any resulting Contract; and
(e) Verify that it or any of its principals (including, but not limited to, an owner, proprietor, sole or majority shareholder, director, president, or managing partner) are not debarred, suspended, or otherwise excluded from doing business with TTUS or any of its Component Institution(s). Institution shall also verify that an entity or principals are not debarred, suspended, or otherwise excluded to confirm that no Contracts are awarded, extended, or renewed.

H. Contracts with Former or Retired Employees

The following restrictions also apply to Potential Contractors and Respondents:

1) Texas Government Code § 2252.901, Contracts with Former or Retired Agency Employees. An Institution may not enter into an employment Contract, a Professional Services Contract, or Consulting Services Contract with a former or retired employee before the first anniversary of the last date on which the individual was employed by the Institution **if appropriated funds** are used to make payments under the Contract. Such Contracts may be made with an employer of a former or retired employee within one year if the individual does not perform Services on Procurements or Projects on which the individual worked while employed by the Institution.

2) Texas Government Code § 2254.033, Restriction on Former Employees of a State Agency. An individual who offers to provide Consulting Services to an Institution and who was employed by the Institution or another State agency at any time during the prior two years shall disclose in the Offer the nature of previous employment, the date employment was terminated, and annual rate of compensation for the employment at the time of termination.

3) Texas Government Code § 572.069, Certain Employment for Former State Officer or Employee Restricted. 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 involving a person may not accept employment from that person before the second anniversary of the date the Contract is signed or the Procurement is terminated or withdrawn.

I. Nepotism: State Auditor's Office Disclosure Statement for Procurement Personnel

In accordance with Texas Government Code § 2262.004, before an Institution may award a Major Contract, defined as a contract with a value of at least $1 million, for the purchase of Goods or Services to a business entity, each of the Institution's Procurement Personnel working on the Contract must submit a completed disclosure statement to the administrative head of the state agency or their designee. Procurement Personnel must disclose, on the form prescribed by the State Auditor's Office, any relationship about which the Procurement personnel is aware with an employee, a partner, a major stockholder, a paid consultant with a contract with the business entity the value of which exceeds $25,000, or other owner of the business entity that is within the degree of kinship described by Texas Government Code § 573.002.

SECTION III – PLANNING

Planning, the first step in the Contract Management process, is crucial to the successful outcome of any Procurement or Contract. Planning assists an Institution in determining the need for Goods or Services, preparing the Specifications, the budget, choosing the appropriate Solicitation type, negotiating and drafting a Contract, and evaluating the necessary level of Contract monitoring and oversight. Proper planning reduces risk in the Procurement process. The following are all recommendations and the Procurement Office should determine the amount of planning and oversight needed based upon the risk of the Contract.

A. General Planning

General planning may include identifying the teams involved in the process, assessing risk, developing communication plans, determining the Solicitation method, and determining any financial obligation.

The level of participation by team members should be directly related to the level of risk and complexity associated with the Procurement.

The Institutional Originating Department shall submit a request to issue a Solicitation or a requisition to the Procurement Office, as applicable. The Originating Department will provide input as needed to develop the Scope of Work and serve as the subject matter expert for the Procurement and will assign a Contract Administrator to oversee the Contract, confirm the Goods or Services are received, and ensure payment is made in accordance with the Contract.

Depending on the complexity of the Solicitation and the level of risk, the Procurement Office will consult with the Office of General Counsel, the chief information officers, risk management, accounting services, and other Institutional departments and subject matter experts to obtain input about compliance with State laws and regulations, Institutional Operating Policies and Procedures, and the Contract. Texas Tech University System Regulation 07.03 details which contracts and what dollar thresholds require review by the Office of General Counsel.

B. Risk Analysis Procedure

Risk analysis involves the management of factors that create the possibility of loss or injury in the performance of a Contract, and includes all activities necessary to identify, analyze, plan, track, or control factors that contribute to an increased level of risk.

Each Institution must develop and comply with the Purchasing Accountability and Risk Analysis Procedure. Texas Government Code, § 2261.256(a). The procedure must address:

1. Assessing the risk of fraud, abuse, or waste in the Contractor selection process, Contract provisions, and payment and reimbursement rates and methods for the different types of Goods or Services for which the Institution contracts;
2. Identifying Contracts that require enhanced Contract monitoring or the immediate attention of Contract Administrator or Contract Administration Team and Institution personnel; and
    a. Each Component Institution's Procurement Office shall establish criteria by which Contracts require additional monitoring efforts or Enhanced Contract Monitoring. Each Institution shall develop Contract monitoring procedures attuned to its own specified needs. All Contracts that require enhanced Contract monitoring shall be reported to the Board of Regents in compliance with Texas Government Code §§ 2261.254 and 2261.255.
3. Establishing clear levels of Procurement accountability and staff responsibilities related to Procurement.
    a. Officers and employees shall not make unauthorized commitments or promises of any kind purporting to bind TTUS or any of its Component Institutions.

b. The chief procurement officer or their designee is delegated the authority to issue Purchase Orders and is therefore responsible for establishing procedures that comply with the requirements set forth in policy and statute. The chief procurement officer may further delegate their authority.
c. Institutional departments have the delegated authority to obtain Bids or quotes for requisitions that will not exceed formal Procurement thresholds established by each Institution and are therefore responsible for ensuring compliance with all ethical standards and procedural processes outlined in the Institution's Operating Policies and Procedures.

The Institution shall post on the Institution's internet website the procedures described above and submit to the Comptroller a link to the web page that includes the procedures. Texas Government Code, § 2261.256(c).

C. Risk Assessment

Risks are inherent in all stages of the Procurement process. Institutions will identify risk factors to focus monitoring resources on Contractors with the highest risk of noncompliance and fraud and on Contracts that pose the greatest financial and operational risk to the Institution. Please refer to Section III.B of this Handbook regarding *Risk Analysis Procedure*.

During the Negotiation of a Contract, and prior to execution, a preliminary risk assessment should be conducted to make an initial determination about the level, type, and amount of management, oversight, and resources required to plan and implement the Contract from beginning to end. As the risk associated with a Contract increases, the level and degree of Contract Manager and Contract Administrator participation and oversight should be increased. Many Contracts can be managed with minimal oversight through Risk Management and proper Contract language.

D. Risk Management

Risk management follows risk assessment and includes identifying specific risks of a Procurement and seeks to minimize the risks to the System through Contract terminology, insurance, managing the risk at an appropriate level, or risk avoidance.

E. Communications Plan

Institutions need to manage both internal and external communications. Individuals involved in any major Contract Procurement process should sign a non-disclosure and conflict of interest form.

F. Determining the Procurement Method

If a Procurement of Goods or Services requires a Solicitation, the Procurement Office shall determine the appropriate method of Solicitation. The Procurement Office may request the Originating Department to provide sufficient information for the Contract Review Team to develop the Scope of Work. The primary methods of Solicitation include:

1. **Invitation for Bids (IFB)** – The IFB uses the competitive sealed Bid method. This method is used when requirements are clearly defined, Negotiations are not necessary, and price is the major determining factor for selection.

2. **Request for Information (RFI)** – Requests for Information are used primarily as a planning tool. The RFI is an optional method that may be used to gather information when an Institution does not have the necessary information to prepare a complete and accurate Solicitation document. RFIs are used to identify industry standards, best practices, potential performance measures, or to generally ascertain the level of interest of prospective Respondents.

3. **Request for Proposal (RFP)** – Used when competitive sealed bidding is not practicable or advantageous, such as when factors other than price are to be considered or when objective criteria cannot be defined. One of the key differences between an IFB and an RFP is that Negotiations are allowed in an RFP. Discussions are allowed with Proposers and best and final offers are solicited.

4. **Request for Qualifications (RFQ)** – Generally used to select a provider of Professional Services under the Texas Government Code, Chapter 2254, Professional Services Procurement Act. The RFQ may be used in other Solicitations not included in Texas Government Code, Chapter 2254. Selection and award to Respondents is based solely on demonstrated competence to perform the Services; and for a fair and reasonable price. § 2254.003. Price is negotiated after the Institution has selected based on Qualifications.

5. **Request for Quote (Quotes)** – A Bid method utilized in the informal Bid process, a sole source, or other limited competition Procurement method, as determined by the Institution's chief procurement officer, to obtain quotations from potential Contractors for the purchase of Goods or Services. Quotes are obtained for small dollar transactions and shall be governed by the Purchase Order terms and conditions or a Contract.

G. Exempt Purchases

Some Procurement transactions may be exempt from competitive Procurement requirements. Each Institution shall maintain a list of Exempt Purchase Goods or Services. The chief procurement officer or their designee shall make the final determination on an Exempt Purchase.

1. Emergency Purchases

An Emergency Purchase occurs as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat. If a situation arises in which compliance with normal Procurement practice 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. Institutions should address Emergency Procurements in their Operating Policies and Procedures.

2. Proprietary Purchases

A Proprietary Purchase (or sole source) is justified only when an equivalent Good or Service is not available or not suitable. A written justification must be provided by the Originating Department when a Specification requirement limits consideration to one Contractor, one unique Good(s), or one Service provider, and the amount of the purchase exceeds the informal Bid threshold at the Institution. Price and personal preferences are not acceptable as determining factors. The Procurement Office reserves the right to require additional Quotes or Bids for a Proprietary Purchase(s).

3. Other Exempt Purchases

Certain Goods or Services are considered exempt from the competitive Procurement rules, either by Statute or if an exemption is in the best interest of the public and/or the Institution as determined by the head procurement or contract staff at the Institution. Bids or Proposals are not required when procuring Exempt Goods or Services but may be requested to confirm Best Value for the Institution and shall have a valid business purpose. Each Institution shall maintain an exempt purchase list applicable to Procurement transactions for the Institution.

SECTION IV – PREPARING THE SOLICITATION

After an Institution's Procurement Office determines which Solicitation method is appropriate, the Solicitation document is prepared. Relevant Statutes, Institution Operating Policies and Procedures, *Regents' Rules*, TTUS Regulations, and industry best practices should be consulted when preparing the Solicitation document. The Contract Review Team involved in preparing a Solicitation, any Institution personnel reviewing the Solicitation, and any other Institutional or outside representatives who are involved in the Procurement process must sign and submit the Institution's *Disclosure of Potential Conflicts by Institution Officials or Employees*.

A. Organization of the Scope of Work

The Scope of Work (SOW) forms the foundational framework for the resulting Contract. The SOW is a detailed description of the conceptual requirements for the Procurement. The success or failure of a Contract can usually be linked to the adequacy of the planning, analysis, and thoroughness of the SOW. Time spent planning, analyzing, and drafting the SOW will generally improve the quality of the Goods or Services provided. It is very important that the SOW:

1. Secure the best economic advantage focusing on obtaining Best Value;
2. Be clearly, accurately, and consistently defined;
3. Be contractually sound;
4. Be unbiased and non-prejudiced toward Respondents;
5. Encourage innovative solutions to the requirements described; and
6. Allow for free and open competition to the maximum extent reasonably possible.

B. Characteristics of an Effective Specification

1. **Simple**: Avoid unnecessary detail, but be complete enough to ensure requirements will satisfy the intended purpose.
2. **Clear**: Use consistent terminology that is understandable to the Institution and potential Contractors. Use correct spelling and appropriate sentence structure to eliminate confusion. Avoid legalese and jargon when possible.
3. **Accurate**: Provide accurate units of measurement consistent and compatible with industry standards and that are specific to the Goods or Services being requested in the Solicitation.
4. **Competitive**: Draft Specifications that encourage competition and provide opportunities for cost savings. Avoid additional requirements that could reduce or eliminate potential Contractors.
5. **Flexible:** Avoid Specifications that lack flexibility which might prevent the acceptance of a Response that could offer a greater value.

C. Contract Term

The Contract term shall comply with *Regents' Rules* and Institutional Operating Policies and Procedures. All Contracts should have an effective date and an expiration date. Options for Renewal should be clearly defined as to the number and length of each potential option. Automatic renewals may require approval of the TTUS Board of Regents. Institutions should consult with the Office of General Counsel regarding outstanding questions about permissible Contract term(s).

D. Historically Underutilized Business (HUB) Requirements

Institutions are required to make a good faith effort to utilize HUBs in Contracts in accordance with Institutional Operating Policies and Procedures. These goals can be achieved through contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with Texas Government Code, Chapter 2161, Subchapter F and Texas Administrative Code, Title 34 Part 1, Chapter 20, Subchapter B and Subchapter D, Division 1. Specific HUB procedures are detailed in the Operating Policies and Procedures of each Institution.

Each Institution that considers entering into a Contract with an expected value of $100,000 or more over the life of the Contract (including any renewals) shall determine whether subcontracting opportunities are probable under the Contract prior to preparation of the Solicitation. Texas Administrative Code, Title 34 Part 1, Chapter 20, Subchapter B, Division 1, Rule § 20.285.

For all Solicitations and Contracts with an estimated value greater than $100,000, in which the Institution has determined that there are subcontracting opportunities, HUB subcontracting forms must be submitted to the Comptroller or the Response will be considered non-Responsive as addressed in Texas Administrative Code, Title 34 Part 1, Chapter 20, Subchapter B, Division 1, Rule § 20.285.

E. Warranties

A warranty is a type of standard that can describe performance. Consider including warranty language as a contractual standard of performance. While an express warranty and an implied warranty are technically different, each standard works to describe a type of contractually-based performance. Unless excluded or modified by the language in the Contract, warranties or standards may be implied or imposed into a Contract by a Statute or case law. For example, in the sale or lease of some types of personal property or Goods, there may be statutory warranties implied into a Contract, such as: a warranty of title, a warranty that the Goods shall be merchantable, or a warranty that Goods are fit for a particular purpose.

The best practice is to include clear standards for the contractual performance or an express warranty describing the objective expectation of performance rather than relying on an implied warranty. Generally, it is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that the seller have a specific intention to make a warranty. However, a mere affirmation of the value of the Goods or a statement merely purporting to be the seller's opinion or commendation of the Goods does not create a warranty. Sec. 2.313 of the Texas Business and Commerce Code.

F. Contractor Qualifications

The SOW should specify the minimum qualifications required of the Contractor. At a minimum, the SOW should require that the Contractor have a specified level of experience, licenses or certifications, staffing levels, or training in the type of Goods or Services to be delivered as determined by the Contract Review Team.

G. Bonding Requirements

The three most common forms of bonding are Bid Bonds (deposits), Performance Bonds, and Payment Bonds. Institutions must advise the Respondents in a Solicitation if a bond is required and what forms are acceptable (e.g., irrevocable letter of credit or cashier's check). When considering whether to use a Bond, remember that the cost of the Bond is typically passed on to the Institution by the Contractor. Some Bonds are required by Statute for specific types of Procurements as set forth in:

Texas Government Code § 2253.021(a):

(1) a Performance Bond if the public works Contract is in excess of $100,000, and
(2) a Payment Bond if the public works Contract is in excess of $25,000.

A public works contract means a contract for consulting, altering, or repairing a public building or carrying out or completing any public work. Texas Government Code § 2253.001(4).

Texas Government Code, Subchapter C, Private Auxiliary Enterprise Providing Services to State Agencies or Institutions of Higher Education - § 2252.064:

(a) A Contractor shall execute a bond issued by a surety company authorized to do business in this State in an amount determined by the Institution, but not to exceed the Contract price.
(b) The Bond must be payable to the Institution and conditioned on the faithful performance of the terms of the Contract.

Each Institution must evaluate the risk of performance failure prior to issuing the Solicitation and determine the need for a Performance Bond or Payment Bond.

H. Insurance Requirements

Institutions must also evaluate the risks associated with each Solicitation and include any insurance requirements in the Specification. The Contract Review Team should consult with the TTUS Risk Manager on insurance requirements as determined by the chief procurement officer.

Institutions shall determine, based on the risk on the Contract, what insurance coverage is necessary.

I. Evaluation Criteria

The Solicitation document should advise the Respondents regarding how a Solicitation Response will be evaluated. The evaluation criteria should reflect the essential qualities or performance requirements necessary to achieve the objective(s) of the Contract. The criteria should allow the Contract Review Team to fairly evaluate the Responses. The evaluation criteria may take a variety of sources of information into consideration, such as the written Response, oral presentations, documented past performance of the Respondents, and references relevant to the Contract. Specific portions of the required Response should directly relate to the evaluation criteria. The language used within the Solicitation will determine the scope of the evaluation criteria and the flexibility the Contract Review Team will have when evaluating Proposals, therefore the evaluation criteria should not be unduly restrictive. Respondents should be provided a list of all requirements within the Solicitation document.

J. Best Value Considerations

As outlined in Texas Education Code § 51.9335**,** Best Value considerations must be included in the Specifications. The lowest cost is not necessarily the Best Value for all Procurements. For example, a Good 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 greater. Institutions should think strategically and consider long-term needs when contemplating Procurement needs.

Best Value factors for institutions of higher education include:

1. Installation costs;
2. The long-term cost to the Institution of acquiring the Contractor's Goods or Services;
3. The quality and reliability of the Goods or Services;
4. Delivery terms;
5. Contractor's past performance including the Contractor's experience;
6. The reputation of the Contractor and of the Contractor's Goods or Services;
7. The extent to which the Goods or Services meet the Institution's needs;
8. The Contractor's past relationship with the Institution;
9. The impact on the ability of the Institution to comply with laws and rules relating to HUBs and to the Procurement of Goods or Services from Persons with disabilities;
10. The cost of employee training;
11. The effect of the purchase on the Institution;
12. The Contractor's anticipated economic impact to the region; and
13. Other factors relevant to determining the Best Value for the Institution or any relevant factor that a private business entity would consider in selecting a Contractor.

K. Proposal Submission Requirements

To assist Respondents in submitting a complete Response, the Specifications should include a listing of all required information Respondents must submit with their Response. Moreover, recommended or required Response formats should be specified in this section, such as order of information, page number limitations, and format.

L. Monitoring

The methods used to monitor Contractor performance should be clearly stated in the Solicitation to give Contractors advance notice if requirements include producing time-consuming reports or maintaining stringent testing requirements outside normal industry parameters. The amount of monitoring should be balanced and adequate to meet the need, but limited in type, scope, and frequency sufficient to achieve the desired result without unnecessarily increasing costs. Overly restrictive oversight can interfere with the Contractor's ability to accomplish the SOW and may unnecessarily and inadvertently increase the cost of the SOW.

The SOW should set deadlines for completion of tasks and a schedule for submittal of Deliverables, required meetings, presentations, or other activities. The Contract Administrator should consider monitoring methods to ensure the Contractor performs as specified in the SOW.

M. Final Acceptance

The SOW should clearly define how an Institution will determine that a Contract has been satisfactorily completed. The SOW sets a standard for acceptance of the Goods or Services and establishes a procedure to accept or reject the Goods or Services based on specific factors.

N. Additional Issues to Consider

Listed below are additional issues which Institutions should consider when preparing the SOW. Institutions should consider the effect on costs when including these items (please note, this list is not exhaustive):

- Licenses or permits required;
- Use of Institutional equipment or resources;
- Storage space for Contractor materials or supplies;
- Intellectual property or copyright issues;
- Security and protection of data and intellectual property;
- Subcontractor requirements; and
- Conflict(s) of interest and other organizational restrictions.

SECTION V – ADVERTISING THE SOLICITATION

When marketing a Solicitation, consideration should be given to the type of Procurement method used. Institutions should refer to the appropriate Statute to ensure the proper advertising procedures, if any, are followed. Below is a table to assist in determining recommended advertising options.

Type of Procurement	Applicable Statute*	Advertising Method(s)
Goods or Services	Texas Education Code § 51.9335	Institutional bidding systems, Electronic State Business Daily (ESBD), HUB organizations
Professional Services/Consulting Services	Texas Government Code Chapter 2254	Institutional bidding systems, Electronic State Business Daily (ESBD), HUB organizations
Construction	Texas Education Code § 51.9335 and Subchapter T - §§ 51.776-51.785	Institutional bidding systems, Electronic State Business Daily (ESBD), newspapers, HUB organizations, print media.

A. The Centralized Master Bidders List (CMBL)

The Centralized Master Bidders List (CMBL) is an electronic mail list administered by the Comptroller which is a database of Contractors registered by commodity codes that have provided information for the primary contact, commodity codes, and the Goods or Services provided. Institutions may use the list to solicit Bids or Proposals from Contractors registered on the CMBL.

B. The Electronic State Business Daily (ESBD)

The Electronic State Business Daily (ESBD) is an internet-based resource used for posting Procurement opportunities. It is also administered by the Comptroller. Institutions can use the ESBD to solicit Procurements to Vendors on the CMBL.

C. The Texas Register

The Texas Register may be used to advertise various types of Procurements as required by Statute, such as Consulting Services. The ***Texas Register*** is administered by the Texas Secretary of State's Office.

D. Institutional Bidding System

Each Component Institution may publish the Solicitation notifications in their respective Institutional bidding system. The bidding system allows Contractors to register to receive notifications relating to their respective commodity types. The Institutional bidding system may also accommodate electronic submittals of Procurement Responses.

E. Newspapers

If required by Statute, TTU System, or Institutional policy, each Component Institution shall publish Procurement notices, in a newspaper of general circulation in print or online.

F. Pre-Solicitation Conferences

Institutions may conduct pre-solicitation conferences. However, Institutions should carefully consider the use of a mandatory conference, as this may limit competition and may result in award protests. Conferences should be mandatory only if an on-site visit is required to have a full understanding of the Procurement or if the Solicitation is so complex that the Institution's Contract Review Team believes attendance is critical for potential Respondents to

fully understand the Procurement. Pre-solicitation conferences provide a forum for Institutional personnel to respond to questions regarding a Solicitation.

The Solicitation document should indicate the date, time, and location of the pre-solicitation conference. If the conference is mandatory, all conference attendees should be documented through a sign-in sheet. The Procurement Office will conduct the conference, in coordination with relevant Institutional representatives. The Procurement Office should facilitate the meeting and answer Procurement process-related questions, while other Institutional representatives may respond to technical questions.

G. Addenda

All changes to Solicitations should be made through an Addendum issued by the Institution. The Addendum is provided to all potential Respondents and should be posted on every site to which the original Solicitation was posted.

H. Communication With Respondents

All communication with potential Respondents should flow through the Procurement Office. The Solicitation document should identify a point of contact within the Procurement Office and describe all applicable forms of communication. While the Procurement Office or other designated personnel may be unable to answer all technical questions posed by potential Respondents, they will gather the requested information, post the information online, and distribute it to all registered potential Respondents.

A Respondent that contacts someone other than authorized Procurement Office personnel regarding a Solicitation may be disqualified.

I. Barring Vendors from Participating in Institutional Contracts

Under Texas Government Code § 2155.077, the Comptroller may bar a Contractor from participating in State Contracts based on the following including, but not limited to:

1. Substandard performance under a Contract with the State or a State agency.
2. If there are material misrepresentations by a Contractor in a Bid or Proposal to a State agency or during the course of performing a Contract with a State agency.
3. A Contractor may be barred due to fraud or breach of a Contract with a State agency.
4. If the Contractor has received unfavorable performance reviews under Texas Government Code, § 2155.089 or repeated unfavorable classifications under Texas Government Code, § 2262.055.
5. If more than two Contracts between the Contractor and the State have been terminated for unsatisfactory Contractor performance during the preceding three years.
6. Noncompliance with Statutory requirements (ex. Human trafficking convictions, Boycotts not permitted by Texas laws, etc.).

J. Solicitation Submission and Opening

The Solicitation documents should state the date, time, and location of the Solicitation opening to be held by the Institution. Unless required by Statute, Institutions may choose to not conduct a public reading of Respondent names or pricing tabulations prior to award of Contract(s).

K. *Regents' Rules* regarding Consulting Contracts

Pursuant to *Regents' Rule* 07.12.4 e., for a Consultant Services Contract with an initial consideration in excess of $25,000 and upon recommendation of the chancellor, Board approval is required prior to the execution of the Contract and prior to the execution of all modifications that increase the consideration of such a Contract. However, a Consulting Services Contract 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 no more than $25,000 unless and until such time as the Board has approved the agreement; and 2.) the chair or chair of the Finance and Administration Committee authorize execution of the agreement in advance of approval by the Board.

For a Consultant Services Contract with an initial consideration of $25,000 or less, Board approval is not required, but notice of the proposed Contract must be provided to the vice chancellor and chief financial officer, in consultation with the chancellor, presidents, and chief financial officers of the Institution. In addition, a report of the Contract shall be provided as an Information Agenda item at the next Board meeting, and approval of the Board is required prior to execution for any modification that will cause the total consideration to exceed $25,000.

L. Professional Services

Contracts for Professional Services are exempt from complying with the above provisions of Texas Government Code Chapter 2254, Subchapter B. However, Contracts for Professional Services must comply with Texas Government Code § 2254, Subchapter A, the Professional Services Procurement Act. Pursuant to § 2254.002(2), Professional Services include Services within the scope and practice of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, professional nursing, interior design, and forensic science. Services provided by these listed professionals that fall outside their scope of practice may be governed by other Procurement requirements and Operating Policies and Procedures.

Institutions are prohibited from using competitive bidding to purchase or award a Contract for Professional Services. Texas Government Code § 2254.003. The selection of a Contractor or award of a Contract for "Professional Services" must be based on two criteria: 1.) the demonstrated competence and qualifications to perform the Services; and 2.) whether a Contract can be negotiated at a fair and reasonable price. The professional fees under the Contract must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations and may not exceed any maximum provided by law.

M. Mixed Services

Pursuant to Texas Government Code § 2254.038, when a Contract involves both Consulting Services and one or more other Services, an Institution must comply with the Consulting Services requirements when the primary objective of the Contract is the purchase of Consulting Services. For instance, if a Contractor proposes to analyze the Institution's information systems needs and develop and implement an automated information system, the primary objective of the Contract is not the analysis provided. It is the delivery of a data information system. This Contract is not a Consulting Services Contract; therefore, the requirements for Consulting Services Contracts do not apply. However, the Institution must comply with the Procurement procedures under Texas Education Code, § 51.9335 and any applicable Institutional policies.

SECTION VI – EVALUATION AND AWARD

The purpose of an evaluation process is to identify which Responses are Responsive and to have sufficient and accurate information to make a sound decision. Institutions should conduct evaluations in a fair and impartial manner consistent with Texas law governing Procurement, Purchasing, and Contracts.

In the RFP process, the Contract Review Team will determine the best overall value to the Institution. In the RFQ process, the Contract Review Team will determine the best qualified Response(s) in accordance with the Specifications. In an Invitation for Bid process, the Contract Review Team will evaluate if the Bidder is Responsive in accordance with the requirements and if a Response complies with the Specifications. A Contract may be awarded to the Bidder who meets the Specifications and provides the lowest overall cost to the Institution.

A. Contract Review Teams

1. Composition and Role. A Contract Review Team ("Team") should be comprised of individuals who are stakeholders in the Goods or Services or individuals who have the necessary technical or program expertise. It is important that Team members understand the needs of the Institution and the desired outcome of the Procurement. Because Team members will have input into the Solicitation document, Team members should fully understand the requirements of the Solicitation. Team members are expected to be able to critically read and evaluate Responses and to document their independent judgments concisely, clearly, and in accordance with the predetermined evaluation criteria.

2. Appointment and Voting. A Contract Review Team is appointed by or under the supervision of the chief procurement officer, or a designee of the Procurement Office, who provides guidance and an orientation to Team members about their role in the process. Generally, a representative from the Procurement Office is appointed to serve as the Team leader and is a non-voting member. Other personnel from the Procurement Office may serve as voting members for the evaluation and award process.

B. Scoring Matrix

A Scoring Matrix may be used by the Contract Review Team members to score individual Responses based on the Specifications and evaluation criteria defined in the Solicitation document. If used, the Team leader shall provide instructions for completing the Scoring Matrix and ensure the matrix is completed in a consistent and fair manner.

C. Responsive Submissions

After all Responses are opened and recorded, the Procurement Office will conduct an initial administrative review to determine if the Responses submitted are Responsive and the Contractor is Responsible.

The Institution should state any other submission requirements and has the authority to reject as Non-Responsive any Bid or Offer that does not meet the minimum Responsive requirements. Only those Responses deemed to be Responsive and from a Responsible Respondent will be provided to the Team. Consultation with legal counsel is sometimes necessary to determine a Proposal's Responsiveness.

D. Rejection of Responses

If an Institution receives fewer than three Responses to a Solicitation, the Institution may elect to 1.) accept these Responses, 2.) extend the opening, or 3.) reject the Responses and reissue the Solicitation. The Institution should include language in the Solicitation document which defines the rights of the Institution. Proper documentation should be retained to fully support all actions. If the Institution chooses to reissue the Solicitation, the Specifications should be reviewed for any unduly restrictive requirements.

E. Proposal and Qualification Evaluations

Once Responses have been reviewed and considered Responsive and a Contractor is deemed Responsible by the Procurement Office, the Contract Review Team shall be provided with the qualified Responses. All written and oral evaluation questions should be presented to the Team leader to seek answers from the Respondents.

Once evaluations are complete, the Team leader will collect the evaluation Scoring Matrix from each Team member. The Contract Review Team leader will review the Scoring Matrix and verify the accuracy of calculations for input into the final evaluation summary. Under no circumstances shall any Team member attempt to pressure other Team member(s) to influence evaluation scores.

F. References, Background, and Credit Checks

The Contract Review Team and the Procurement Office may verify any references included in the Response and conduct any other reference, credit check, or background check deemed appropriate.

All reference, credit, or background checks should be documented in writing. It is beneficial if the individual conducting the reference, credit, or background check uses a consistent script to provide a consistent process to all Respondents. Sometimes it is difficult to obtain information from the references provided, either because the references have a policy of not providing reference information or because they cannot be reached in a timely manner.

G. Oral Presentations and Discussions

Oral presentations or discussions with Respondents are conducted at the option of the Institution, and if used, the Solicitation document should provide scheduling information and protocol. 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.

Oral presentations and demonstrations may be scheduled for all Respondents or limited to the top ranked Respondents in the competitive range of the evaluation process as determined by the chief procurement officer or their designee. The competitive range shall consist of those Responses determined to be reasonably considered for award selection. Oral presentations and demonstrations should be fair to all parties. The time allowed and the format should be consistent for all presenters. A prepared script will help ensure consistency.

H. Best and Final Offers

An Institution may request Best and Final Offer(s) ("BAFO") from the Respondents in the Request for Proposal process. The BAFO serves as an official revision of the RFP Response. A provision for the BAFO process should be included in the Solicitation document.

Revisions of Responses are normally accomplished by formally requesting BAFOs after the initial evaluation process or at the conclusion of oral presentations and discussions. This request should include a deadline for receipt of BAFOs and include instructions regarding what is to be submitted in response to the BAFO request. After consideration of all BAFO Responses, an Institution may select the Best Value Respondents with which to commence Negotiations.

I. Negotiations

In any Contract, there are usually terms or conditions that each party may be willing to relinquish. An Institution should identify and differentiate the terms and conditions that are essential, desirable, or subject to Negotiation.

During Negotiations, an Institution may not use technical leveling or technical transfusion techniques.

- Technical leveling is helping a Respondent to bring their Response up to the level of other Responses through successive rounds of discussion, usually by pointing out Response weaknesses.

- Technical transfusion is the disclosing of technical information or approaches from one Response to other competitors in the course of discussion.
- Prohibited disclosures include (see Texas Government Code § 552.153(2)(C)):

    1) trade secrets of the Proposer;
    2) financial records of the Proposer, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or other means; or
    3) work product related to a competitive Bid or Proposal submitted by the Proposer that, if made public before the execution of an interim or comprehensive agreement, would provide a competing Proposer an unjust advantage or adversely affect the financial interest or bargaining position of the responsible governmental entity or the Proposer.

J. Negotiation Strategies

If the Institution and a Respondent cannot reach an agreement after commencing Negotiations, the Institution should consider commencing Negotiations with the next Respondent. Once an Institution proceeds to Negotiate with the next Best Value Respondent, the Institution cannot return to the Negotiation process with any of the Respondents with which prior Negotiations failed. An Institution may continue Negotiations with the next Best Value Contractor until the best interest of the Institution is achieved. This process may result in either an Award or a termination of the Negotiation.

K. Award

An Institution shall award a Contract or multiple Contracts for the purchase of Goods or Services that provides the Best Value for the Institution in compliance with the Specifications. In some cases, an Institution may elect to issue only a Purchase Order that serves as the agreement between the parties. The terms and conditions of the Purchase Order should state that the Purchase Order governs over a Response, a Quote, or any other document provided by a Respondent.

Upon award of a Contract, an Institution shall notify all Respondents of the award.

SECTION VII – CONTRACT FORMATION

The information in this section is not intended to constitute legal advice.

The purpose of this section is to provide general guidelines regarding Contract formation. However, there are many variations and exceptions to these general instructions. Please consult the TTUS Office of General Counsel for any questions about applicable Statutes, regulations, *Regents' Rules*, TTU System Regulations, and Institutional Operating Policies and Procedures.

A. Approach to Contract Formation

Fundamentally, the purpose of a written Contract is to serve as a reference document that records the terms of an agreement of two or more parties in order to prevent misunderstanding and conflict. If properly formed, a Contract creates a legal, binding, and enforceable set of obligations for the parties involved. Without a clearly formed Contract, conflicts may arise well into the Contract period, as memories may become more unreliable with the passage of time and party representatives may change.

Therefore, it is important that the parties document clear terms and address potential issues as completely as possible. The person who drafts the Contract must understand the subject matter and concerns of the parties well enough to anticipate potential areas of disagreement and specifically address them in the Contract. Once signed, it may be difficult to amend unclear terms or add terms to address issues since all parties must agree to any changes.

Additionally, creating Contracts for a State Institution of higher education is complicated by the interplay of State and federal Statutes and regulations, *Regents' Rules*, TTU System Regulations, and Operating Policies and Procedures pertaining to issues such as fiscal constraints, constitutional, and statutory requirements, and Contractor requirements.

B. Elements of a Contract

The basic and essential elements necessary to form a binding Contract[2] are:

1. **Offer:** the manifestation of present intent and willingness to enter into an agreement that creates the power of acceptance in the offeree. A party must show the following to prove that an offer was made:
   - The offeror intended to make an offer,
   - The terms of the offer were clear and definite, and
   - The offeror communicated the essential terms of the offer to the offeree;[3]

2. **Acceptance:** Once there is a valid offer, there must then be acceptance of that offer. An acceptance is an objective manifestation by the offeree to be bound by the terms of the offer. A valid acceptance must show the following:
   - The acceptance was made before the offer lapsed or was revoked by the offeror,[4]
   - The manner in which the acceptance was made strictly complied with the terms of the offer,[5]
   - The acceptance was communicated to the offeror,[6] and
   - The form of the acceptance was clear and definite;[7]

3. **Mutual Assent**. Also known as a "meeting of the minds," mutual assent occurs upon acceptance of a valid offer to contract and requires "a mutual understanding and assent to the expression of the parties' agreement."[8] The parties

[2] Davis v. Chaparro, 431 S.W.3d 717, 722 (Tex. App..—El Paso 2014, pet. denied); IHS Acquisition No. 171, Inc. v. Beatty-Ortiz, 387 S.W.3d 799, 806 (Tex. App.—El Paso 2012, no pet.); Cessna Aircraft Co. v. Aircraft Network, L.L.C., 213 S.W.3d 455, 465 (Tex. App.—Dallas 2006, pet. denied).
[3] Domingo v. Mitchell, 257 S.W.3d 34, 39 (Tex. App.—Amarillo 2008).
[4] Ducc Realty Co. v Cox, 356 S.W.2d 807, 809 (Tex. App.—Waco 1962, no writ).
[5] *Beatty-Ortiz*, 387 S.W.3d at 806.
[6] Dempsey v. King, 662 S.W.2d 725, 726-27 (Tex. App.—Austin 1983, writ dism'd).
[7] Engleman Irrigation Dist. v. Shields Bros., 960 S.W.2d 343, 352 (Tex. App.—Corpus Christi 1997).
[8] *Domingo*, 257 S.W.3d at 40.

must agree to the same thing, in the same sense, and at the same time; their agreement must be based on "an objective standard, considering what the parties did and said, not their subjective states of mind;"[9]

4. **A communication** that each of the parties has consented to the terms of the Contract;

5. **Execution and delivery** of the Contract with an intent that it become mutual and binding on the parties; and

6. **Consideration**: Also known as "mutuality of obligation," consideration is a present (not past or future) bargained-for exchange of promises. It can consist of a benefit to the promisor or a loss or detriment to the promisee.[10]

   NOTE: A Contract is **not** formed if the underlying purpose of the agreement is illegal or if a party is legally incompetent, which would negate elements of formation. If a Contract becomes illegal after formation, the duty to perform is discharged.

C. Drafting the Contract

Contracts typically include standard terms and conditions, often referred to as 'boilerplate' or 'standard' terms and conditions. This chapter provides reference to standard terms and conditions used by the Institutions in most Contracts, but unless otherwise specified, such standard terms and conditions may be modified to meet an Institution's needs.

An Institution that repeatedly contracts for the same or similar Goods or Services may develop a template Contract with terms that are standard for a specific type of transaction. Appropriate terms included in a Contract will fully describe the agreement and obligations of the parties. Relevant provisions that are typically included in Contracts include, but are not limited to:

- Administrative and Institutional business provisions;
- Financial provisions;
- Provisions that allocate risk;
- The SOW;
- Provisions relating to the Contract term, termination, governing law, and dispute resolution; and
- Provisions that relate to rights and ownership of work product and intellectual property.

D. Planning for the Contract

Like other Contract Management processes, an Institution needs to plan for Contract drafting by allowing adequate time to prepare and review. The Institution should include a sample Contract template or general terms and conditions in the Solicitation document. This allows the Respondent to make an offer with knowledge of the proposed contractual terms and conditions. However, as a practical manner, it may be difficult to prepare a draft Contract with a detailed SOW due to the potential for Negotiation and resource limitations. Some recommended planning steps are:

- Collecting and reviewing similar Contracts. 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. Studying risks, business process and contract objectives, assumptions, and constraints in other Contracts may be helpful.
- Prepare an outline containing headings for the major terms and conditions. This makes it easier to group related terms and conditions. An outline will also illustrate potential gaps in the structure of the Contract.
- Finally, allow adequate time to consult with the Office of General Counsel and other subject matter experts regarding potential legal and business issues.

[9] *Id.* at 39.
[10] *Id.* at 40.

E. Form of the Contract

An agreement can be in the form of a Contract, with recitals, negotiated terms, and signature blocks, but Purchase Orders are also considered Contracts. Each of these forms has advantages and disadvantages. Determining which format is appropriate should be based on an assessment of the risks involved.

1. Formal Contract

A formal Contract (also known as a "four-corner contract") offers the greatest opportunity to avoid conflicting provisions, because all terms and conditions are negotiated, contained in one document, and signed by the parties. Contract Management is sometimes easier when all provisions regarding the duties, obligations, and responsibilities of each party can be logically organized and easily found. On the other hand, formal Contracts typically require more time to plan, prepare, and review.

2. Purchase Order

A Purchase Order uses a layered approach, i.e., the Purchase Order usually relies on a number of documents that in combination, constitute a Contract. Applying the formation rules in a simple manner, a Contractor delivers an offer, in a form of a Quote or a Solicitation Response. The Institution indicates acceptance of the Offer by issuing a Purchase Order with standard terms and conditions attached. Together these various documents combined comprise the offer and acceptance and evidence of the basis of an agreement.

There is potential for conflicting or additional terms among the various documents. When used properly, a Purchase Order is quick and efficient, but the Institution's standard terms and conditions need to explicitly clarify which document governs or has precedence in the event of conflicting language. When using a Purchase Order as evidence of a Contract, an Institution is advised to use its terms, rather than accepting terms a Contractor proposes.

F. Contract Terms

There are certain terms and conditions that are essential and many that must be included in all Contracts. Please consult with the Office of General Counsel regarding questions related to the applicability of Contract terms and the development of standard terms and conditions.

See Exhibit A – *Standard Terms and Conditions*

G. Authority to Contract (See *Regents' Rules*, Chapter 07.12; *Regents' Rules,* Chapter 08)

Only persons having actual authority established by the Board of Regents or as properly delegated from those with authority can approve, sign, and execute Contracts committing the TTU System or any Component Institution. Written Contracts shall be executed whenever a Component Institution enters into a binding Contract with another party which involves any material consideration. Material consideration does not have to be monetary.

An Institution may enter into a Contract for the purchase of Goods or Services that has a value exceeding $1,000,000 or involving a sale or lease of land and/or improvements thereon, or a commitment of funds or other resources for more than four years (unless there is a one hundred and twenty (120) day or less no-cause cancellation clause):

1. only if the Board of Regents approves the Contract and the approved Contract is signed by the chancellor or president; or
2. in accordance with *Regents' Rules* 07.12.4, which delegates to the chancellor or president authority to approve Contracts in excess of $1,000,000 over the term of the Contract, but the per annum amount is less than $1,000,000.

H. Delegation of Authority

Each Component Institution shall establish a policy or maintain a matrix clearly detailing the types and values of contracts for which contracting authority is delegated by the Board or the president and further delegated to officers and employees of the institution. An officer or employee may not execute a document for the Board unless the officer or employee has authority to act for the Board and the authority is exercised in compliance with applicable conditions and restrictions.

I. Binding Signatures

Original signatures by those in authority to Contract are the generally accepted norm through which a Contract becomes binding. Additionally, it is possible that an email or a chain of emails that make it clear a party accepts the terms of a Contract can be enforceable.

The System and its Institutions accept digital signatures that are compliant with the ESIGN Act of 2000 and the Uniform Electronic Transaction Act (UETA) of 1999 when the signature platform authenticates users by password, and the platform produces a time stamp for the digital signature. Compliant digital signatures are considered "original signatures."

SECTION VIII – POST-AWARD CONTRACT ADMINISTRATION

The following Section serves as recommended guidance for the Contract Administration process that occurs after the Contract is fully executed. Each Institution should develop a Contract Administration policy for that Institution based on available resources and requirements. Based on the complexity of the Contract, additional Contract Administration responsibilities should be developed to properly administer the Contract requirements.

A. Contract Administrator Responsibilities (End-User or Requesting Department):

The requesting department should identify a Contract Administrator or for complex Contracts a team to collectively manage the Contract requirements. The Contract Administrator(s) needs to have a proficient understanding of the Contract provisions, the ability to communicate about Contract obligations to all parties involved, and have the ability to maintain control over the Contract performance.

It is the Contractor's responsibility to perform and meet the requirements of the Contract. Contractors need technical direction and approval from a Contract Administrator, provided in a timely and effective manner. All guidance provided to a Contractor must be within the scope of the Contract and applicable laws, Regents Rules, TTUS Regulations, and Institutional Operating Policies and Procedures.

The post-award Contract Administrator responsibilities may include, but are not limited to, the following components:

1. Read and understand the Contract. Consult with the Procurement Office on any terms and conditions that are not understood.
2. Serving as the point of contact for disseminating instructions regarding the SOW to the Contractor.
3. Receiving and responding to informal communications between an Institution and a Contractor.
4. Establishing scope of authority, clear lines of communication and reporting, and specific individuals who will interact directly with a Contractor.
5. Managing Institutional assets used in Contract performance.
6. Providing access to Institution facilities, equipment, data, personnel, materials, and information.
7. Consult with the Procurement office or where appropriate, the Office of General Counsel.
8. Maintaining appropriate documentation as required by the applicable document retention guidelines.
9. Documenting significant events including deficiencies, Deliverables, and milestones.
10. Monitoring the Contractor's progress and performance to confirm Goods or Services conform to the Contract requirements.
11. Inspecting and approving the final Goods or Services received and providing any required documentation.
12. Reviewing all invoices and authorizing payments consistent with the Contract and in accordance with Institutional Operating Policies and Procedures.
13. Monitoring budgets to verify sufficient funds are available for the duration of the Contract.
14. At regular intervals, verify Contractor performance for compliance with Contract requirements. Report any noncompliance issues to the Procurement Office. With the assistance of the Procurement Office, determine if corrective action or other Contract action is necessary.
15. Coordinate with applicable TTUS departments on Contract compliance requirements.
16. Develop a plan and coordinate with the Procurement Office for Contract Closeout.

The extent of the Contract Administrator's requirements and responsibilities will vary by Contract. The level and degree of Contract Administration and Contract Administrator participation should be consistent with the complexity and level of risk of the Contract, the Contract term, the available resources, and dollar value.

B. Contract Manager's Responsibilities (Procurement Office):

The primary post-award responsibilities of the Contract Manager or Procurement Office may include, but are not limited to:

1. Providing notices and exercising remedies, for minor disputes, when a Contractor's performance is deficient or noncompliant.
2. Consulting with Office of General Counsel to address any major disputes, legal concerns, or other Contract issues.
3. Receiving and responding to formal Contract communications between the Institution and the Contractor.
4. Managing, approving, and documenting any changes to the Contract.
5. Establishing control of correspondence.
6. Coordinating and submitting Contract changes to the Board and the proper signatory.
7. Coordinating with various offices involved in the Procurement/Contracting process to ensure documentation is retained in the repository in accordance with TTUS retention policies.
8. Monitoring default terms and conditions in the Contract.
9. Providing oversight of the Contract Close-out process to properly document the Contract file.
10. Performing the Contract Close-out responsibilities.
11. Regularly review performance for Contract Management process improvement.

C. Monitoring Performance

Each Institution should develop a procedure to identify each Contract that requires enhanced Contract or performance monitoring. An Institution's chief procurement officer shall immediately notify the Board of Regents, or their assignees of any serious issue or risk identified with respect to a Contract monitored in accordance with Texas Government Code § 2261.253(c).

D. Contract Change Methods

Throughout the term of the Contract, it may become necessary to make changes to the Contract terms. There are two ways to change a Contract:

1. **Mutual Agreement** - in which all parties to the Contract agree in writing that a modification is necessary to alter a provision of the Contract.
2. **Unilateral Contract Modification -** in which the terms and conditions in the original Contract set forth the situations under which either (or a specified) party may exercise a right to modify the Contract without the other party's consent.

Contract changes should always be documented in writing on a format approved by the Procurement Office and/or the Office of General Counsel. Contract Administrators must request Contract changes through the Procurement Office.

E. Dispute Resolution

Dispute resolution is governed by Texas Government Code Chapter 2260 for certain Contract claims against an Institution and the State. The goal of any dispute resolution process is to resolve problems before they escalate. To avoid escalation, and avoid Institution personnel actions exacerbating potential problems, it is imperative that the Contract Administrator respond promptly to all Contractor inquiries by taking the following initial steps including, but not limited to:

1. Identify the problem – many times what may appear to be a problem can be resolved by providing a Contractor with information or clarification.
2. Report – a Contract Administrator shall report the issue to the Procurement Office even in cases where action may not be required from the Procurement Office.
3. Research facts – obtain information regarding the potential problem from all relevant sources including members of the Contract Review Team and the Contractor. This resulting information will be maintained in the Contract file.

4. Evaluation – review the facts in conjunction with the requirements and terms and conditions of the Contract. The Procurement Office, in consultation with the Office of General Counsel and the Contract Review Team, will then determine an appropriate course of action.

F. Termination for Default Notifications

Prior to terminating a Contract for default, a cure notice shall be sent to the Contractor if the parties so agreed in the Contract. A cure notice letter allows a Contractor to have a defined period of time to "cure" the deficiency or violation. The Contract Administrator shall consult with the Procurement Office.

G. Termination

When a Contract is terminated, the parties are relieved from further unperformed obligations in accordance with the agreed terms and conditions. A Contract may be terminated under the following processes.

1. Termination for Convenience

A termination for convenience, also known as no-fault termination (or "without cause"), allows an Institution to terminate a Contract, in whole or in part, at any time in its sole discretion, if it is determined that such termination is in the best interest of the Institution.

The Procurement Office should provide a Contractor with written notice specifying whether an Institution is terminating all or part of the Contract. The notice of termination should give the effective date of termination. If the Contract is being selectively terminated, the notice should specify which part(s) of the Contract are being terminated.

2. Termination for Default

A Contract may be terminated for default (or "with cause") when an Institution concludes that a Contractor has failed to perform, make progress, or has otherwise breached the Contract. An Institution is not required to terminate a Contract even though the circumstances permit such action. The Procurement Office may determine that it is in the Institution's best interest to pursue other alternatives.

A Contract should describe in detail the default obligations of the parties. A defaulting party may have additional financial obligations to the other party.

A Contract shall not be terminated for default when the failure to perform is due to excusable causes. In order to qualify as an excusable cause, the cause must be beyond the control, and without the fault or negligence of the defaulting party. Such excusable causes include, but are not limited to:

1. Acts of God or a public enemy;
2. Acts of an Institution;
3. Fire;
4. Floods;
5. Epidemics;
6. Pandemics;
7. Strikes;
8. Freight embargos; and
9. Unusually severe weather.

Severe weather, although beyond the control of either party, will not generally constitute an excusable delay if it is not considered "unusually severe weather".

If a 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 the Contractor and the Subcontractor. Even if this requirement is met, the cause will not be excusable if the Goods or Services to be provided by the Subcontractor could have been obtained from other sources in time to meet the Contract delivery schedule.

H. Institution Reporting of Contracting Information

1) Required Posting of Certain Contracts

In accordance with Texas Government Code § 2261.253, the Institution shall post all Contracts and Purchase Orders for the Procurement of Goods or Services from a private Contractor on the Institution's Internet website, unless otherwise exempted from required posting. For Contracts that are not competitively Bid or are entered into without compliance with competitive bidding procedures, the statutory or other authority under which the purchase was permitted shall be posted.

I. Contract File

Institutions are required to maintain documentation related to each Contract. Under Texas Government Code § 441.1855 each Institution:

1) shall retain records of each Contract entered into by the Institution and all related Contract Solicitation documents; and
2) may destroy the Contract and supporting documentation in accordance with the Institution's retention policy that is applicable for that Contract type and when:
   (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 supporting documentation are resolved.

J. Contract Close-Out

The purpose of the Contract close-out process is to confirm that both parties to the Contract have fulfilled all contractual obligations.

To initiate the close-out process, an Institution should first determine that a Contractor has substantially performed all required contractual obligations.

A Contract is completed when all Goods or Services have been received and accepted; all Deliverables have been accepted; all administrative actions have been accomplished; and all Institutional furnished equipment and materials have been returned.

Upon confirmation of completion, the parties shall make final payment to a Contractor. Final payment shall not be made until all compliance and corrective actions have been successfully completed and the Contract Administrator or their designee has provided final acceptance. For some Contracts, final acceptance may be in the form of authorizing payment. For more complex Contracts, the Contract Administrator should coordinate with the Procurement Office.

Texas Tech University System

Exhibit A - Standard Terms and Conditions

When incorporated by reference into an agreement between the Texas Tech University System ("TTUS"), a Texas public system of higher education, and/or any one or more of its Component Institutions, each Texas public institution of higher education, the following terms ("Incorporated Terms") form a material and binding part of the agreement between the parties (the "Contract"). As used herein, "University" means the TTUS party or parties to the agreement, and "Contractor" means the non-TTUS party or parties to the agreement, whether or not the relationship of Contractor is that of an independent contractor.

1. **Contractor's Representations and Warranties**. Contractor represents and warrants it is duly organized, validly existing, and in good standing under the laws of the state of its incorporation; is authorized to conduct business in Texas; has all necessary approvals to execute the Contract; and the individual executing the Contract has been duly authorized to act for and bind Contractor.
2. **Independent Contractor**. This Contract does not form a joint venture or partnership. University will not be responsible for the Federal Insurance Contribution Act payments, federal or state unemployment taxes, income tax withholding, Workers Compensation Insurance payments, or any other insurance payments, nor will University furnish any medical or retirement benefits or any paid vacation or sick leave. Contractor is responsible for conduct of its business operation.
3. **Assignment**. Neither this Contract, nor any rights or obligations of monies due hereunder are assignable or transferable without University's prior written agreement. Contractor will not assign or sub-award any portion of the Contract without University's prior written approval, which will not be unreasonably withheld.
4. **Subcontractors**. Contractor shall not assign any of its duties or responsibilities under this Contract to any subcontractor, except as expressly provided for in this Contract and pre-approved by University in writing. Subcontractors providing services under the Contract shall meet the same requirements and level of experience required of Contractor. No subcontract under the Contract relieves Contractor of the responsibility for providing the services Contractor has agreed to provide. Additionally, if Contractor uses subcontractors to perform services, Contractor must comply with Texas Government Code § 2251.022.
5. **Tax exempt**. University is exempt from Texas Sales & Use Tax on goods and services in accordance with Texas Tax Code § 151.309, and 34 Texas Administrative Code § 3.322.
6. **Payments**. So long as Contractor has provided University, in writing, with its current and accurate Federal Tax Identification Number, University will pay Contractor for goods and services in accordance with Texas Government Code, Chapter 2251.
7. **Payment of Debt or Delinquency to the State**. Pursuant to Texas Government Code §§ 2107.008 and 2252.903, Contractor agrees any payments owing to Contractor under the Contract may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency thereof, regardless of when it arises, until such debt or delinquency is paid in full.
8. **Travel Expenses**. University shall only reimburse travel expenses pre-approved in writing, at rates not to exceed the most current rates set by the Texas Comptroller (https://fmx.cpa.texas.gov/fmx/travel/textravel/rates/current.php). University may reimburse rental car expenses at rates not to exceed those set in University contracts. University will not reimburse for alcoholic beverages.
9. **State and System Funding**. University's performance under the Contract may be dependent upon appropriation of funds by the Texas legislature ("Legislature") and/or allocation of funds by the TTUS Board of Regents ("Regents"). Contractor acknowledges that appropriation and allocation of funds are beyond University's control. If the Legislature fails to appropriate, or Regents fail to allocate, necessary funds, or if there is a reduction of funding from other revenue sources, University will issue written notice to Contractor and University may terminate this Contract without further duty or obligation hereunder, other than payment for goods and services already delivered or provided.
10. **Federal Funding**. This Contract may be funded wholly or partially with federal funds. All Contracts funded in whole or part with federal funds are subject to the Federal Funds Contract Terms available at https://www.texastech.edu/ogc/federal-funds-contract-terms.pdf. University utilizes http://www.gsa.gov and https://www.ecfr.gov/ for all federal guidelines.

11. **Texas Public Information Act**. All information, documentation, and other material submitted by Contractor for and under this Contract are subject to public disclosure under the Texas Public Information Act, Texas Government Code, Chapter 552 ("PIA"), or as otherwise required by applicable law or judicial order. Contractor is hereby notified that University strictly adheres to the PIA and the interpretations thereof rendered by the courts and Texas Attorney General ("AG"). University will use best efforts to maintain the confidentiality of all Contractor-submitted information except where University is required to disclose it under the PIA or other applicable law or judicial order.

12. **Publicity and Marks**. Contractor agrees that it will not publicize this Contract or disclose, confirm, or deny any details of this Contract to third parties, or use University's name or protected marks without University's prior written approval.

13. **Limitation on University's Liability**. It is understood and agreed that University will not be liable for any negligent or wrongful acts, either of commission or omission, chargeable to it unless such liability is imposed by Texas law, and this Contract will not be construed as seeking to either enlarge or diminish any obligation or duty owed by University to Contractor or to any third party. It is understood and agreed that the University will not be liable for any indirect or consequential damages.

14. **Force Majeure**. "Event of Force Majeure" means an event beyond the control of Contractor or University which prevents or makes a party's compliance with any of its obligations under this Contract illegal or impracticable, including but not limited to: act of God (including, without limitation, fire, explosion, earthquake, tornado, drought, and flood); war, act or threats of terrorism, hostilities (whether or not war be declared), invasion, act of enemies, mobilization, requisition, or embargo; rebellion, insurrection, military or usurped power, or civil war; contamination or destruction from any nuclear, chemical, or biological event; riot, commotion, strikes, go slows, lock outs, or disorder; epidemic, pandemic, viral outbreak, or health crisis; or directive of governmental authority. No party will be considered in breach of this Contract to the extent that performance of their respective obligations is prevented or made illegal or impracticable by an Event of Force Majeure that arises during the term (or after execution of the Contract but prior to the beginning of the term). A party asserting an Event of Force Majeure hereunder ("Affected Party") will give reasonable notice to the other party of an Event of Force Majeure upon it being foreseen by, or becoming known to, Affected Party. In the event of an Event of Force Majeure, Affected Party will endeavor to continue to perform its obligations under the Contract only so far as reasonably practicable.

15. **University Insurance**. Contractor agrees University, as an agency of the State of Texas, may self-fund against general liability risk and that any Contractor requirements for University to carry insurance are waived. The Texas Tort Claims Act governs relief with respect to property damage, personal injury, and death proximately caused by the wrongful act or omission of a University employee acting within the scope of employment.

16. **Breach of Contract Claims**. The dispute resolution process provided for in Texas Government Code, Chapter 2260 ("Chapter 2260") and the related rules adopted by the AG pursuant to Chapter 2260 will be used by Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. Chapter 2260 requires Contractor to first provide written notice of a claim and negotiate with University before proceeding to the contested case process. University will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. Governed by rules adopted by the AG, the contested case process is Contractor's sole and exclusive method to seek a remedy for breach unless, after considering the Administrative Law Judge's report, the Legislature gives consent for Contractor to sue under Texas Civil Practice and Remedies Code Chapter 107. The parties specifically agree that (i) neither the execution of the Contract by University nor any other conduct, action, or inaction of any representative of University relating to the Contract constitutes or is intended to constitute a waiver of University or the State's sovereign immunity to suit; and (ii) University has not waived its right to seek redress in the courts. Any term or provision in the Contractor Terms indicating agreement to arbitration, other alternative dispute resolution, or litigation options in the event of a dispute between the parties is expressly rejected and is null and void. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by University, Contractor will continue performance and will not be excused from performance during the period any breach of agreement claim or dispute is pending under the above processes; however, Contractor may suspend performance during the pendency of such claim or dispute if Contractor has complied with all provisions of Texas Government Code § 2251.051, and such suspension of performance is expressly applicable and authorized under that law.

17. **FERPA**. If given access to personally identifiable information about any student during performance of the Contract, Contractor agrees to abide by the limitations on re-disclosure of personally identifiable information from student records as set forth in the Family Educational Rights and Privacy Act ("FERPA") 34 CFR § 99.3. To the extent Contractor has access to or creates "education records" ("FERPA Records") under the Contract or is deemed a "school official", as these terms are defined in FERPA, Contractor represents, warrants, and agrees it will: (1) hold FERPA Records in strict confidence and

will not use or disclose FERPA Records except as (a) permitted or required by this Contract, (b) required by law, or (c) otherwise authorized by University in writing; (2) safeguard FERPA Records according to commercially reasonable administrative, physical, and technical standards that are no less rigorous than the standards by which Contractor protects its own confidential information; and (3) continually monitor its operations and take any action necessary to assure that FERPA Records are safeguarded in accordance with the terms of this Contract. At University's request, Contractor agrees to provide University with a written summary of procedures Contractor uses to safeguard FERPA Records. Contractor agrees to include same provision in subcontracts and affiliate agreements where such parties may have access to or create FERPA Records. Contractor will indemnify and hold harmless University from and against all claims, actions, and proceedings resulting from Contractor's or its subcontractor's or affiliate's breach of any obligations under this paragraph.

18. **HIPAA**. When applicable, it is the parties' intent to comply with all provisions of the Health Insurance Portability and Accountability Act of 1996, now codified at Title XI, Part C of the Social Security Act and as it may be amended, and all regulations promulgated thereunder ("HIPAA"), as may change from time to time. Contractor shall not, and shall require that its employees and agents shall not, disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by University in writing, any individually identifiable patient or medical record information regarding University patients, and the Contractor shall comply, and shall ensure that each of its employees and agents providing services under this Contract complies, with all federal and state laws and regulations, and all HIPAA rules, regulations and policies of University regarding the confidentiality of such information. If required, Contractor agrees to execute University's business associate agreement.

19. **Required Posting**. Contractor acknowledges and agrees that University is required to post certain contracts and documents relating to contract solicitations under Texas Government Code §§ 2054.067 and 2261.253.

20. **Not Exclusive**. Contractor agrees that the Contract with University is non-exclusive, and University has the right to engage with other parties for similar or identical scopes of work, goods, or services.

21. **Access to Documents; Audits**. Contractor shall maintain and allow University to access records generated pursuant to this Contract for at least two (2) years after submission of the last accounting report date on which services were rendered, or until final resolution of any proceeding arising out of this Contract, whichever is later. Contractor understands acceptance of funds under this Contract constitutes acceptance of the authority of the Texas State Auditor's Office (and any successor), TTUS, and University (collectively, "Auditor") to conduct an audit or investigation in connection with those funds pursuant to Texas Education Code § 51.9335(c). Contractor agrees to cooperate with Auditor in the conduct of the audit or investigation, including without limitation providing requested records. University has the right, at University's cost, to audit Contractor's financial records pertaining to the Contract for the preceding twelve (12) month period either using University's personnel or an independent third party. University will complete such audit at Contractor's office, on reasonable advance notice, and on dates and times mutually agreed to by the parties. If the audit reveals Contractor owes University money, Contractor will pay the amount due within thirty (30) days of the date the University notifies Contractor of the audit results. If the audit reveals University owes Contractor money, University will pay Contractor within thirty (30) days of the date the audit is complete.

22. **Return or Destruction of Data**. Upon expiration or termination of this Contract, and at University's discretion, all University data will be (a) returned to University (and any copies remaining with Contractor destroyed with confirmation of destruction provided to University), or (b) destroyed with written confirmation of destruction provided to University. University data includes all University information, database, confidential information, backup copies, and copies stored on external/third party-hosted storage.

23. **Contractor Certifications Required by Texas Law**.
    a. **Taxable Entity**. If Contractor is a taxable entity as defined by Chapter 171, Texas Tax Code ("Chapter 171"), then Contractor certifies that it is not delinquent in the payment of any taxes due under Chapter 171, is exempt from the payment of those taxes, or is an out-of-state taxable entity that is not subject to those taxes.
    b. **Child Support**. Pursuant to Texas Family Code § 231.006, Contractor certifies it is not ineligible to receive the award of the Contract or payments under the Contract and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.
    c. **Employment**. Pursuant to Texas Government Code § 669.003, Contractor certifies that it does not employ, or has disclosed its employment of, any former executive head of a Texas State agency or entity.
    d. **No Trafficking**. Pursuant to Texas Government Code § 2155.0061, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

e. **No Boycott**. If this Contract has a value of $100,000 or more to be paid wholly or partly from public funds of University, and if Contractor is a company, other than a sole proprietorship, with 10 or more full-time employees, then pursuant to Texas Government Code § 2271.002, Contractor affirmatively states it does not and will not:
    i. Boycott Israel during the term of this Contract. In this paragraph, the terms "company" and "boycott Israel" shall have the meanings described in Texas Government Code § 808.001.
    ii. Boycott energy companies during the term of this Contract. In this paragraph, the terms "company" and "boycott energy companies" shall have the meanings described in Texas Government Code § 809.001.

f. **No Conflicts**. Contractor certifies this Contract is not prohibited under Texas Government Code § 2261.252(b) and agrees that if Contractor's certification is or becomes untrue, this Contract is void, and Contractor will not seek and waives its right to seek any legal or equitable remedy for past or future performance under this Contract, including damages, whether under breach of contract, unjust enrichment, or any other legal theory; specific performance; and injunctive relief.

g. **American Steel**. To the extent the Contract relates to a project as defined Texas Government Code § 2252.201(5) (to construct, remodel, or alter a building, structure, or infrastructure; supply material for such a project; or finance, refinance, or provide funds for such project), and no exemption in Texas Government Code § 2252.203 applies, any iron or steel product produced through a manufacturing process and used in the project that is the subject of the Contract must be produced in the United States (as defined in Texas Government Code § 2252.201(4)).

h. **Texas Health and Safety Code**. Contractor affirmatively states that it will comply with the requirements of Texas Health and Safety Code, § 161.0085(c).

Compliance with Texas Government Code § 2274.002. If this Contract has a value of $100,000 or more to be paid wholly or partly from public funds of University, and if Contractor is a company, other than a sole proprietorship, with 10 or more full-time employees, then pursuant to Texas Government Code § 2274.002, Contractor verifies it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or trade association.

24. **Entire Contract; Modifications; Amendments**. The Contract supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire Contract and understanding between the parties with respect to the subject matter hereof. The Contract and each of its provisions will be binding upon the parties and may not be waived, modified, amended, or altered except in writing signed by representatives of University and Contractor with valid signature authority. All correspondence regarding amendments to the Contract must be forwarded to the University's contracting office for prior review and approval.

25. **Survival**. Provisions hereof that by their nature are intended to survive, including but not limited to confidentiality obligations, indemnification, and insurance, shall survive expiration or termination of this Contract.

26. **Severability**. If one or more provisions of this Contract, or the application of any provision to any party or circumstance, is held invalid, unenforceable, or illegal in any respect, the remainder of this Contract and the application to other parties or circumstances will remain valid and in full force and effect.

27. **Non-waiver of Defaults**. University's failure at any time to enforce or require the strict keeping and performance of any of the terms and conditions of this Contract will not constitute a waiver of such terms, conditions, or rights, and will not affect or impair it or University's right at any time to avail itself of the terms, conditions, or rights under this Contract.

28. **Applicable Laws and Regulations**. Contractor agrees that it will comply with all federal, state, and local laws, regulations, rules, and ordinances applicable to Contractor's performance under the Contract. If present on University's campus to perform services under this Contract, Contractor personnel will comply with University's applicable policies and procedures. Contractor also agrees that, pursuant to Texas Education Code § 51.9335(h), in any contract for the acquisition of goods or services to which University is a party, any provision required by applicable law to be included in the contract is considered to be part of this Contract whether or not the provision appears on the face of the contract or if the contract contains any provision to the contrary.

29. **Emergency Health and Safety Procedures**. In the event of pandemic, epidemic, viral outbreak, health crisis, or other emergency ("Emergency"), the University may, at its sole discretion, implement new or modified health and safety procedures in order to protect the health and safety of the University community. In the event of Emergency, Contractor agrees to adhere to all such policies, procedures, and directives of University when entering or performing services on University's campus.

30. **Limitations**. **THE PARTIES ARE AWARE THAT THERE MAY BE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY TO ENTER INTO CERTAIN TERMS AND CONDITIONS, INCLUDING TERMS AND CONDITIONS (IF ANY) RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF UNIVERSITY'S LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; ANY PROVISION THAT CREATES AN UNKNOWN OR UNFUNDED LIABILITY; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.**

31. **Venue; Governing Law**. The County in which University's main campus or primary office in the State of Texas is located shall be the sole proper place of venue for any legal action or proceeding arising out of this Contract or the enforcement of any provision in this Contract. This Contract and all of the rights and obligations of the parties and any claims arising from this Contract will be construed, interpreted, and governed by the laws of the State of Texas.

There are certain terms and conditions that are essential and many that must be included in all Contracts. Please consult with the Office of General Counsel regarding questions related to the applicability of Contract terms and the development of standard terms and conditions. Examples of recommended provisions may also include, but are not limited to the following (Institutions are expected to stay current regarding contract provision categories and provisional language):

Scope of Work
Term of Contract
Payment
Terms
Termination
Dispute Resolution and TGC Chapter 2260 Breach of Contract Claims
Indemnification
Independent Contractor
Child Support Obligations
Previous Employment
Franchise Tax
Limitations
Debt or Delinquency
State Auditor's Office
Texas Public Information Act
FERPA and HIPAA Compliance
TxRamp
Severability
Prohibition on Contracting Companies Boycotting Israel (TGC § 2271.002)
Prohibition on Contracts Related to Persons Involved in Human Trafficking (TGC § 2155.0061)
Prohibition on Contracting with Companies Employing former Executive Heads of Texas agencies (TGC § 669.003)
Required Posting of Certain Contracts
Publicity and Prohibited Use of Institution's Protected Marks
Force Majeure
State and System Funding
Federal Funding
Venue and Governing Law
Non-Exclusivity
Non-Waiver
Assignment
Price
Confidential Information
Abandonment of Default
Affirmation Clauses
Ownership/Intellectual Property
Return or Destruction of Data
Conflict of Interest
Certification Regarding Business with Certain Countries and Organizations
Not Eligible for Rehire
Notices
Order Precedence Assignment
Proprietary Information Antitrust
Drug Free Workplace Policy
Patents and Copyrights
Public Disclosure
Substitution