

## SYSTEM REGULATION

### **25.99.03 Contracting for External Consultants and Professional Services**

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#### 1. GENERAL

- 1.1 The procedures for contracting with external consultants and providers of professional services, as established by statute and appropriations act riders, and as interpreted by various rule-making agencies, are complex in nature. Variations in the process are occasioned by differences in the type of service provided, the type of provider, and the anticipated or actual cost. For these reasons the following procedures are given in some detail to facilitate an orderly progression through the various stages of notification, approval, payment and reporting requirements.
- 1.2 The Chief Executive Officer (CEO) of each System component must ensure that procedures are in place to guide employees who initiate consulting and professional service arrangements. The procedures should clearly outline the process for forwarding the required notifications, approvals, payments and reports through administrative channels to appropriate state offices.
- 1.3 Each System component must comply with requirements outlined in System Regulation 33.99.16, Contract Workforce, when contemplating the use of a professional services provider or an external consultant.
- 1.4 System Policy 51.02 requires approval by the Chancellor and the Board of Regents under specified circumstances for securing services of outside architects and/or engineers for design services. The selection procedure is administered by the System Facilities Planning and Construction office.
- 1.5 System Regulation 09.04.01 contains the requirements for securing services of outside legal counsel. All efforts to secure outside legal counsel must be directed through the System Office of General Counsel.
- 1.6 Prior Employment with State Agencies or Institutions
  - 1.6.1 None of the funds appropriated to the System or any of its components may be used to enter into a consultant or professional services contract with any individual who has been employed by the System within the past 12 months.
  - 1.6.2 An individual who offers to perform a consulting service for a System component, and who has been employed by any System component or by another state agency at any time during the two years preceding the making of

the offer, must disclose in the offer to perform a consulting service, the nature, date of termination and annual rate of compensation of the previous employment. If the individual contracts with the System component without complying with this requirement, then the contract is void.

- 1.7 If it seems more advantageous to the state for the procurement of a particular consulting service to be subject to the procedures of Chapter 2155, TEXAS GOVERNMENT CODE, rather than Chapter 2254, TEXAS GOVERNMENT CODE, the governor, comptroller and Texas Building and Procurement Commission may adopt, by rule, a memorandum of understanding to that effect.
- 1.8 If the comptroller determines that it would be more cost effective for the state, the comptroller may exempt certain consulting services costing less than a specified amount from the requirements of Chapter 2254, TEXAS GOVERNMENT CODE.
- 1.9 A consulting services contract, or a renewal, amendment or extension of a contract must not be divided into more than one contract to avoid State law requirements regarding consultant contracts.

## 2. DEFINITIONS

When used in this regulation, the following words and terms have these meanings unless the context clearly indicates otherwise.

- 2.1 Professional Service: a service within the scope of the practice of accounting, architecture, landscape architecture, optometry, medicine, real estate appraising, land surveying or professional engineering, professional nursing or those services performed by any licensed or registered architect, landscape architect, optometrist, physician, surgeon, registered nurse, certified public accountant, real estate appraiser, land surveyor or professional engineer in connection with his or her professional employment or practice.
- 2.2 Consulting Service: the service of studying an existing or a proposed operation or project of a component and advising the component regarding the operation or project. The services are provided under a contract that does not involve the traditional relationship of employer and employee. The term does not include services connected with the routine work necessary to the functioning of a component's programs. The key words are "studying" and "advising," rather than "performing."
- 2.3 Consultant: an external entity or individual that provides or proposes to provide a consulting service. The term includes a political subdivision, but does not include the federal government, a state agency or a state governmental entity.
- 2.4 Consultant Contract: a contract or agreement with a consultant to perform a consulting service. It is not used to describe a contract for "professional service" as defined above. If a contract involves both consulting services and other types of services, it is governed

by the requirements of this regulation relating to consultant contracts if the primary objective of the contract is the purchase of consulting services.

### 3. REQUIREMENTS RELATED TO PROFESSIONAL SERVICES

The selection and engagement procedures for professional services, as defined in 2.1 above, are subject to the Professional Services Procurement Act (Chapter 2254, Subchapter A, TEXAS GOVERNMENT CODE). A provider of professional services must be selected on the basis of demonstrated competence and qualifications to perform the services and the award must be for a fair and reasonable price. The professional fees must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations and must not exceed any maximum provided by law. Any contract or agreement for professional services in violation of any provisions of the Professional Services Procurement Act is void and of no effect.

### 4. REQUIREMENTS RELATED TO CONSULTING SERVICES

4.1 Procedures related to contracting for consulting services, as defined in section 2.2 above, are found in Chapter 2254, Subchapter B, TEXAS GOVERNMENT CODE, and in the current general appropriations act. These procedures do not apply to those services constituting "professional services", as defined in section 2.1 above, nor to private legal counsel, investment counselors, actuaries, other medical or dental service providers or consultants on fiduciary duties of a retirement system trust fund.

4.2 Requirements in this section apply to all consulting service contracts except where specifically excluded or differentiated in the text and based on the contract's amount. The requirements apply to consulting services that a component purchases with funds that are appropriated by the legislature, generated by the component's statutory duties or received from the federal government (to the extent that federal laws or regulations do not conflict with Chapter 2254, Subchapter B, TEXAS GOVERNMENT CODE). Failure to comply will render the contract void.

#### 4.3 Need for Consulting Services

A consultant may be employed only if: (1) there is a substantial need for the consulting services; and (2) the System component cannot adequately perform the consulting services with its own personnel or through a contract with another state agency.

#### 4.4 Selection Criteria

Selection of a consultant must be based on demonstrated competence, knowledge and qualifications and on the reasonableness of the proposed fee for the services. When other considerations are equal, preference will be given to a consultant whose principal place of business is within the state or to a consultant who will manage the consulting engagement wholly from one of its offices within the state.

#### 4.5 Consulting Services Contracts in Excess of \$25,000

A consulting services contract which is reasonably foreseeable to have an original value in excess of \$25,000, is subject to the following procedures. A consulting services contract which originally had a value of \$25,000 or less but which, upon renewal, amendment or extension, will have a total value in excess of \$25,000, is subject to the procedures in sections 4.5.1 through 4.5.4 and 4.8 before it can be renewed, amended or extended. (See 4.7.)

#### 4.5.1 Finding by CEO

The System component must include in its invitation for offers (published in accordance with section 4.5.2) the CEO's finding that the consulting services are necessary and an explanation of that finding. A consulting services contract that is executed without a finding from the CEO is void.

#### 4.5.2 Pre-award Publication Requirements

At least 30 days before executing a contract, the following contract invitation information must be filed with the Secretary of State for publication in the Texas Register:

- (1) an invitation for consultants to provide offers of consulting services;
- (2) the System employee who should be contacted by a consultant who desires to make an offer;
- (3) the closing date for the receipt of offers;
- (4) the procedure by which the System component will award the contract for consulting services;
- (5) the CEO's finding that the consulting services are necessary and an explanation of that finding; and
- (6) if the consulting service relates to a service previously performed by a consultant, the System component must disclose that information in its invitation for offers. If the component intends to award the contract to that consultant unless a better offer is submitted, that intention must be disclosed in the invitation for offers.

#### 4.5.3 Pre-award Notification Requirements

At least 30 days before executing a contract, the System component must notify the Legislative Budget Board (LBB) and the Governor's Budget and Planning Office (GBPO) of the component's intent to contract with a consultant, and must provide information demonstrating that the System component has complied

with the need and selection criteria for employing a consultant. The Consultant Contract Notification Form can be used for this notification.

#### 4.5.4 Post-Award Publication Requirements

Within 20 days of contracting, the following information must be filed with the Secretary of State for publication in the Texas Register:

- (1) a description of the activities that the consultant will conduct;
- (2) the name and business address of the consultant;
- (3) the total value of the contract;
- (4) the beginning and ending date of the contract;
- (5) the due dates of documents, films, recordings or reports the consultant is required to give the System component; and
- (6) if applicable, information regarding previous employment. (See 1.6.2)

Additional reporting requirements may exist. Please refer to Section 5.

#### 4.6 Consulting Services Contracts That are Less Than or Equal to \$25,000

If a consulting services contract has a total cost that is less than or equal to \$25,000, none of the requirements of section 4.5 apply.

#### 4.7 Renewal, Amendment or Extension of Contracts

4.7.1 If a renewal, amendment or extension of a consulting services contract will have a reasonably foreseeable value of \$25,000 or less, but the original contract was for more than \$25,000, the System component must follow the requirements specified in section 4.5.4 of this regulation.

4.7.2 If a renewal, amendment or extension of a consulting services contract plus the cost of the original contract will have a reasonably foreseeable total value exceeding \$25,000, the System component must follow the requirements specified in sections 4.5.1, 4.5.2, 4.5.3 and 4.5.4 of this regulation.

4.7.3 If a renewal, amendment or extension of a consulting services contract plus the cost of the original contract has a value of less than or equal to \$25,000, none of the requirements of section 4.5 apply.

#### 4.8 Other Filing, Notification, and Reporting Requirements

The following requirements apply to all consulting services contracts including renewals, amendments and extensions, irrespective of the contract amount or the source of funds for payment.

- 4.8.1 A System component officer or employee who has a financial interest in, or is related within the second degree by blood or by marriage to an individual who has a financial interest in an association, partnership, firm or corporation that submits an offer to provide consulting services to the System component must report the financial interest to the component CEO not later than the tenth day after the day on which the offer is submitted. (For information on the degrees of relationships, see System Policy 33.03.)
- 4.8.2 Upon request, a System component will supply the LBB and the GBPO with copies of all documents, films, recordings or reports developed by consultants.
- 4.8.3 Copies of all documents, films, recordings or reports developed by consultants must be filed with the Texas State Library and must be retained by the library for at least five years.
- 4.8.4 As part of the biennial budgetary hearing process conducted by the LBB and the GBPO, each System component must supply those organizations with reports on actions taken in response to the recommendations of any consultant employed during the course of the previous biennium.

#### 4.9 Emergency Waiver

- 4.9.1 If an unforeseen emergency suddenly and unexpectedly causes a System component to need the services of a consultant in a time frame that makes compliance with all or part of these requirements infeasible, then the System component must request from the Governor a limited waiver of the requirements. The emergency will be "unforeseen" only to the extent that the System component was not negligent in anticipating the occurrence of the emergency.
- 4.9.2 The limited waiver may be granted only after information has been provided to the Governor on the nature of the emergency, the reason it was unforeseen, the amount of the proposed contract, the identity of the consultant with whom the component wishes to contract and other information deemed necessary by the Governor. Such information can be included in a cover memo to accompany the Consultant Contract Notification Form which can be found at <http://tamus.edu/offices/budgets-acct/documents/consultant-notif.htm>.
- 4.9.3 As soon as possible after the limited waiver has been granted, the System component must fulfill the requirements that are appropriate under the conditions of the waiver. The granting of a waiver by the Governor fulfills the CEO's finding requirement for the consultant contract. The notice published in

the Texas Register must contain a detailed description of the emergency that necessitated the Governor's temporary waiver.

## 5. CONTRACT APPROVAL AND NOTIFICATION

- 5.1 The contract review and approval requirements set out in System Policy 25.07, *Contract Administration*, System Regulation 25.07.01, *Contract Administration Procedures and Delegations*, and the component delegation of authority apply to each contract negotiated by any System component before the contract is finally approved.
- 5.2 Each System component must notify the LBB in writing in accordance with the reporting requirements of System Regulation 25.07.01, section 6.1 no later than the 10<sup>th</sup> day after entering into a contract for consulting or professional services. This notification requirement applies to all such contracts, including amendments, modifications, renewals and extensions with a total value exceeding \$14,000 regardless of the funding source. Notification is not required for professional services contracts for medical or optometry services.

## 6. PURCHASE VOUCHER REQUIREMENTS ON FUNDS IN STATE TREASURY

- 6.1 The State Comptroller has established certain requirements associated with the payment for professional and consulting services from funds in the State Treasury. Purchase vouchers in payment for either professional or consulting services must contain the following information and be supported by the following documentation, with exceptions as noted:
  - (1) reasonably foreseeable value of the contract or renewal contract;
  - (2) cumulative total of prior payments under the original and, if applicable, renewal contract;
  - (3) copies of the contract and all amendments or modifications to that contract when the voucher either represents the first request for payment under a particular contract or is the first voucher submitted after the contract was amended or modified;
  - (4) in the case of a major consulting service contract (in excess of \$25,000), the volume and page number of the Texas Register in which the publication requirements were fulfilled for the original and any subsequent renewal contracts; in the case of a professional services contract, a statement on the voucher that the contract complies with the Professional Services Procurement Act;
  - (5) in the case of a consulting service contract, a statement as to the necessity for the consulting service, the selection procedures and whether former state employees provided the consulting service; and

(6) in the case of a consulting services contract or renewal contract with a value in excess of \$25,000 a copy of the CEO's finding that a need for the services exists. (See section 4.5.1.)

6.2 When an emergency waiver of the requirements has been received from the Governor, the System component must submit a copy of the emergency waiver with each purchase document submitted to the State Comptroller to request payment under the consulting services contract covered by the waiver.

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CONTACT OFFICE: System Office of Budgets and Accounting

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[Section 25 Rules](#)