



# UT System Administration Policy Library – Policy UTS128 Consulting Contracts Policy and Procedures Guide

Responsible Officer: Executive Vice Chancellor for Business Affairs

Sponsoring Office: Office of Business Affairs

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Errors or changes to: [policyoffice@utsystem.edu](mailto:policyoffice@utsystem.edu)

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## **POLICY STATEMENT**

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It is the policy of The University of Texas System that all contracts for consulting services be awarded in accordance with applicable laws, regulations and rules and that those involved in the procurement and contracting process perform their responsibilities in a fiscally prudent and ethical manner.

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## **RATIONALE**

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This policy provides requirements and guidelines for entering into contracts for consulting services that are funded with money:

- appropriated by the Legislature; or
- derived from the exercise of the statutory duties of the institution; or
- received from the federal government; provided, however, that the provisions of this policy do not apply to the extent they conflict with federal laws or regulations about the expenditure of federal funds. (See *Texas Government Code* §2254.023.)

This policy does not apply to the acquisition of professional services or the acquisition of services of legal counsel, investment counselors, actuaries, or medical or dental service providers. (See *Texas Government Code* § 2254.024)

If a contract involves both consulting and other services, this policy applies if the primary objective of the contract is the acquisition of consulting services. (See *Texas Government Code* § 2254.038)

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## **SCOPE**

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All institutions (except The University of Texas M.D. Anderson Cancer Center) and UT System Administration

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## **WEBSITE ADDRESS FOR THIS POLICY**

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<http://www.utsystem.edu/policy/policies/uts128.html>

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## RELATED STATUTES, POLICIES, REQUIREMENTS OR STANDARDS

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UT System Administration Policies & Standards	Other Statutes, Policies & Standards
<ul style="list-style-type: none"> <li>• <a href="#"><u>UTS134, Code of Ethics for Financial Officers and Employees</u></a></li> <li>• <a href="#"><u>UTS137, Historically Underutilized Business (HUB) Program</u></a></li> <li>• <a href="#"><u>UTS145, Processing of Contracts</u></a></li> <li>• <a href="#"><u>UTS148, Protest Procedures related to Procurements of Goods and Services</u></a></li> <li>• <a href="#"><u>UTS156, Purchaser Training and Certification</u></a></li> <li>• <a href="#"><u>UTS159, Purchasing</u></a></li> <li>• <a href="#"><u>Board of Regents' Rules and Regulations, Rule 10501</u></a></li> <li>• <a href="#"><u>Board of Regents' Rules and Regulations, Rule 30104</u></a></li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#"><u>Texas Education Code § 51.928</u></a></li> <li>• <a href="#"><u>Texas Education Code § 65.31</u></a></li> <li>• <a href="#"><u>Texas Government Code, Chapter 771</u></a></li> <li>• <a href="#"><u>Texas Government Code § 2155.004</u></a></li> <li>• <a href="#"><u>Texas Government Code § 2254.002</u></a></li> <li>• <a href="#"><u>Texas Government Code § 2254.028</u></a></li> <li>• <a href="#"><u>Texas Government Code, § 2254.021, Subchapter B, Consulting Services</u></a></li> <li>• Texas Attorney General Opinions Nos. <a href="#"><u>H-1173</u></a> (1978), <a href="#"><u>JM-282</u></a> (1984), <a href="#"><u>JM-376</u></a> (1985), and <a href="#"><u>DM-184</u></a> (1992)</li> </ul> <p>Governor's Budget, Planning and Policy Division - Consultant Contract Guidelines:</p> <ul style="list-style-type: none"> <li>• <a href="#"><u>General Agency Requirements and Guidelines For Consultant Contracts</u></a></li> <li>• <a href="#"><u>Consultant Contract Notification Form</u></a></li> <li>• <a href="#"><u>Instructions for Completing the Consultant Contract Notification Form</u></a></li> <li>• <a href="#"><u>Instructions for Meeting Notification and Fact-Finding Requirements for Consultant Contracts</u></a></li> <li>• <a href="#"><u>Texas Administrative Code, Title 34, Rule §5.54</u></a></li> <li>• <a href="#"><u>State Comptroller's Purchase Policies and Procedures Guide (July 2004), §5.006</u></a></li> </ul>

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## CONTACTS

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If you have any questions about UT System Administration Policy UTS 128, *Consulting Contracts Policy and Procedures Guide*, contact the following offices:

Subject	Office Name	Telephone Number	Email/URL
	Office of Business Affairs	512-499-4560	<a href="mailto:businessaffairs@utsystem.edu">businessaffairs@utsystem.edu</a> <a href="http://www.utsystem.edu/bus/">http://www.utsystem.edu/bus/</a>
	Office of General Counsel	512-499-4462	<a href="http://www.utsystem.edu/ogc/contracts.htm">http://www.utsystem.edu/ogc/contracts.htm</a>

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## DEFINITIONS

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**Consultant:** A person who provides or who 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. (*Texas Government Code* § 2254.021(3).)

**Consulting service:** The service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. (*Texas Government Code* § 2254.021(1).) For more information on what types of services are considered consulting services for purposes of *Texas Government Code* §§2254.021-.040, refer to Texas Attorney General Opinions Nos. H-1173 (1978), JM-282 (1984), JM-376 (1985), and DM-184 (1992), and the "Explanatory Note" on the Governor's Budget, Planning and Policy Division web site for Consultant Contract Guidelines at: <http://governor.state.tx.us/bpp/guidelines>

**Major consulting services contract:** In the case of an institution of higher education, a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$25,000. (*Texas Government Code* § 2254.021(2).)

**Professional services:** Those services defined as "professional services" in *Texas Government Code* § 2254.002(2).

**Sponsoring Office:** The Office of the Executive Vice Chancellor for Business Affairs at The University of Texas System, which is the UT office that officially interprets this policy and is responsible for revising it as necessary to meet the changing needs of The University of Texas System and statutory requirements.

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## RESPONSIBILITIES

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### **Primary Procurement Officer**

- Processes all procurement solicitations and contracts for consulting services.
- Processes all renewals, amendments and extensions of consulting services contracts.
- May designate others to perform procurement and contract processing responsibilities but remains responsible for their performance.

### **UT Institution**

- Obtains any required findings of fact that consulting services are necessary from either (a) the Governor's Budget, Planning and Policy Division or (b) the UT Institution President.
- Obtains the approval of the appropriate Executive Vice Chancellor (if finding of fact will be obtained from the Governor's Budget, Planning and Policy Division, then Executive Vice Chancellor approval must be obtained before submitting the notice of intent and the request for a finding of fact to the Governor's Budget, Planning and Policy Division).
- Submits all notices to the Legislative Budget Board and the Governor's Budget Planning and Policy Division that are required by applicable law, regulation or rule.
- Submits all Texas Register notices required by applicable law, regulation or rule to the Board of Regents.
- If a consulting services contract has an anticipated value of \$100,000 or more, ensures that contract is in compliance with all Historically Underutilized Business (HUB) laws, regulations and rules.
- Obtains Board of Regents approval as required by the Board of Regents' *Rules and Regulations*.
- Contracts for consulting services.

### **UT Institution President**

Authorized to make a finding of fact that consulting services the UT Institution intends to procure are necessary. The finding of fact should include an explanation of the facts on which the finding is based. (*Texas Government Code*, §2254.028 (c))

### **UT System Chancellor**

Authorized to make a finding of fact that consulting services the UT System intends to procure are necessary. The finding of fact should include an explanation of the facts on which the finding is based. (*Texas Government Code*, §2254.028 (c))

### **Office of the Board of Regents**

Files notices with the Texas Secretary of State for publication in the Texas Register.

## **Board of Regents**

Approves Consulting Services Contract as required by the Board of Regents' *Rules and Regulations*.

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# **PROCEDURES**

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### **All Consulting Services Contracts Processing by the Primary Procurement Officer**

All solicitations and contracts for consulting services will be processed through the primary procurement officer of the institution, who will determine what documentation must be submitted by the requesting office or department, including the documentation needed to obtain the statutorily required finding of fact for Major Consulting Services Contracts.

The primary procurement officer will process the solicitation and contract in accordance with applicable laws, regulations, rules, policies and procedures, will implement procedures for the processing of contracts for consulting services, and will establish training requirements for purchasing personnel who procure consulting services contracts in accordance with UTS156, *Purchaser Training and Certification*. The primary procurement officer may designate others to perform these responsibilities but will remain responsible for their performance.

### **Summary of Selected Statutory Requirements for Consulting Services Contracts**

A "Summary of Selected Statutory Requirements for Consulting Services Contracts" is attached as an appendix to this policy. Note that if a finding of fact or the filing of a notice is required by *Texas Government Code* §§ 2254.028-.031, the contract is void if the institution fails to comply with those requirements. (See *Texas Government Code* §§ 2254.028(b) and 2254.034.) More detailed information about complying with the statutory requirements may be found on the web site for the Governor's Budget, Planning and Policy Division and in the Comptroller's Purchase Policies and Procedures Guide (July 2004), Section 5.006.

### **Notices Published in the Texas Register**

Each institution will submit to the Office of the Board of Regents all notices required by applicable law, regulation or rule to be filed with the Texas Secretary of State for publication in the Texas Register.

The Office of the Board of Regents will file the notices with the Texas Secretary of State.

### **Ethical Behavior in Contracting**

All employees involved in the procurement of consulting services will comply with the Ethics Policy, Board of Regents' *Rules and Regulations*, Rule 30104, UTS134, *Code of Ethics for Financial Officers and Employees*, and UTS159, *Purchasing*.

### **No Special Consideration or Favoritism**

No proposed consultant may receive special consideration or favoritism. A consultant that is paid to assist an institution in developing (1) a procurement solicitation or (2) specifications for a procurement solicitation may not be awarded the contract for the services the institution is procuring. A consultant may provide free technical assistance, however. Based on applicable legal authority, it appears that free technical assistance is assistance that will not give the providing consultant an advantage over other consultants. (See *Sterrett v. Bell*, 240 S.W.2d 516, 520 (Tex. Civ. App.--Dallas 1951, no writ); *Texas Highway Commission v. Texas Association of Steel Importers*, 372 S.W.2d 525, 527 (Tex. 1963); Texas Attorney General Opinions Nos. JM-940 (1988) and JM-282 (1984); *Texas Government Code* § 2155.004.)

**Compliance with UTS137, *Historically Underutilized Business Program***

If the consulting services contract will have an anticipated value of \$100,000 or more, compliance with UTS137, *Historically Underutilized Business Program*, is required.

**Compliance with UTS145, *Processing of Contracts***

All consulting contracts must be processed in accordance with the provisions of UTS145, *Processing of Contracts*.

**Finding of Fact**

An institution has the option to obtain the statutorily mandated finding of fact that the consulting services are necessary from the Governor’s Budget, Planning and Policy Division or from the chief executive officer of the institution. If the finding of fact is issued by the institution's chief executive officer, the institution must include that finding and an explanation of the finding in the invitation required to be published in the Texas Register. The finding of fact that the consulting services are necessary includes a determination that there is a substantial need for the consulting services and the institution cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with a state governmental entity, and is required for those Major Consulting Services Contracts that are subject to *Texas Government Code* §§ 2254.021-.040 (see the Introduction in the “Summary of Selected Statutory Requirements for Consulting Services Contracts” attached as an Appendix to this policy).

**Approval by Executive Vice Chancellor**

The institution must obtain the approval of the appropriate Executive Vice Chancellor before (1) the institution submits to the Office of the Board of Regents the invitation required to be published in the Texas Register; and (2) the institution submits to the Legislative Budget Board and the Governor’s Budget, Planning and Policy Division (a) the notice of intent to contract with a consultant, and (b) the request for a finding of fact (only applicable if the institution elects to obtain the finding of fact from the Governor’s Budget, Planning and Policy Division). The institution will send its request for approval to the appropriate Executive Vice Chancellor. The request for approval will include (1) the completed Approval Request Form (attached), (2) a copy of the finding of fact issued by the institution's chief executive officer (only applicable if the institution elects to obtain the finding of fact from its chief executive officer), (3) a copy of the proposed notice to be published in the Texas Register, and (4) a copy of the proposed solicitation for consulting services.

The "appropriate Executive Vice Chancellor" for a consulting contract entered into by (a) a UT health institution is the UT System Executive Vice Chancellor for Health Affairs; (b) a UT System academic institution is the UT System Executive Vice Chancellor for Academic Affairs; and (c) UT System Administration is the U. T. System Executive Vice Chancellor for Business Affairs.

**Renewal, Amendment or Extension of Contract**

All renewals, amendments and extensions of consulting services contracts must be submitted to the institution's primary procurement officer for processing in accordance with applicable laws, regulations, rules, policies and procedures.

**Renewal, Amendment or Extension of a Major Consulting Services Contract**

If the institution proposes to renew, amend or extend a Major Consulting Services Contract, the institution must comply with the requirements for Major Consulting Services Contracts as set forth in this policy.

**Renewal, Amendment or Extension of a Consulting Services Contract That Was Not Originally a Major Consulting Services Contract**

If the institution proposes to renew, amend or extend any consulting services contract and the original consulting services contract was not a Major Consulting Services Contract but the original contract and the proposed renewal, amendment or extension together have a reasonably foreseeable value of more than \$25,000, the institution must comply with the requirements for Major Consulting Services Contracts as set forth in this policy.

**Consulting Services Provided by Another Institution**

An institution may acquire consulting services from another institution in accordance with *Texas Education Code* § 51.928 and *Texas Government Code*, Chapter 771.

**Consulting Services Provided by Another State Agency**

An institution may acquire consulting services from another state agency in accordance with *Texas Government Code*, Chapter 771.

**Approval of Consulting Services Contract by the Board of Regents**

Regental approval of a consulting services contract may be required by Board of Regents' *Rules and Regulations*, Rule 10501.

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## FORMS AND TOOLS/ONLINE PROCESSES

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[Office of the Board of Regents, Procedures & Operations, Consultant Contract Submissions](#)

[UT System, Office of Business Affairs Contract Processing Checklist](#)

## [Major Consulting Contract Approval Request Form](#)

## [Procedure for Major Consulting Services Contracts](#) (UT authentication required)

Major Consulting Services Contract Forms (UT authentication required):

- [Finding of Fact Made by UT System Chancellor](#)
- [Finding of Fact Made by UT Institution President](#)
- [Finding of Fact Made by Governor’s Budget, Planning and Policy Division](#)
- [Consultant Contract Notification Form \(Submit to Governor's Office and Legislative Budget Board\)](#)
- [Notice to Governor’s Budget, Planning and Policy Division \(New Major Consulting Services Contract\)](#)
- [Notice to Governor’s Budget, Planning and Policy Division \(Amended Consulting Services Contract\)](#)
- [Notice to Legislative Budget Board \(New Major Consulting Services Contract\)](#)
- [Notice to Legislative Budget Board \(Amended Consulting Services Contract\)](#)
- [Texas Register Notice - 30 Days Before Entering Into New Major Consulting Services Contract](#)
- [Texas Register Notice - 30 Days Before Entering Into Amended Consulting Services Contract](#)
- [Texas Register Notice - 20 Days After Entering Into Major Consulting Services Contract](#)

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## APPENDIX

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### Summary of Selected Statutory Requirements for Consulting Services Contracts

#### Introduction

*Texas Government Code*, §§ 2254.021 – .040 are the primary statutes applicable to the acquisition of consulting services. *Texas Education Code* § 73.115 (f) provides that Chapter 2254 of the *Texas Government Code* does not apply to purchases of goods and service by The University of Texas M. D. Anderson Cancer Center made pursuant to §73.115. *Texas Education Code* §§ 74.008 and 51.9335 contain provisions that preempt other laws on the acquisition of goods and services *only* to the extent of a conflict. Questions about the applicability of *Texas Government Code* §§ 2254.021 – .040 and other statutory provisions should be addressed to The University of Texas System Office of General Counsel.

This Appendix contains a summary of selected statutory provisions, but the reader should review all of the primary statutes before beginning the process to procure consulting services.

#### When a Consultant May Be Used

An institution may use a consultant only if:

- there is a substantial need for the consulting services; and
- the institution cannot adequately perform the services with its own personnel or obtain consulting services through a contract with a state governmental entity

Source: Tex. Gov't Code § 2254.026

**Limitation on Who May Be a Consultant**

- An individual who has been employed previously by the institution within the past twelve (12) months may not be hired as a consultant if appropriated funds are used to pay the consultant. *Source: Tex. Gov't Code § 2252.901.*
- In addition, there are certain disclosure requirements applicable to a proposed consultant who was previously employed by the institution during the preceding two (2) years. *Source: Tex. Gov't Code § 2254.033.*

**Emergency Procurements of Consulting Services**

If an unforeseen emergency causes an institution to need the services of a consultant before compliance with the statutory requirements can be completed, the institution may request a waiver from the Governor's Budget, Planning and Policy Division in accordance with the Governor's rules for emergency waiver requests. An unforeseen emergency means a situation that suddenly and unexpectedly causes the institution to require the services of a consultant, including the issuance of a court order, an actual or imminent natural disaster, or new state or federal legislation. An emergency is not unforeseen if the institution was negligent in failing to foresee the occurrence of the emergency. *Source: Tex. Gov't Code § 2254.025.*

**Finding of Fact, Notices and Other Required Filings.**

- The table on the following pages describes the finding of fact, notices and other required filings that must be given or made in connection with the acquisition of consulting services contracts. **Failure to obtain the requisite finding of fact or to file the requisite notices in accordance with Texas Government Code §§ 2254.028 - .031 makes the contract void.** (See Tex. Gov't Code §§ 2254.028(b) & 2254.034.) More detailed information about these requirements may be obtained from the Governor's Budget, Planning and Policy Division.
- For the State Comptroller rules cited in the table, see the Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter E, Section 5.54.

Requirements	Contracts Covered	Deadline	Contact Agency	Statutory Source
1. Give notice of intent to contract with a consultant	Contracts > \$25,000  Renewal,	Before entering into contract (or renewal,	Governor's Budget, Planning and Policy Division; <u>and</u>	Tex. Gov't Code §§ <a href="#">2254.028</a> (a)(1) & <a href="#">2254.031</a>

	<p>amendment or extension of original contract &gt;\$25,000, if renewal, amendment or extension &gt;\$25,000</p> <p>Renewal, amendment or extension of original contract ≤\$25,000, if original contract plus renewal, amendment or extension &gt;\$25,000</p>	<p>amendment or extension) <i>(Note: the Governor’s Budget, Planning and Policy Division requires this notice be given at least 30 days before entering into the contract)</i></p>	<p>Legislative Budget Board</p>	<p>State Comptroller rules § <a href="#">5.54</a> (g)</p>
<p><b>2. Obtain finding of fact that consulting services are necessary</b></p>	<p>Contracts &gt; \$25,000</p> <p>Renewal, amendment or extension of original contract &gt;\$25,000, if renewal, amendment or extension &gt;\$25,000</p> <p>Renewal, amendment or extension of original contract ≤\$25,000, if original contract plus renewal, amendment or extension &gt;\$25,000</p>	<p>Before entering into contract (or renewal, amendment or extension) <i>(Note: the Governor’s Budget, Planning and Policy Division requires this notice be given at least 30 days before entering into the contract)</i></p>	<p>Chief executive officer of institution; <b>or</b></p> <p>Governor’s Budget, Planning and Policy Division</p>	<p>Tex. Gov’t Code §§ <a href="#">2254.028</a> (a)(3) &amp; (c) &amp; <a href="#">2254.031</a></p> <p>State Comptroller rules § <a href="#">5.54</a> (g)</p>
<p><b>3. File invitation for consultants to provide offers for publication in the</b></p>	<p>Contracts &gt; \$25,000</p> <p>Renewal,</p>	<p>No later than 30 days before entering into contract (or</p>	<p>Texas Secretary of State (via the Office of the Board of</p>	<p>Tex. Gov’t Code §§ <a href="#">2254.028</a> (c), <a href="#">2254.029</a>, &amp; <a href="#">2254.031</a></p>

<i>Texas Register</i> ( <b>Note:</b> if finding of fact is issued by chief executive officer of institution, include finding of fact and explanation of finding in invitation)	amendment or extension of original contract >\$25,000, if the renewal, amendment or extension >\$25,000  Renewal, amendment or extension of original contract ≤\$25,000, if the original contract plus the renewal, amendment or extension >\$25,000	renewal, amendment or extension)	Regents)	State Comptroller rules, § <a href="#">5.54</a> (h)
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<b>Requirements</b>	<b>Contracts Covered</b>	<b>Deadline</b>	<b>Contact Agency</b>	<b>Statutory Source</b>
<b>4.</b> File notice of entering into contract	All contracts >\$14,000 (including renewals, amendments or extensions)	No later than 10 days after entering into contract (or renewal, amendment or extension)	Legislative Budget Board	Tex. Gov't Code § <a href="#">2254.0301</a>
<b>5.</b> File notice of selection of consultant for publication in the <i>Texas Register</i>	Contracts > \$25,000  Renewal, amendment or extension of original contract > \$25,000, regardless of value of renewal, amendment or extension  Renewal, amendment or extension of	No later than 20 days after entering into contract (or renewal, amendment or extension)	Texas Secretary of State (via the Office of the Board of Regents)	Tex. Gov't Code § <a href="#">2254.030</a>  State Comptroller rules § 5.54(i)

	original contract ≤\$25,000, regardless of value of renewal, amendment or extension			
<b>6.</b> File copy of all reports produced by consultant	All consulting services contracts and all renewals, amendments or extensions	No deadline established by statute	Texas State Library	Tex. Gov't Code § <a href="#">2254.036</a> State Comptroller rules § 5.54(n)
<b>7.</b> File report on actions taken in response to consultant's recommendations	All consulting services contracts and all renewals, extensions or modifications	As part of the biennial budgetary hearing process	Governor's Budget, Planning and Policy Division; and Legislative Budget Board	Tex. Gov't Code § <a href="#">2254.037</a> State Comptroller rules § 5.54(o)

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Keywords: contracts, consulting, consultant, consultants, contract

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