



UT System Administration Policy Library – Policy UTS 130

Vending Machine Contracts

Responsible Officer: Executive Vice Chancellor for Business Affairs

Sponsoring Office: Office of General Counsel

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POLICY STATEMENT

It is the policy of The University of Texas System that all contracts for vending machine services, including pouring rights agreements that cover vending machine services, be awarded in accordance with applicable laws and rules and that those involved in the procurement process perform their responsibilities in a fiscally prudent and ethical manner.

RATIONALE

This policy provides requirements and guidelines for entering into contracts for installation and operation of vending machines for auxiliary enterprise purposes on property owned or controlled by institutions of The University of Texas System.

The Legislature authorized the location of vending machines in state-owned buildings that are not served by a vendor operating under supervision of the Texas Commission for the Blind; provided that such locations must be approved by the governing body of the agency in control of the building.

The Board of Regents' *Rules and Regulations*, Rule 80103, Section 2.2 authorizes the operation of vending machines at UT institutions, under the following requirements:

The sale or offer for sale of food, drink, or any other product that may be lawfully sold by means of a vending machine that is operated by the UT System or institution or a subcontractor of either, under an approved written agreement, in an area designated in advance by the Chancellor of the UT System or the president of a institution or his or her delegate.

Vending machine installations at UT institutions are treated as "auxiliary enterprise" operations, which must be conducted in accordance with Subchapter C, Chapter 2252, *Texas Government Code*,. The requirements mandated by Chapter 2252 are included in the UT Standard Vending Machine Agreement.

Section 51.945, *Texas Education Code*, requires the Board of Regents to implement policies to provide an opportunity for students to appear before any University officer or group deciding whether a food service provider should be selected or retained. The statute specifies that any contract between an institution and a food service contractor must require the contractor to hold period meetings or forums to provide students with a reasonable opportunity to discuss the contractor's performance. The Board of Regents' *Rules and Regulations*, Rule 50302, requires each UT institution offering degree

programs to include in its Handbook of Operating Procedures a policy and procedure for student participation in selecting and monitoring on-campus food service vendors. The *Rules* specify minimum requirements for the institutional policies applicable to contracts for food and beverage services located in or in conjunction with student unions, residence halls, or campus-wide cafeterias, and contracts for vending machine food and beverage services.

SCOPE

All institutions and UT System Administration

WEBSITE ADDRESS FOR THIS POLICY

<http://www.utsystem.edu/policy/policies/uts130.html>

RELATED STATUTES, POLICIES, REQUIREMENTS OR STANDARDS

UT System Administration Policies & Standards	Other Statutes, Policies & Standards
<ul style="list-style-type: none"> • Board of Regents’ Rules and Regulations, Rule 80102, Section 2.2 • Board of Regents’ Rules and Regulations, Rule 50302 • UTS145, Processing of Contracts • UTS150, Access by Persons with Disabilities to Electronic and Information Resources Procured by The University of Texas System Administration and The University of Texas System Institutions 	<ul style="list-style-type: none"> • Texas Government Code, Section 2203.005 • Texas Government Code, Chapter 2252, Subchapter C • Texas Government Code, Chapters 2252.062-.2252.064 • Texas Education Code, Chapters 51.002-.003 • Texas Education Code, Chapters 51.008-.009 • Texas Education Code, Chapter 51.0031 • Texas Education Code, Section 51.945 • Texas Education Code, Section 65.31

CONTACTS

If you have any questions about UT System Administration Policy UTS130, *Vending Machine Contracts*, contact the following office:

Subject	Office Name	Telephone Number	Email/URL
	Office of General Counsel	512-499-4462	ogcemail@utsystem.edu http://www.utsystem.edu/ogc/

DEFINITIONS

Auxiliary enterprise: A business activity that is conducted at a state agency, provides a service to the agency, and is not paid for with appropriated money.

Contractor: An individual, association, corporation, or other business entity that operates an auxiliary enterprise or performs a service of the auxiliary enterprise.

RESPONSIBILITIES

UT Institution Staff Member(s) Contracting with Vending Machine Provider.

- Solicits and obtains proposals from prospective contractors using a competitive solicitation process or other method that will achieve best value in vending services.
- Includes standard UT Vending Machine Agreement in the competitive solicitation.
- Obtains prospective contractor's financial statement as part of its proposal.
- Obtains from contractor performance bond and other documentation required by Sections 2252.062, 2252.063, and 2252.064, *Texas Government Code*.
- Submits vending machine agreement to the institutional docket coordinator for inclusion in the institutional docket.
- Processes vending machine agreement for signature by President or President's delegate.

- Forwards copy of the signed vending machine agreement to the Texas Comptroller of Public Accounts, indicating that the vending machine agreement has been approved by the Board of Regents and including a description of the location of the vending machines.

Office of General Counsel

- Reviews and approves vending machine agreements that deviate from the standard UT Vending Machine Agreement, contain addenda, or otherwise require review and approval by OGC under UTS145 Processing of Contracts.

President or President's Delegate

- Signs vending machine agreement, after the vending machine agreement has been approved by the Board of Regents.

UT Institution Staff Member(s) Responsible for Depositing Vending Machine Funds

- Retain and deposit vending machine revenue.

PROCEDURES

1. Standard UT Vending Machine Agreement

1.1 The recommended **standard UT Vending Machine Agreement (attached)** was developed by the Office of General Counsel (OGC) for use by UT institutions for vending machine arrangements entered into after the effective date of this policy.

The standard UT Vending Machine Agreement was drafted to cover the operation of vending machines offering typical food and beverage items; it will need to be revised if an institution plans to contract for (a) on-campus installation of coin or card-operated laundry machines, amusement games, or other machines substantially different from typical drink or snack machines; or (b) additional beverage-related services, such as fountain beverage supplies, or beverage pouring, advertising or promotional rights. The procedures outlined below for the solicitation, review, docketing, execution and reporting of vending machine agreement should be followed for all new vending machine agreements and for extensions of any existing vending machine agreements.

1.2 Except as provided in Section 1.1, UT institutions issuing a solicitation for proposals for vending machine services should include a copy of the standard UT Vending Machine Agreement in the solicitation document, with a statement that

the selected contractor (if any) will be expected to sign the standard UT Vending Machine Agreement and comply with all applicable statutory and Regental requirements.

2. Solicitation of Vending Contractors

2.1 UT institutions should use either an appropriate competitive selection process or some other method that will achieve best value in selecting a contractor or contractors to provide vending services.

In developing the desired qualifications and selecting a contractor, a UT institution will comply with Board of Regents' *Rules and Regulations*, Rule 50302 and its institutional policy concerning student participation in selection of food service providers.

UT institutions should solicit and obtain proposals from prospective contractors far enough in advance of the projected start date for the contractor's operations to allow sufficient time for (1) a review of the proposed vending machine agreement by OGC, if necessary; (2) negotiation of the vending machine agreement; and (3) docketing of the vending machine agreement for approval by the Board of Regents.

2.2 An institution's vending machine agreement should normally have a term of either two years or four years, with the expiration date of August 31, the end of the State fiscal year or biennium. The standard UT Vending Machine Agreement form provides that the term may be extended for an additional two years beyond the original term.

2.3 Institutional officers should note the requirements of Sections 2252.062, 2252.063, and 2252.064, *Texas Government Code*, concerning the contractor's submittal of financial statements, posting of a performance bond, and reporting of sales information. Those statutory requirements are specified in the standard UT Vending Machine Agreement, and should be stated in an institution's solicitation specifications.

The UT institution should request that each prospective contractor submit its financial statement as part of the prospective contractor's proposal. Note that the standard UT Vending Machine Agreement requires the contractor to pay a royalty to the UT institution based on a percentage of gross receipts before exclusion of sales tax. Institutions should ensure that this requirement is clearly indicated in the solicitation specifications.

3. Contract Processing Procedures

3.1 UT institutions entering into vending machine agreements using the standard UT Vending Machine Agreement, with no modifications except completing the blanks, need not obtain review as to legal form from OGC prior to Board approval. Contracts that deviate in any way from the standard UT Vending Machine Agreement or that contain addenda must be reviewed and approved as to legal matters by OGC prior to Board approval only if approval is required under UTS145 Processing of Contracts.

If OGC approval of a vending machine agreement is required or otherwise desired, an institution should submit the proposed vending machine agreement to OGC in accordance with UTS145 Processing of Contracts.

3.2 Docketing.

UT institutions should submit vending machine agreements to the Board of Regents Office for approval on the institutional docket, to comply with the requirements of Section 2203.005(a), *Texas Government Code*.

After the Board of Regents' approval of the docket and execution by the contractor and the UT institution's President or the President's delegate, it is the responsibility of the UT institution to forward an executed copy of the vending machine agreement to the Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts, indicating that the vending machine agreement was approved by the Board of Regents and including a description of the locations of the vending machines, as required by Section 2203.005(b), *Texas Government Code*.

3.3 Renewing Contracts.

Renewals by UT institutions of vending machine agreements that (1) do not modify in any way the form of the original contract and (2) are documented by using the standard **UT Extension and Amendment of Vending Machine Services Agreement (attached)** without modifying the substance of that standard form, do not require review or approval of OGC.

Renewals that either modify the form of the original contract or are documented by an instrument other than the standard UT Extension and Amendment of Vending Machine Services Agreement form, require approval from OGC only if such approval is required by UTS145 Processing of Contracts.

4. Use of Funds Derived from Vending Machines Operations

4.1 All revenue earned from auxiliary enterprises at UT institutions should be retained and deposited (or invested) by each institution under Sections 51.003 and 51.0031, *Texas Education Code*.

FORMS AND TOOLS/ONLINE PROCESSES

[Standard UT Vending Machine Agreement](#)

[Standard UT Extension and Amendment of Vending Machine Services Agreement](#)

APPENDIX

Legal Opinion regarding Use of Funds Derived from Vending Machines Operations

Section 2203.005(c), *Texas Government Code*, requires that all rentals, commissions, or other net revenue received by an agency from vending machines will be accounted for as state money and deposited to the credit of the general revenue fund unless the disposition of the revenue is governed by other law. Section 2203.005 also requires each agency to account for its vending machine revenue in the agency's annual report.

However, the 1999 bill enacting Section 2203 stated that "This Act does not affect the authority of an institution of higher education to collect, account for, and control local funds and institutional funds in the manner authorized by Subchapter A, Chapter 51, *Education Code*." Certain statutes in Chapter 51, *Education Code*, provide for the disposition of vending machine revenue received by institutions of higher education. The list set forth in Section 51.002, *Texas Education Code*, identifying those monies to be retained by institutions does not specifically include either "revenue from vending machines" or the larger category of funds to which those revenues are typically considered to belong, "revenue from auxiliary enterprises." However, Section 51.008, *Texas Education Code*, states that it prevails over Section 51.002, and Section 51.008 does specify that institutions of higher education will deposit into the State Treasury all receipts "derived from all sources except auxiliary enterprises, noninstructional services,..." and several other excepted sources.

Therefore, based on the cited provisions in the *Texas Education Code*, and in accordance with long-standing practice, all revenue earned from auxiliary enterprises at institutions of higher education should be retained and deposited (or invested) by each institution under Sections 51.003 and 51.0031, *Texas Education Code*.

Further, revenues from vending machines are within the category of "institutional funds," as defined in Section 51.009, *Texas Education Code*, and therefore are among the funds referred to in the bill that enacted Section 2203.005(c), *Texas Government Code*, which says the bill does not affect an institution's authority to collect and control local funds and institutional funds in the manner authorized by Subchapter A, Chapter 51, *Texas Education Code*.

It is the opinion of OGC that the 1999 enactment of Section 2203.005(c), *Texas Government Code*, did not affect the preexisting law concerning disposition of revenue from vending machines at institutions of higher education.

Keywords: vending machines, contracts, food services, vending machine, contract
