BACKGROUND

Following the November 6, 2014 meeting of the Board of Regents, a small working group was formed to review the purchasing policies and practices in the procurement of goods and services through methods other than competitive bidding by the U. T. System and its institutions, and to suggest recommendations for improvement in those practices. Such purchasing practices subject to this review included procurement through sole sourcing, state agencies, and the use of other group purchasing organizations (GPOs).

The working group met initially to review its charge and to formulate a plan moving forward (Appendix A - Working Group Charge). In November 2014, a request was made to all of the U. T. System institutions to provide information on all contracts and purchase orders entered into in Fiscal Year 2014 that were not competitively bid—including information on the vendor, method of procurement (sole source, specific GPO, etc.) and dollar amount of each contract. That information was received in late December and summarized and collated in an attempt to ensure consistency and comparability. The data revealed that approximately 30% of our total purchases were procured in a method other than the traditional competitive bidding process. The total dollars spent in Fiscal Year 2014 for Sole Source, TXMAS/State, DIR and other group purchasing organizations were just over $1.28 billion.

While at first glance this number may seem extraordinarily large, there were valid reasons for why such a large dollar amount was spent procuring goods and services utilizing purchasing methods other than the traditional competitive bidding process. Indeed, the data illustrated both the value of the flexibility the state has provided in procurement methods and, perhaps more importantly, the absolute imperative we have to ensure that the trust given is not abused and that policies and practices are in place to guarantee that U. T. System is fair, transparent and absolutely ethical in all procurements. Appendix B provides an excerpt from the Texas Education Code under which U. T. System institutions are generally allowed to operate.

Of the $1.28 billion in identified purchases (utilizing methods other than traditional competitive bidding), almost half or just under $600 million were categorized as sole source purchases. These sole source purchases included the following:

- Library materials
- Direct Publications/Software Renewals/Maintenance
• Proprietary (i.e. Pharmaceuticals, Chemical Reagents)
• Original Equipment Manufacturer (OEM) Maintenance/Renewals
• Compatibility with Existing Equipment
• Continuity of Services/Research
• Meets Required Specifications/Unique Specifications
• Contractor/Grantor Requirements
• Professional Services (Legal, Architect, Engineer, Physician)
• Professional Organization Memberships
• Insurance
• Emergency Purchases

Also, unlike purchases made using group purchasing organizations that are, for now, exempt from Board of Regents’ approval under Regents’ Rule 10501, these sole source purchases (in excess of the required dollar threshold) do require approval by the Board. (Appendix C - Regents’ Rule 10501 excerpt).

Of the remaining $680 million, which was not sole sourced, approximately $230 million (18% of the total $1.28 billion) were purchases made through state contracts, while $450 million (35% of the total $1.28 billion) were purchases from one of more than 25 GPOs, including the U. T. System Supply Chain Alliance.

In addition, two state agencies and three GPOs accounted for over $620 million (or more than 90%) of the identified $680 million procured through agency contracts or GPOs. They are as follows:

• The Department of Information Resources (DIR) - $178 million
• Texas Multiple Awards Schedules (TXMAS) - $ 42 million
• Premier Healthcare Alliance GPO - $245 million
• U. T. System Supply Chain Alliance - $130 million
• E&I Cooperative Services - $ 25 million

Given the large amount of goods and services procured by the U. T. System through the five organizations mentioned above, the working group requested information from all five groups to better understand individual practices and processes in soliciting contract proposals from vendors and in identifying contract and pricing terms that can be used by members utilizing the organization’s shared contracts. Appendix D shows a list of the questions generally asked of the State Agencies/GPOs with whom we visited.

Variation was found in the approach taken by these agencies/GPOs in how they qualify vendors and set pricing for contracts. For example, the U. T. System Supply Chain Alliance engages in a very rigorous competitive bidding process determined not only to qualify vendors for use by U. T. System institutions, but also to ensure that the vendor(s) selected provide the most competitive pricing by, in part, communicating the aggregate spend likely to come from our institutions and agreeing to narrow the choice available to the institutions. Other groups add value by “pre-qualifying” vendors through a competitive bidding process but, by their own admission, are not seeking to necessarily acquire the most favorable pricing terms that would come through the bidding of a large contract. In other words the price

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offered by the vendor in the process may be a standard price that the vendor would give to any purchaser.

On January 28, 2015, as the working group was engaged in its work, Governor Abbott issued a letter (Appendix E) to all state agency heads asking for greater transparency and better stewardship in the state’s contracting and procurement processes. This letter was in response to concerns raised in the contracting processes at another State agency, which reinforces the value and insight of our Board of Regents, which noted the risks associated with this important function many months earlier and convened this working group to review practices and policies well in advance of any identified procurement challenges in other state agencies.

Once the letter was issued by Governor Abbott, the U. T. System agreed, to the extent possible to immediately implement the five specific suggestions from the letter to improve transparency and foster accountability. In addition, U. T. System informed the Governor’s staff and members of the Legislature of the review that was currently underway by this working group and that further recommendations would be coming to the Board of Regents in May. The working group has attempted to adjust its process and to reflect the Governor’s suggestions and guidance into its recommendations.

RECOMMENDATIONS

Having reviewed the data, conducted numerous interviews and deliberations, the working group suggests the following recommendations for the Board of Regents to consider.

Recommendation #1: It is recommended that all U. T. System institutions begin using a standardized sole source (“Exclusive Acquisition”) procedure and best value determination. The working group recommends that the Office of General Counsel (OGC) publish guidelines to standardize the process for all U. T. System institutions based on a set of best practices. The working group has identified the following Best Practices that should be considered:

- Adopt the term “Exclusive Acquisition” and include justification for:
  - Sole source/proprietary purchases
  - Best value purchases
  - Emergency purchases
  - Purchases of professional services
    - *Texas Government Code* 2254.002/003 requires pre-qualification. In situations where only one supplier is being considered, written justification would be required in the absence of pre-qualification
- Cite in either the procedure or the form the legislative guideline that applies or defines a requirement
- Affirmation signed by the request originator that attests to accuracy of the information presented and absence of any conflict of interest
- Counter signature by the school/department-level administrative official
• Dual approval within the Purchasing Department by both the Buyer and a purchasing manager
  o Purchasing management signature must be in line with established delegation of authority limits

Exclusive Acquisition Justification (EAJ) would be required when only one supplier is being considered for purchases that meet the institution’s dollar threshold requirements for competitive bids or proposals.

In Appendix F, the working group offers a suggested standardized form that could be used for all sole source (exclusive acquisition) procurements.

**Recommendation #2:** The working group applauds the purchasing training and certification currently mandated by University of Texas System Policy UTS156 and endorses its continuing application. In UTS156, core training is required for all employees who process procurements of goods or services and must include the following areas:

- Ethics
- Supplier relations
- U. T. System Historically Underutilized Business (HUB) program
- Applicable laws, rules and regulations
- The role of the buyer and the buyer’s fiduciary responsibility
- Documentation and records management
- Applicable policies and procedures
- Contract administration
- Principles of “best value” procurement

In addition, all personnel who process competitive procurements and issue purchase orders in an amount greater than $25,000 must obtain certification from one of the nationally recognized procurement educational associations and/or Texas Procurement and Support Services (TPASS) training programs listed below:

- Institute for Supply Management
- National Institute of Government Purchasing
- State of Texas (administered by TPASS division of the Texas Comptroller’s Office)

Only individuals who have specific procurement knowledge and experience are eligible for certification. There are three essential components for eligibility:

- Level of education
- A required number of years in procurement experience
- Coursework training and a successful passing score on a formal examination
The required certification levels are classified by the type of purchase (e.g., formal bids, small dollar procurements) and the level of commitment authority given to the purchaser. For example, a purchaser who processes formal bids requires more years of procurement experience and course work training than a purchaser who process informal quotes. Certifications must be renewed every five years and the recertification process requires continuing education hours ranging from 45 hours to 120 hours depending upon the certifying educational association. Certification requirements are incorporated into institution’s job descriptions to ensure all applicable personnel are appropriately certified.

Recommendation #3: The working group recommends that there be a tiered approach to the use of State Agency Contracts/Group Purchasing Organizations. It is recommended that the Regents delegate to the Executive Vice Chancellor for Business Affairs (EVCBA) to work with the U. T. System Purchasing Council and the U. T. System Supply Chain Alliance to develop an “accreditation” process whereby GPOs might be certified for various levels of use. Until a GPO is recommended for certification to the Board of Regents and subsequently approved by the Board, an institution cannot procure goods or services through the GPO. The group, working with the EVCBA, would recommend GPO “certifications” to the Board of Regents and the conditions under which an institution can utilize the GPO’s services. It is further recommended that GPOs certified by the Board undergo a recertification process every two years whereby they are reapproved for use by the Board of Regents.

While the accreditation process is being developed and until GPO certification recommendations are approved by the Board, we recommend institutions be permitted full use of contracts provided by the U. T. System Supply Chain Alliance as is, and conditional use of contracts provided by:

- The Department of Information Services (DIR);
- Texas Multiple Awards Schedules (TXMAS);
- Premier Healthcare Alliance GPO; and
- E&I Cooperative Services.

Subject to the following:

Services: Where it is clear that the Agency/GPO has multiple suppliers in the same service category, then the institution must develop a specific scope of work and solicit and receive a minimum of three valid proposals (or two if there are only two firms in the category) from contracted suppliers.

Goods: Where it is clear that the Agency/GPO has multiple suppliers for the same good category, then the institution shall solicit a minimum of three valid proposals (or two if there are only two firms in the category) from contracted suppliers;

- for DIR, TXMAS, and E&I Cooperative Services, this step is applicable to contracts over a $1.0 million threshold that are calculated based on the contract terms, and
• for Premier Healthcare Alliance GPO, this step is applicable according to the following contract requirement thresholds that are calculated based on the contract term:
  o $1.0 million for UTB, UTPA, UTPB, UTRGV, UTT and UTHSCT;
  o $2.0 million for UTA, UTD, UTEP, UTSA; and
  o $3.0 million for UTAUS, UTHSCH, UTHSCSA, UTMB, UTSWMC, UTMDA, and U. T. System.

In addition, if the institution exceeds the top tier volumes, spend, or market share under a GPO contract with a tiered pricing structure, then the institution shall be required to obtain a minimum of three valid proposals or two if there are only two firms in the category.

Best Value Justification: In all cases the institution must complete and sign off on a standard “best value” justification form. Appendix G illustrates a sample process, already implemented at a number of our institutions which takes into account these required conditions. The “best value” form is in development.

**Recommendation #4:** It is recommended that Regents’ Rule 10501, Sec. 2.2.7, which exempts all purchases made under a group purchasing program that follow all applicable statutory and regulatory standards for procurement from Board of Regents approval – be amended. Instead, it is proposed that:

• First, Section 2.2.7 would only apply to State Agencies/GPOs that have been “certified” by the Board of Regents (see Recommendation #3) and contracts that follow the conditions associated with that certification (currently we recommend application of this section to the U. T. System Supply Chain Alliance and the four Agencies/GPOs noted above in Recommendation #3).

• Second, purchases made through a “certified” State Agency/GPO purchasing program under:
  o $1.0 million for UTB, UTPA, UTPB, UTRGV, UTT and UTHSCT;
  o $2.0 million for UTA, UTD, UTEP, UTSA; and
  o $3.0 million for UTAUS, UTHSCH, UTHSCSA, UTMB, UTSWMC, UTMDA, and U. T. System
be exempt from Board of Regents’ approval.

• Third, that proposed purchases made through a “certified” State Agency/GPO over the above mentioned thresholds be communicated via email to members of the Audit, Compliance, and Management Review (ACMR) Committee of the Board and that each member of the ACMR Committee be given 48 hours for any individual questions concerning the purchase.

• Fourth, that a quarterly report of all procurements made in the prior three months that are over the above mentioned thresholds and that utilize a State Agency/GPO purchasing program, be provided to the Board of Regents.

**Recommendation #5:** Consistent with the direction received from Governor Abbott, it is recommended that each U. T. System institution locate and develop a webpage on their website to report information on each sole source contract within 30 days of the signing of the contract. This recommendation has already been implemented.

**Recommendation #6:** Again, consistent with the direction received from Governor Abbott, it is recommended that for any procurement of more than $5 million, the institution’s procurement director
or contract manager certify in writing the procurement method to the institution President or Chancellor. Appendix H shows a recommended “certification template,” which can be used for this process. And, while the template has yet to be standardized, the certification process for contracts exceeding $5 million has already been implemented.

Recommendation #7: The working group recommends continued adherence to current U. T. System policy and conflict of interest programs and finds that the policy and programs currently in place adequately protect the U. T. System, its institutions, and its employees from unmanageable conflicts while still allowing for appropriate engagement in needed business activities.

Recommendation #8: While we of course recognize the guidance received from the Governor and will clearly adhere to any new legislative requirement related to transparency and ethical procurement of goods and services, the working group believes that current delegations of contracting authority are reasonable, efficient and reflective of the appropriate levels of accountability. This is particularly apparent when considering University of Texas System Policy UTS156 and the rigorous training and certifications required of all those engaged in the procurement of goods and services. The working group does not believe that requiring the institution President or the Chancellor to sign all contracts in excess of $1 million is a particularly effective control mechanism and believes such a requirement creates some unnecessary inefficiencies in the system.

Recommendation #9: With a few identified exceptions (including food services/concessions) it is recommended that U. T. System explore the implementation of contract term limits of no more than five years (including extensions). It is recommended that this issue be studied and considered with input from the institutions to determine if such term limits are practical, what length they might be, and what list of exceptions should be identified. Another considered approach would be to require Board of Regents’ approval for contracts beyond five years, regardless of total dollar value.

FUTURE THOUGHTS

While not part of its specific recommendations the working group would note two other items for possible future discussion and study.

First, there may be a need for more review and consideration of how and when to engage consulting services at the U. T. System and its institutions. It is clear that U. T. System expends large amounts of resources on such services and it is likewise apparent that there is often a need to supplement internal expertise with outside help due to a narrow proficiency required, the temporary nature of a project or study, an independent approach or review, etc. But it is also evident that contracts for consulting services can be some of the most difficult to negotiate and manage to ensure risk is shared, value is maximized,
and objectives are met. Therefore, there may be value in better understanding how, when and why to obtain such services and what might be done to enhance efficiency in this area.

Second, an identified purchasing best practice for future consideration is the possible further consolidation of procurement functions within the U. T. System. If done right, this more corporate-like model – relating only to purchasing and procurement – has the advantages of enhanced efficiency, better controls, and simplified processes while still allowing for the individualized decision-making and flexibility critical to the individual institutions.
APPENDIX A
Working Group Charge

As requested by the Board of Regents (BOR) on November 6, 2014, this working group will gather data and information on the processes and procedures under which U. T. institutions acquire goods and services. Based on the data gathered and the information obtained, the working group will make recommendations to the BOR to assure compliance with statutory “best value” requirements, to suggest best practices and enhanced efficiency, and to provide assurance to the BOR that they are exercising an appropriate degree of oversight regarding U. T. System expenditures.

Specifically, the task force will

1. Obtain data on the various ways U. T. institutions acquire goods and services, including number and type of contracts and dollars expended on sole source acquisitions, competitive procurements conducted by the institutions themselves, and group purchases made under contracts procured by the Department of Information Resources, the Comptroller of Public Accounts (TXMAS), Premier, Novation and other significant group purchasing organizations.

2. Review best practices on the use and documentation of sole source and group purchase contracts. Review the competitive processes used by the group purchasing organizations and how well they satisfy our best value requirements.

3. Review how the use of various purchase methods can be justified and documented under the best value purchasing authority.

4. Review the BOR Rules on purchasing, including exemptions from BOR approval, for significant contracts by type and monetary value.

5. Make recommendations on how to strengthen purchasing policies and procedures to reflect best practices, maintain efficiency and flexibility while ensuring proper oversight and public transparency.
APPENDIX B

Texas Education Code Excerpt

The following is an excerpt from the Texas Education Code under which U. T. System institutions are generally allowed to operate:

§ 51.9335. ACQUISITION OF GOODS AND SERVICES.

(a) An institution of higher education may acquire goods or services by the method that provides the best value to the institution, including:

(1) competitive bidding;
(2) competitive sealed proposals;
(3) a catalogue purchase;
(4) a group purchasing program; or
(5) an open market contract.

(b) In determining what is the best value to an institution of higher education, the institution shall consider:

(1) the purchase price;
(2) the reputation of the vendor and of the vendor's goods or services;
(3) the quality of the vendor's goods or services;
(4) the extent to which the goods or services meet the institution's needs;
(5) the vendor's past relationship with the institution;
(6) the impact on the ability of the institution to comply with laws and rules relating to historically underutilized businesses and to the procurement of goods and services from persons with disabilities;
(7) the total long-term cost to the institution of acquiring the vendor's goods or services;
(8) any other relevant factor that a private business entity would consider in selecting a vendor; and
(9) the use of material in construction or repair to real property that is not proprietary to a single vendor unless the institution provides written justification in the request for bids for use of the unique material specified.
APPENDIX C

1. Title

Delegation to Act on Behalf of the Board

2. Rule and Regulation

Sec. 2 Delegation

2.1 Compliance with Special Instructions. All authority to execute and deliver contracts, agreements, and other documents is subject to these Rules and Regulations and compliance with all applicable laws and special instructions or guidelines issued by the Chancellor, an Executive Vice Chancellor, and/or the Vice Chancellor and General Counsel. Special instructions or guidelines by the Chancellor, an Executive Vice Chancellor, or the Vice Chancellor and General Counsel may include without limitation instructions concerning reporting requirements; standard clauses or provisions; ratification or prior approval by the Board of Regents or the appropriate Executive Vice Chancellor; review and approval by the Office of General Counsel; and recordkeeping.

2.2 Contracts Not Requiring Board Approval. The following contracts or agreements, including purchase orders and vouchers, do not require prior approval by the Board of Regents.

2.2.1 Construction Projects. Contracts, agreements, and documents relating to construction projects previously approved by the Board of Regents in the Capital Improvement Program and Capital Budget or Minor Projects.

2.2.2 Construction Settlements. All settlement claims and disputes relating to construction projects to the extent funding for the project has been authorized.

2.2.3 Intellectual Property. Legal documents, contracts, or grant proposals for sponsored research, including institutional support grants, and licenses or other conveyances of intellectual
property owned or controlled by the Board of Regents as outlined in Rule 90105 of these Rules.

2.2.4 Replacements. Contracts or agreements for the purchase of replacement equipment or licensing of replacement software or services associated with the implementation of the software.

2.2.5 Routine Supplies. Contracts or agreements for the purchase of routinely purchased supplies or equipment.

2.2.6 Approved Budget Items. Purchases of new equipment or licensing of new software or services associated with the implementation of the software, identified specifically in the institutional budget approved by the Board of Regents.

2.2.7 Group Purchases. Purchases made under a group purchasing program that follow all applicable statutory and regulatory standards for procurement.

2.2.8 Loans. Loans of institutional funds to certified nonprofit health corporations, which loans have been approved as provided in The University of Texas System Administration Policy UTS166, Cash Management and Cash Handling Policy and The University of Texas System Administration Policy UTS167, Banking Services Policy concerning deposits and loans.

2.2.9 Certain Employment Agreements. Agreements with administrators employed by the U. T. System or any of the institutions, so long as such agreements fully comply with the requirements of Texas Education Code Section 51.948 including the requirement to make a finding that the agreement is in the best interest of the U. T. System or any of the institutions, except those with total annual compensation of $1 million or greater or with proposed multiyear contracts of $1 million or greater.
2.2.10 Energy Resources. Contracts or agreements for utility services or energy resources and related services, if any, which contracts or agreements have been approved in advance by the Chancellor or the Chancellor’s delegate.

2.2.11 Library Materials and Subscriptions. Contracts or agreements for the purchase or license of library books and library materials.

2.2.12 Athletic employment agreements. Contracts, contract revisions, and contract extensions with athletic directors and coaches except those with total annual compensation of $1 million or greater or those with proposed multiyear contracts of $1 million or greater.

(a) Contracts, contract revisions, and contract extensions for individuals with total annual compensation of $1 million or greater may be negotiated and executed by the President following consultation with the Chancellor, the Executive Vice Chancellor for Academic Affairs, the Vice Chancellor and General Counsel, and the Chairman of the Board of Regents and additional consultation, as requested by the Chairman, to determine if special circumstances require an offer or contract change to be made prior to a scheduled meeting of the Board and if the proposed offer or contract change is in the best interest of the institution.

(b) Such special circumstance contracts shall be submitted to the Board for formal approval via the Consent Agenda at the next appropriate meeting of the Board as required by Rule 20204 of these Rules.

(c) Alternatively, the President may seek prior approval of the Board to negotiate with a slate of identified individuals within defined contract terms and proceed, if authorized, to hire an athletic director or coach and
submit a contract for formal approval by the Board as set out in (b) above.

(d) It is the expectation of the Board, the Chancellor, and the Executive Vice Chancellor for Academic Affairs that each President will assure the Chairman, the Chancellor, and the Executive Vice Chancellor for Academic Affairs are provided advance notice of proposed hirings and potential terms of employment related to such contracts in advance of an offer or publication or public distribution of information to allow for meaningful consultations and/or approvals.

2.2.13 Athletic Games. Contracts or agreements related to athletic games, including postseason bowl games. If the contract or agreement exceeds $1 million in value, the contract or agreement must be approved by the Executive Vice Chancellor for Academic Affairs and be in a form acceptable to the Vice Chancellor and General Counsel.

2.2.14 Property or Casualty Losses. Contracts or agreements with a cost or monetary value to the U. T. System or any of the institutions in excess of $1 million but not exceeding $10 million associated with or related to a property or casualty loss that is expected to exceed $1 million may be approved, executed, and delivered by the Chancellor. The Chancellor shall consult with the institutional president, if applicable.

2.2.15 Health Operations. Contracts or agreements for the procurement of routine services or the purchase or lease of routine medical equipment, required for the operation or support of a hospital or medical clinic, if the services or equipment were competitively procured.

2.2.16 Increase in Board Approval Threshold. An institution's dollar threshold specified in Section 3.1 may be increased to up to $5 million by the
Vice Chancellor and General Counsel, after consultation with the General Counsel to the Board of Regents, if it is determined that the institution has the expertise to negotiate, review, and administer such contracts. Unless approved in advance by the Vice Chancellor and General Counsel, any increase will not apply to contracts or agreements designated as Special Procedure Contracts by the Vice Chancellor and General Counsel.

2.2.17 Group Employee or Student Benefits. Contracts or agreements for uniform group employee or student benefits, including those offered pursuant to Chapter 1601, Texas Insurance Code.

2.4 Signature Authority. The Board of Regents delegates to the Chancellor or the president of an institution authority to execute and deliver on behalf of the Board contracts and agreements of any kind or nature, including without limitation licenses issued to the Board or an institution. In addition to other primary delegates the Board assigns in the Regents’ Rules and Regulations, the Board assigns the primary delegate for signature authority for the following types of contracts.

2.5 System Administration and Systemwide Contracts. The Board of Regents delegates to the Executive Vice Chancellor for Business Affairs authority to execute and deliver on behalf of the Board contracts or agreements:

(a) affecting only System Administration,

(b) binding two or more institutions of the U. T. System with the concurrence of the institutions bound, or

(c) having the potential to benefit more than one institution of the U. T. System so long as participation is initiated voluntarily by the institution.

2.6 Contracts Between or Among System Administration and Institutions. The Board of Regents delegates to the Executive Vice Chancellor for Business Affairs authority to execute on behalf of the Board contracts or agreements between or among System Administration
and institutions of the U. T. System for resources or services. Any such contract or agreement shall provide for the recovery of the cost of services and resources furnished.

2.7 Contracts with System Administration or Between or Among Institutions. The Board of Regents delegates to the president of an institution authority to execute on behalf of the Board contracts or agreements with System Administration or between or among institutions of the U. T. System for resources or services. Any such contract or agreement shall provide for the recovery of the cost of services and resources furnished.

2.8 Contracts for Legal Services and Filing of Litigation. The Board of Regents delegates to the Vice Chancellor and General Counsel authority to execute and deliver on behalf of the Board contracts for legal services and such other services as may be necessary or desirable in connection with the settlement or litigation of a dispute or claim after obtaining approvals as may be required by law. Litigation to be instituted under these contracts on behalf of the Board, System Administration, or an institution of U. T. System must have the prior approval of the Vice Chancellor and General Counsel.

2.9 Settlement of Disputes. Except as provided in Section 3.6 below, the Board of Regents delegates to the Vice Chancellor and General Counsel authority to execute and deliver on behalf of the Board agreements settling any claim, dispute, or litigation. The Vice Chancellor and General Counsel shall consult with the institutional president and the appropriate Executive Vice Chancellor or Chancellor with regard to all settlements greater than $150,000 that will be paid out of institutional funds. Settlements greater than $1,000,000 will require the approval of the Board as outlined in Section 3.6 below. The Vice Chancellor and General Counsel shall consult with the Office of External Relations with respect to settlement of will contests and other matters relating to gifts and bequests administered by that Office.

Sec. 3 Matters Not Delegated. The following contracts or agreements, including purchase orders or vouchers and binding letters of intent or memorandums of understanding, must be submitted to the Board for approval or authorization:
3.1 Contracts Exceeding $1 Million.

3.1.1 All contracts or agreements, with a total cost or monetary value to the U. T. System or any of the institutions of more than $1 million, unless exempted in Section 4 below. The total cost or monetary value of the contract includes all potential contract extensions or renewals whether automatic or by operation of additional documentation. For purposes of this Rule, any contract with unspecified cost or monetary value with a term of greater than four years is presumed to have a total value of greater than $1 million.

3.1.2 Any amendment, extension, or renewal that increases the cost or monetary value of the original contract to more than $1 million must be submitted to the Board for approval or authorization. Any amendment, extension, or renewal with a cost or monetary value that exceeds 25% of the cost or monetary value of the original contract approved by the Board must be submitted to the Board for approval.

3.2 Contracts with Foreign Governments. Contracts or agreements of any kind or nature, regardless of dollar amount, with a foreign government or agencies thereof, except affiliation agreements and cooperative program agreements, material transfer agreements, sponsored research agreements and licenses, or other conveysances of intellectual property owned or controlled by the Board of Regents prepared on an approved standard form or satisfying the requirements set by the Office of the General Counsel, or agreements or contracts necessary to protect the exchange of confidential information or nonbinding letters of intent or memorandums of understanding executed in advance of definitive agreements each as reviewed and approved by the Vice Chancellor and Office of General Counsel.

3.3 Contracts Involving Certain Uses of Institution Names, Trademarks, or Logos. Except as specifically allowed under existing contracts entered into between the Board of Regents and nonprofit entities supporting a U. T. System institution, agreements regardless of dollar
amount that grant the right to a non-U. T. entity to use the institutional name or related trademarks or logos in association with the provision of a material medical-related service or in association with physical improvements located on property not owned or leased by the contracting U. T. System institution.

3.4 Contracts with Certain Officers. Agreements, regardless of dollar amount, with the Chancellor, a president, a former Chancellor or president, an Executive Vice Chancellor, a Vice Chancellor, the General Counsel to the Board, or the Chief Audit Executive are subject to the applicable provisions of Texas Education Code Section 51.948.

3.5 Insurance Settlements.

(a) Settlements in excess of $1 million must have the approval of the Board.

(b) Settlement claims from insurance on money and securities or fidelity bonds of up to $1 million shall be approved by the Executive Vice Chancellor for Business Affairs.

(c) If a loss is so extensive that partial payments in excess of $1 million are necessary, the Chancellor is delegated authority to execute all documents related to the partial payment or adjustment. Final settlement of claims in excess of $1 million will require approval by the Board.

3.6 Settlement of Disputes. Settlements of any claim, dispute or litigation for an amount greater than $1 million require approval. The settlement may also be approved by the appropriate standing committee of the Board of Regents. The Vice Chancellor and General Counsel shall consult with the institution's president and appropriate Executive Vice Chancellor or Vice Chancellor with regard to all settlements in excess of $150,000 that will be paid out of institutional funds.

3.7 Power to Authorize Expenditures. No expenditure out of funds under control of the Board shall be made and no debt or obligation shall be incurred and no promise shall be made in the name of the System or any of the
institutions or of the Board of Regents by any member of the respective staffs of the U. T. System or any of the institutions except:

3.7.1 In accordance with general or special budgetary apportionments authorized in advance by the Board of Regents and entered in its minutes; or

3.7.2 In accordance with authority specifically vested by the Board of Regents in a committee of the Board; or

3.7.3 In accordance with authority to act for the Board of Regents when it is not in session, specifically vested by these Rules and Regulations or by special action of the Board.

Sec. 4 Exceptions. This Rule does not apply to any of the following:

4.1 UTIMCO. Management of assets by UTIMCO, which is governed by contract and the provisions of Rule 70101, 70201, 70202, and 70401 of these Rules and Regulations.

4.2 Acceptance of Gifts. The acceptance, processing, or administration of gifts and bequests, which actions are governed by Rule 60101, 60103, 70101, and 70301 of these Rules and Regulations and applicable policies of the Board of Regents.

4.3 Statutory. Any power, duty, or responsibility that the Board has no legal authority to delegate, including any action that the Texas Constitution requires be taken by the Board of Regents.

3. Definitions

Group Purchasing Program – for purposes of this Rule, a purchasing program established by (1) a state agency that is authorized by law to procure goods and services for other state agencies, such as the Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts and the Texas Department of Information Resources, or any successor agencies, respectively; or (2) a group purchasing organization in which the institution participates, such as Novation, Premier, Western States Contracting Alliance, and U.S. Communities Government Purchasing Alliance; or (3) the U. T. System Supply Chain Alliance.
APPENDIX D
Questions for Group Purchasing Organizations

1. Describe how your GPO’s sourcing and contracting processes help UT System institutions satisfy legally required “best value” standards (see next page for excerpt from the relevant Texas statute).

2. Please discuss:
   a. How solicitations for proposals are advertised (e.g., when, where, to whom, minority suppliers, etc.).
   b. What percentage of your GPO’s contract awards are competitively bid, as opposed to being sole sourced, and how you make your members aware of the method used for a particular award.
   c. How competing bids are evaluated, and what criteria have to be satisfied for a vendor to be awarded a contract.
   d. How GPO members are involved in the sourcing process.
   e. How transparency is achieved by making bid materials (e.g., RFP responses, scoring process, etc.) available to members.

3. Does your GPO practice an “all awards” process (e.g., where 80-100% of the bidders are awarded a contract)?

4. What percentage of your contract awards are “all awards,” “multiple awards,” and “single awards,” respectively?

5. What instructions do you give to your GPO members about their ability to negotiate terms that are better than those in the awarded contract, or to choose among multiple awards?

6. How do you determine the duration of awarded contracts?

7. Are complete master contract terms and conditions made available to your GPO members?

Only for TXMAS:

Provide details of how business terms are established in contract awards to product distributors, in situations where the federal or state contracts on which TXMAS relies in making its awards are only with the product manufacturers.
January 28, 2015

To: All State Agency Heads

Re: Transparency in State Agency Contracting and Procurement

As leaders in state government, we must never forget that we work for the people of Texas, whose hard-earned tax dollars make all our work possible. Our duty to be good stewards of the taxpayers' money is not just a statutory or public policy goal—it is a moral obligation that we owe to the millions of Texans whose precious resources have been entrusted to us.

One simple, effective way state agencies can both maximize value for the taxpayers—and improve the public's confidence in their government—is to utilize a competitive bidding process to purchase goods and services whenever that is possible. As Governor, I must ensure that all state agencies are committed to maximizing value and utilizing open and transparent contracting processes.

With that very important goal in mind, I am strongly supporting contracting reform legislation that Sen. Jane Nelson announced Monday. If enacted, SB 353 would impose meaningful reforms on state contracting processes that would improve transparency and foster accountability in the contracting process. Specifically, Sen. Nelson's legislation would, among other requirements:

- Require public disclosure of all no-bid contracts and a public justification for using such a procurement method;
- Require that all agency employees involved in procurement or contract management disclose any possible conflicts of interest;
- Prohibit contracts with business entities with which high-level agency leadership or staff have a financial interest;
- Require that the agency's board chair sign any contract valued at more than $1 million—or delegate signature authority to the agency head;
- For procurements of more than $5 million, require the agency's central contracting office or procurement director to sign off on the procurement method and to indicate, in writing, to the Board and agency head any potential issue that could arise in the contract solicitation.
While this bill is still a work in progress and may be amended to include additional reforms, I believe that the filed version of SB 353 is an important first step toward restoring public trust. There is no reason to wait and no time to waste in working to ensure the highest level of transparency and integrity in the state contracting process. And while we plan to work proactively with Sen. Nelson with the goal of enacting even more stringent reforms to the contracting process, as Governor, I believe that immediate action is necessary and that the reforms outlined above form a solid foundation that will improve public confidence and transparency in state contracting.

With that in mind, effective February 1, I expect all state agency heads to begin complying with the reforms outlined above. Again, we recognize that this legislation may be amended as it proceeds through the legislative process, however until the law eventually takes effect, state agencies must begin to implement the reforms outlined in this letter immediately.

Finally, I want to reiterate my commitment to an open and transparent bidding process for all state contracts. In light of that goal, I expect that all state agencies will utilize a competitive bidding process not only when it is required by law but also at all times that it is feasible to do so. Of course, I understand that emergencies may arise that require immediate action by agencies that is not amenable to a more lengthy competitive bidding process. However, it is my expectation as Governor that agencies will utilize a competitive bidding process at all other times.

This memorandum does not change the law. That is the Legislature's responsibility. It does not change any agency administrative rules regarding contracting or procurement. There is a process for that. The purpose of this letter is to outline higher standards for state agencies and to call on custodians of the public trust to achieve those high standards when they face decisions about how to spend the taxpayers' hard-earned money.

Thank you for your service to the State of Texas.

Sincerely,  

Greg Abbott  
Governor of Texas
APPENDIX F
Sole Source (Exclusive Acquisition) Justification Form

EXCLUSIVE ACQUISITION JUSTIFICATION (EAJ)

Use this form for purchases or new contracts over $5,000 where there are no GPO or bidding opportunities. Note: Every order exceeding $100,000 is subject to HUB subcontracting rules and regulations

For assistance in completing this form please call the Purchasing Office at ext. 78000

Acquisition Type: 

<table>
<thead>
<tr>
<th>Categorization of request:</th>
<th>Academic</th>
<th>Requisition. #</th>
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<tbody>
<tr>
<td>Direct patient care</td>
<td></td>
<td>(if applicable)</td>
</tr>
<tr>
<td>Research</td>
<td>Other:</td>
<td></td>
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</table>

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<tr>
<th>Acquisition $ Amount</th>
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Definition of Scope: 

Recommended Supplier: 

What function, scope, or outcome the requested equipment, product, or service will provide? (Please provide a general description of the function. Additionally, you may attach a detailed specification.)

Type of Justification

Sole Source:

(as defined in Government Code 2155.067)

☐ Only known supplier that meets your "definition of scope." (Please complete sections "A" and "B" and "F")

Best Value:

(as defined in Education Code Section 74.008, Section b)

☐ Required for exact compatibility with existing equipment, standardization, or hospital formulary. (Please complete sections "C" and "F")

Emergency:

(as defined in Government Code 2155.086, Section c)

☐ A purchase for which delay would create a hazard to life, health, safety, welfare or property. (Please complete sections "D" and "F")

Professional Services:

(as defined in Government Code 2254.002, e.a. Architects, Engineers, RNs, CPAs, Physician, Land Surveyor, etc.)

☐ Note: For Architects/Engineers Services, if a Direct Appointment Letter is required, please attach the signed letter to this form. (Please complete sections "E" and "F")

A) Explain what unique features or specifications are contained that will allow you to meet your "definition of scope" but aren't offered by any other supplier.
B) Note any other competitor considered and why they were excluded: If none, explain why.

<table>
<thead>
<tr>
<th>Supplier</th>
<th>Reason for Exclusion/Explanation for &quot;None&quot;</th>
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C) Describe the existing condition(s) requiring exact compatibility or standardization.

D) Describe the urgency and impact to the institution for not placing this purchase through the competitive bid process.

E) Professional Services

1) Anticipated contract completion time frame, based from the award date.

2) Supplier Selection

   a) Criteria used to select the Supplier for these services.

   b) Reason for selection (Identify specific qualifications of selected Supplier)

3) If the recommended supplier is an individual or sole-proprietor, please complete the Employee/Independent Contractor Verification Form and attach it to this form.

F) Approvals

ATTENTION: For contracts not requiring a requisition for contract signature, or, Contracts for signature only: Two signatures are required for approval (Financial Approver and Subject Matter Expert)

For contracts with requisition for contract signature, or, Requisitions only: Only one signature is required for approval from the Subject Matter Expert.

Your approval affirms that:

- No substitute or equivalent product/service exists in the marketplace that can meet your operational needs.
- No employee/employer relationship exists (IRS regulations and guidelines).
- This supplier is not related to anyone who has authority over this purchase and has not been employed by the institution within the past 12 calendar months (Government Code; Section 2252.901).
- Supplier has not been paid by the institution to develop/recommend specifications or requirements (Government Code; Section 2155.004).
- The above statements are true and correct to the best of my knowledge, and that no other material fact or consideration offered or given has influenced this recommendation for an Exclusive Acquisition.
Your **SIGNATURE** verifies your acknowledgment of the above requirements for disclosure and authorization.

- For contracts not requiring a requisition for contract signature, or
  - Contracts for signature only (no payment)

<table>
<thead>
<tr>
<th>Financial Approver Signature</th>
<th>Date</th>
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<tr>
<td>Financial Approver Name (typed or printed)</td>
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<table>
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<tr>
<th>Subject Matter Expert Signature</th>
<th>Date</th>
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<tbody>
<tr>
<td>Subject Matter Expert Name (typed or printed)</td>
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- For contracts with requisition for contract signature, or
  - Requisitions only

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<tr>
<th>Subject Matter Expert Signature</th>
<th>Date</th>
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<tbody>
<tr>
<td>Subject Matter Expert Name (typed or printed)</td>
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**For Purchasing Use Only:**

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<tr>
<th>Buyer Review</th>
<th>Date</th>
<th>Team/Sr. Team Lead (if exceeds Buyer delegation)</th>
<th>Date</th>
<th>Purchasing Manager ($250,000 - $750,000)</th>
<th>Date</th>
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<tr>
<th>Purchasing Dir. Approval ($750,000 - $1,000,000)</th>
<th>Date</th>
<th>EVP &amp; Chief Bus/Fin Officer Approval (over $1,000,000)</th>
<th>Date</th>
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Attachments:
- Attach **complete and signed** form to your requisition in PeopleSoft.
- Attach any quote/proposal from supplier to your requisition in PeopleSoft
- For Architects/Engineers only, attach Direct Appointment Letter (if applicable)

**NOTE:** Missing documentation and/or information, or signatures on form will cause a delay in processing your request.
APPENDIX G
Sample procedure for utilizing DIR (and other GPO contracts) currently implemented by some U. T. System institutions

This procedure is effective immediately and applies to group purchase contracts and local contracts for services in which contracts have been awarded to multiple suppliers. This applies specifically to those contracts that require a scope of work (SOW) to be developed that includes establishment of specific tasks/deliverables, resource hours and hourly rates. It includes, but is not limited to:

- Department of Information Resources (DIR) Deliverables-Based IT Services (DBITS) contracts
- Other DIR contracts for services where it is clear on the DIR website that other suppliers have awards in the same service category
- Other Group Purchasing Organization (GPO) service contracts where multiple awards have been made
- Local contracts where multiple awards have been made
  - This includes but is not limited to recent awards under RFP-1402 Digital Asset Development

Procedure

- The business unit requiring the service will develop a SOW and obtain a minimum of three (3) valid proposals from contracted suppliers
  - If only two suppliers have contracts awarded, then two (2) proposals are required
  - A decision by a supplier to not submit a proposal is not counted as a valid proposal
- The business unit will select a winning proposal based on the appropriate best value criteria listed in Texas Education Code Section 51.9335(b)
  - All proposals and rationale for selection must be provided to the Purchasing Office or Business Contracts Office as appropriate
  - Appropriateness of the selection must be reviewed and approved by the Assistant Director, Purchasing or Business Contracts Administrator

Exceptions

- Any requests for exception must be reviewed and approved by the AVP, Procurement & Payment Services
  - Requests for approval for consideration of one supplier only will require submission and approval of a best value determination based on the best value criteria listed in Texas Education Code Section 51.9335(b)
APPENDIX H
Sample Certification Template

[Date]

TO: Dr. Scott C. Kelley, Executive Vice Chancellor for Business Affairs

FROM: ________________________________

SUBJECT: Certification Memorandum for Contract with [vendor]

The [department] has awarded a contract to [vendor] for [describe goods/services]. The base term of the contract is [number] years, and the total value of the contract over those [number] years is estimated to be $[amount].

The contract was awarded following a competitive procurement process facilitated by the [department], which included the issuance of request for proposal (RFP) number UTS/[number]. All proposals received in response to the solicitation were evaluated and scored by a selection committee comprised of Subject Matter Experts (SMEs) from various U. T. System institutions.

The committee identified the proposal submitted by [vendor] as offering best value to U. T. System [Administration] or [and its institutions].

ACKNOWLEDGED BY:

Scott C. Kelley, Executive Vice Chancellor for Business Affairs