November 4, 2014

Pedro Reyes, Ph.D.
Executive Vice Chancellor for Academic Affairs
The University of Texas System Administration
601 Colorado Street, OHH 4th Floor
Austin, Texas 78701

Dear Dr. Reyes:

We have completed the special review of the facts and process used by The University of Texas at Austin (UT Austin) for contracting with Accenture LLP for professional consulting services. The detailed report and management response are attached for your review.

We obtained guidance from the UT System Office of General Counsel (OGC) throughout this engagement for interpretation of applicable procurement law and conflict of interest issues. Although UT Austin responded that they disagree with some conclusions reached, we maintain our positions as stated throughout the report and concur with guidance provided by OGC.

This review was conducted in accordance with The Institute of Internal Auditors’ International Standards for the Professional Practice of Internal Auditing. We will follow up on recommendations made in this report to determine their implementation status. This process will help to enhance accountability and ensure that planned actions are implemented timely.

We appreciate the support and assistance provided throughout the engagement by both UT Austin and the UT System Office of General Counsel.

Sincerely,

[Signature]

J. Michael Peppers, CPA, CIA, QIAL, CRMA
Chief Audit Executive

cc: Francisco Cigarroa, M.D., Chancellor
Francie Frederick, General Counsel to the Board of Regents
William Powers, Jr., President, The University of Texas at Austin
Kevin Hegarty, Vice President and Chief Financial Officer, The University of Texas at Austin
Michael Vandervort, Director, Office of Internal Audits, The University of Texas at Austin
The University of Texas System Administration

Special Review of
The University of Texas at Austin
Procurement of Consulting Services from Accenture, LLP

November 2014

THE UNIVERSITY OF TEXAS SYSTEM AUDIT OFFICE
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Executive Summary

At the request of the Executive Vice Chancellor for Academic Affairs, The University of Texas (UT) System Audit Office conducted a special review of the facts and process used by The University of Texas at Austin (UT Austin) for contracting with Accenture, LLP (Accenture) for professional consulting services. This review was requested after Regents were unable to get prompt responses to inquiries about the Accenture engagement and then received conflicting information regarding the scope of work and deliverables. We were specifically asked to review the vendor selection and procurement process, use of a pre-existing Texas Department of Information Resources (DIR) group cooperative contract for the types of services provided by Accenture, and any potential conflicts of interest connected with the procurement.

This review included two procurement agreements between UT Austin and Accenture – the first in 2012 for $1,083,060 and the second in 2013 for $2,999,318. UT Austin did not document its basis for selection of Accenture and minimal procurement documentation exists. Therefore, most of the information gathered for this review is based on recollection and verbal representation. This limitation impacted our ability to definitively answer some of the questions raised.

Kevin Hegarty, UT Austin Vice President and Chief Financial Officer, determined that Accenture was the best vendor to provide the needed services. Mr. Hegarty communicated his selection decision to Jerry Fuller, UT Austin Director of Procurement and Payment Services. Mr. Fuller then used an existing State-wide group purchasing contract held by DIR to negotiate price with Accenture and issue purchase orders. Regarding Mr. Hegarty's selection determination, Texas Education Code (TEC) §51.9335 allows that a single vendor may be selected without requesting competing bids if the institution can justify that the vendor clearly provides the best value, not necessarily lowest cost, to the institution.1 UT Austin indicated they did not explicitly justify and document that determination because they believed that Mr. Fuller's use of a group purchasing contract (competitively pre-qualified by the DIR) relieved them of that obligation. It did not. The UT System Office of General Counsel (OGC) advises that, "While it is true that selecting a vendor from a group purchasing list satisfies [TEC §51.9335] Subsection (a), they must still satisfy Subsection (b) and consider those nine enumerated elements. This is important when DIR or the State Comptroller may have pre-qualified more than one vendor who can provide the same services. A best value determination must still be made to justify the selection of that one vendor from the list of multiple vendors."2 The question then becomes whether Mr. Hegarty conducted an adequate "best value determination" in compliance with the statute. As previously noted, no documentation in support of such determination exists. OGC advises that "full documentation is certainly a best practice that our institutions should adopt but failure to do so would not be an explicit violation of the statute."2 OGC further advised us that compliance with TEC §51.9335(b) cannot be presumed without convincing elaboration that the justifying factors outlined in the statute were considered. During this review, Mr. Hegarty recounted and represented reasons for the selection; however, without documented evidence

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1 Appendix B: Texas Education Code §51.9335 – Acquisition of Goods and Services lists nine factors to be considered in determining best value.
2 Appendix C: UT System General Counsel Opinion – Best Value Procurement.
from the time of the procurement, we cannot determine whether the best value justification – if documented in 2012 – would have been adequate, in compliance with the statute, and approved at that time.

Separate from consideration of compliance with the State law, UT Austin has a policy that requires written justification to be submitted and approved for any sole source purchase request over $5,000. Although UT Austin staff believe use of a group purchasing contract made the selection of Accenture not a sole source decision and not subject to this policy, thus eliminating the need to justify an exclusive vendor selection, we disagree. Because the exclusive selection of Accenture met their policy definition of a “best value” sole source purchase, we believe it should have been handled as such.

The types of services provided by Accenture were within the scope of allowable services and dollar threshold for the DIR group purchasing contract used, under the Deliverables-Based IT Services (DBITS) program. Furthermore, purchases made under a group purchasing program are specifically exempt from requiring UT System Board of Regents (Board) approval. Thus, the Accenture purchase orders did not require Board approval even though they exceeded $1 million.

Because Accenture was initially hired to support a committee chaired by an Accenture executive, we believe a conflict of interest was created by UT Austin when the chairman’s employer was selected to conduct work in support of the committee. While UT Austin’s policy on Individual Conflicts of Interest does not apply to this situation and we found no evidence of inappropriate conduct by the committee chairman, it still may appear to the public that independence of judgment has been affected. The conflict should have been recognized, documented, and managed by UT Austin.

Documentation in support of the actions and decisions presented in this report was less than would be reasonably expected for procurements of this nature and scope to demonstrate compliance with applicable policy and law. This lack of documentation caused certain aspects of the procurement to be questioned as described throughout this report, and limited our ability to answer some of the questions raised. The report includes three recommendations to help ensure that policies are consistently followed, more complete documentation is prepared in support of purchasing decisions, and procurement policies and procedures are enhanced to better address the risk or perception that inappropriate preference was given in the selection of vendors.

UT Austin’s response to each of the three recommendations is included in the appropriate sections of the report that follows. The responses generally concur with the recommendations made; however, they express disagreement with a number of the findings of the report which led to our recommendations. Their positions – including a response to this Executive Summary and each recommendation – are included in full as Appendix K.

Although UT Austin disagrees with some conclusions reached, as described in their response, we maintain our positions as stated in the report and concur with guidance provided by OGC throughout this engagement.

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At the request of the Executive Vice Chancellor for Academic Affairs, The University of Texas (UT) System Audit Office conducted a special review of the facts and process used by The University of Texas at Austin (UT Austin) for contracting with Accenture, LLP (Accenture) for professional consulting services. Members of the UT System Board of Regents (Board) became aware of UT Austin’s engagement of Accenture through public media sources in June 2013, and subsequently requested information about the contract and services received. On the Regents’ behalf, Dr. Pedro Reyes, Executive Vice Chancellor for Academic Affairs, made an initial request for Accenture’s final report. UT Austin and Accenture both responded that such document did not exist. Dr. Reyes made several additional attempts over the following six months to collect any available documentation from UT Austin related to the engagement, and received conflicting statements as to the existence of items such as scope of work and deliverables.\(^4\) This review was requested after Regents reviewed the information they were given by UT Austin, believed it to be incomplete and inaccurate, and raised questions related to purchasing process and authority, non-competitive procurement, and conflicts of interest. The specific questions were as follows:

1) Did the selection of Accenture without a competitive bidding process violate any State law, or UT System or UT Austin policy?
2) Was the use of an existing Texas Department of Information Resources (DIR) group cooperative purchasing contract allowable for the types of services performed?
3) Was the initial contract negotiated to just under $1 million in order to circumvent Board approval requirements?\(^5\)
4) Were there any conflicts of interest present in the hiring of a committee chairman’s employer to support the work of that committee?

The purpose of this Special Review is to provide information, observations and recommendations related to these questions.

To answer these questions, we reviewed relevant purchasing documentation, deliverables produced in accordance with purchasing agreements, payment history, email communications, and other relevant documentation of activities related to these projects. We also interviewed UT Austin, UT System Administration, DIR, and Accenture staff as needed to obtain an understanding of facts and assertions associated with the procurements.

UT Austin did not document its basis for selection of Accenture and minimal procurement documentation exists. Therefore, most of the information gathered for this review is based on recollection and verbal representation by the individuals listed in Appendix E and cannot be

\(^4\) A chronology of the relevant communications between members of the Board of Regents, the Executive Vice Chancellor of Academic Affairs, and UT Austin, was provided by the Office of Academic Affairs and is included as Appendix I.

\(^5\) In this context, “contract” refers to a purchase order and corresponding Statement of Work agreement procured under a State-wide cooperative contract.
conclusively confirmed or refuted. This limitation impacted our ability to definitively answer some of the questions raised.

**Background**

In March 2012, UT Austin President William Powers, Jr., convened the Committee on Business Productivity (Committee), a volunteer group of thirteen UT Austin alumni and “distinguished leaders in business,” to “offer advice on aspects of the University’s business operations and processes that could be improved, streamlined, and leveraged” to “move the University ahead.” President Powers described his need for the Committee as an effort to find opportunities to continue progress made towards a budget-based business model under increased funding challenges. Committee members were selected by President Powers, Vice President and Chief Financial Officer Kevin Hegarty, and Dean of the McCombs School of Business Dr. Thomas Gilligan, based on areas of expertise that aligned with potential areas of study. These three UT Austin leaders and the Committee members chose Stephen Rohleder, Group Chief Executive of Accenture’s health and public service group at that time, from among the selected Committee members to serve as chairman.

The Committee was charged with examining three areas: Asset Utilization, Technology Commercialization, and Administrative Services Transformation. UT Austin hired Accenture in May 2012 to assist in its support of the Committee by collecting and analyzing data, researching and reporting on best practices as compared to UT Austin operations, and evaluating and suggesting opportunities for improvement. Under the agreement, Accenture staff were tasked with project management, leadership of support teams for each of the three charge areas, and subject matter advisement. UT Austin provided additional support staff to these teams. Information resulting from the Accenture engagement was used by the Committee to make recommendations for improvement. This Accenture engagement cost $1,083,060, and ended shortly after the Committee’s final report in January 2013. Additional details regarding the selection and procurement of Accenture and structure of cost agreements for this engagement are included in the detailed sections of this report, beginning on page 3.

The Committee report included recommendations for consideration in all three areas. Mr. Hegarty was tasked by President Powers with the responsibility to lead studies of the recommendations to identify those of most value, then to begin developing implementation plans. One of the Committee’s recommendations was to implement a Shared Administrative Services (Shared Services) model whereby certain administrative functions currently performed

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7 Mr. Rohleder is a Lifetime Member of the UT Austin McCombs School of Business Advisory Council. http://www.mccombs.utexas.edu/Invest-In-McCombs/Donors/Advisory-Council. Mr. Rohleder has also served the past twelve years as the Accenture executive sponsor for UT Austin/McCombs campus recruiting efforts. 
8 All three individuals involved in the establishment of the Committee, and selection and appointment of its members, provided consistent information on Committee purpose, membership, and chair selection. 
9 As of June 1, 2014, Mr. Rohleder is in the newly created position of Accenture Group Chief Executive – North America.
by staff reporting to individual business units become centrally managed services. Examples included accounting and purchasing functions, payroll, and some computer support services. Accenture was again hired in April 2013 to assist in planning the implementation of a Shared Services model, and completed the second engagement in February 2014 at a cost of $2,999,318. Details pertaining to this engagement are also included in relevant sections of this report.

Selection of Accenture

Key actions, decisions, and circumstances:

- Accenture was selected by Mr. Hegarty to provide consulting services without competitive bidding by UT Austin.
- Purchasing documentation did not include information on the methodology or justification used to select Accenture.
- A second contract of $2,999,318 for a related project was also awarded to Accenture without consideration for other vendors.

President Powers recalled that he was familiar with similar work performed at other universities in which consulting firms were engaged to conduct efficiency and effectiveness studies. President Powers felt the resulting reports were not always customized to the universities’ environments as he envisioned the Committee’s work should be. He also told us that the Committee agreed with his viewpoint that the final product should reflect the unique challenges of the University. He felt that, to get the type of in-depth analysis he envisioned, the Committee would need to be “immersed” in the campus. To accomplish this, he believed that additional support may be necessary. President Powers told us that he authorized Mr. Hegarty to hire consulting resources if needed, but that he was not involved in the specific decision that Accenture be used.

In the email exchange included as Appendix G, Mr. Hegarty shared with Mr. Rohleder a draft of specific charges for the Committee. Mr. Rohleder replied that addressing all three would require “serious leadership time and staff resources.” It is not clear whether Mr. Rohleder was referring to UT Austin staff resources or others that might be obtained externally. Mr. Rohleder asserted to us that his intent was to express that having dedicated resources available would be critical to timely completion of the Committee’s work. He also commented that the Committee would have worked with any qualified vendor chosen by the University. In his reply to Mr. Rohleder, Mr. Hegarty made the suggestion to engage Accenture. Mr. Hegarty told us that he originally planned for existing staff resources to provide support to the Committee; however, it had become apparent to him that existing resources were not adequate to fulfill the needs of the project. Other than this email exchange, there was no other documented discussion regarding Mr. Hegarty’s decision to use Accenture. Mr. Rohleder also told us that he, Mr. Hegarty, and President Powers met to discuss and clarify the charges prior to sharing them with the Committee.

Mr. Hegarty determined that Accenture provided the best value to the University and should be hired to the exclusion of any other qualified vendors. As depicted in Appendix A, this decision
that a specific vendor be used, often referred to as “Sole Source,” does not require that there be only one source for a needed product or service. The UT System Office of General Counsel (OGC) advised us that Texas Education Code (TEC) §51.9335 – Acquisition of Goods and Services allows that a single vendor may be selected without requesting competing bids if the institution can justify that the vendor clearly provides the best overall value, not necessarily lowest cost, to the institution. The statute outlines nine criteria to be considered that include, but are not limited to: price, vendor reputation, quality of goods or services, institution needs, past relationship with the vendor, and “any other relevant factor that a private business entity would consider in selecting a vendor.”

OGC indicates this statute “does not contain an explicit requirement that such [best value justification] documentation must be created and maintained” though they strongly recommend it. “Full documentation is certainly a best practice that our institutions should adopt but failure to do so would not be an explicit violation of the statute.”

Although no documentation exists and, as stated above, is not explicitly required by statute, Mr. Hegarty described to us the following reasons for selecting Accenture:

- Completion of similar work for other institutions;
- Belief that Accenture was generally considered the industry leader for the type of services being requested;
- Time-critical need for immediate resources; and
- Conjecture that Mr. Rohleder would be able to “get the right people” assigned to the project because he would be directly knowledgeable of the Committee’s needs.

Dr. Gilligan and President Powers told us that they also believed Accenture to be the industry leader at that time.

The reasons stated to us by Mr. Hegarty are generally consistent with some of the nine considerations itemized in TEC §51.9335(b). OGC advised that compliance with TEC §51.9335(b) cannot be presumed without convincing elaboration that the nine factors were considered. After providing information to Mr. Hegarty on the nine criteria itemized in TEC §51.9335, he asserted to us that he considered seven of the nine and determined that the remaining two were not applicable. However, his justification is not documented, thus our review is reliant upon recollections and verbal representations two years after the procurement occurred. This precludes the ability to determine whether the best value justification would have been adequate, in compliance with the statute, and approved at that time.

UT Austin policy requires that justifying factors be documented for what they consider to be Sole Source purchases. There is no documentation in purchasing files describing Mr. Hegarty’s justification for the selection of Accenture without considering other consulting firms that provide the same types of services. Jerry Fuller, UT Austin Director of Procurement and Payment Services, told us that no documentation was prepared because he believed a justification was unnecessary. He told us that he did not consider the purchase to be Sole Source.

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10 Appendix B: Texas Education Code §51.9335(b) – Determination of Best Value.
11 Appendix C: UT System General Counsel Opinion – Best Value Procurement.
12 Mr. Rohleder told us he was not involved in selecting Accenture staff for the project.
13 Appendix D: UT Austin Handbook of Business Procedures 7.5.3 – Sole Source Purchases.
because a group purchasing contract was used. OGC advises that, “While it is true that selecting a vendor from a group purchasing list satisfies Subsection (a) [TEC §51.9335, Appendix B], they must still satisfy Subsection (b) and consider those nine enumerated elements.”\textsuperscript{14} This is discussed further in the Procurement Method section beginning on page 11.

Mr. Hegarty chose Accenture exclusively, prior to identifying procurement methods that were available to engage Accenture for the work. In our opinion, the decision to select Accenture without formally considering other vendors met UT Austin’s policy definition of Sole Source, regardless of the procurement method chosen. UT Austin Handbook of Business Procedures 7.5.3 – Sole Source Purchases requires that “justification be submitted with any sole source purchase request that exceeds $5,000.” It further defines two types of exclusive acquisition purchases: Proprietary and Best Value. “A best value purchase is used when it is in the best interest of the university to use the particular product or service, but there is actually more than one source available.” Because Accenture was selected based on Mr. Hegarty’s judgment that Accenture provided the best value, and no other vendors were considered, UT Austin’s purchase of Accenture services met their policy definition of Sole Source “best value purchase,” and should have been documented and processed accordingly. Selecting a vendor as a “Sole Source” provider does not disqualify use of available group contracts, as discussed in the Procurement Method section of this report.

UT Austin’s Request for Sole Source Purchase form requires that several justifying factors be documented. These include unique features or characteristics of importance, information regarding why other available sources are unsatisfactory, descriptions of “any substantial risks that could not be overcome if the product or service was procured from another vendor,” and any other special requirements.\textsuperscript{15} The form includes a Conflict of Interest certification statement that must be signed by the requestor, and the form requires approval by the dean, department chairman, or business officer as applicable. The Procurement and Payment Services office is then responsible to either approve or deny the request, document the rationale for their decision, and sign the form. Had Mr. Hegarty’s best value justification been documented using the prescribed format, it would have required the reasons to be stated and evaluated.

The second engagement of Accenture occurred after the Committee’s report was finalized. Mr. Hegarty was responsible to adapt the Committee’s recommendations for the campus, and stated that he thought Accenture’s help would be needed for the Shared Services recommendation. He said that he chose to re-engage Accenture primarily for the benefit of continuity since their staff was knowledgeable about the University and the project from their experience on the first engagement. Because this decision to hire Accenture was also made without allowing competing bids or considering other vendors, we believe this should also have been considered “Sole Source” as defined by UT Austin’s policy. However, the DIR cooperative contract was again used following the same process as the prior Accenture engagement, no other vendors were considered, and no documentation in support of this justification was prepared. UT Austin purchasing files include only the final purchase orders, change orders, Statements of Work, and a minimal amount of email correspondence related to the processing of the orders. UT Austin

\textsuperscript{14} Appendix C: UT System General Counsel Opinion – Best Value Procurement.
\textsuperscript{15} Appendix F: UT Austin Form – Request for Sole Source Purchase (for Noncompetitive Purchases over $5000).
procurement staff do not believe any additional documentation was required because they do not consider the purchase to be “Sole Source” and thought that use of any group purchasing contract, regardless of the number of qualified vendors available through such contracts, did not require best value justification be documented.

**Question 1:** Did the selection of Accenture without a competitive bidding process violate any State law, or UT System or UT Austin policy?

Regarding violation of State law, UT Austin’s best value justification is not documented thus we cannot definitively answer this question. State law allows that a single vendor may be selected without requesting competing bids if the institution can justify that the vendor clearly provides the best overall value, not necessarily lowest cost, to the institution. TEC §51.9335(b) lists nine factors to be considered in determining best value. The reasons Mr. Hegarty articulated to us do address some of the nine criteria outlined in the statute. This justification is not documented, thus our review is reliant upon recollections and verbal representations rather than official University records. This precludes a determination whether the justification would have been in compliance with State law at that time.

Regarding violation of UT System or UT Austin policy, yes. In our opinion, the decision to hire Accenture as the best value provider without obtaining competing bids or considering other vendors with group contracts fell under UT Austin’s policy definition of “Sole Source,” which requires documentation and approval. We believe UT Austin was in violation of this policy. They believe that any use of a group purchasing contract, regardless of the number of qualified vendors available through such contracts, is not “Sole Source” and thus did not require documentation on how Accenture was selected. Despite our disagreement on the applicability of UT Austin’s policy, it is reasonable to expect documentation in support of vendor selection for procurements of this nature and scope to demonstrate transparency and compliance with procurement law.

**Recommendations:** UT Austin Procurement and Payment Services should ensure proper documentation is maintained to demonstrate that statutory best value criteria are considered and satisfied. In addition, any purchase meeting the established definition of “Sole Source” as described in the UT Austin Handbook of Business Procedures should be handled as such, regardless of procurement method or requestor.

**UT Austin Response:** The record as discussed in the Special Review indicates that UT Austin fully complied with State law, as well as existing UT System and UT Austin policy and practice, with respect to its selection of Accenture. UT Austin agrees.

- No Violation of State Law
The Special Review relies upon portions of a recent Office of General Counsel (“OGC”) Opinion dated September 2014, that did not exist at the time of the 2012 and 2013 Accenture procurements (the “OGC Opinion”). UT Austin did not interpret the underlying procurement statute in 2012 and 2013 in a manner similar to the analysis advanced in the OGC Opinion. While the OGC Opinion differs from the interpretation of the underlying procurement statute as understood by UT Austin at the time of the procurements, both interpretations are reasonable and supportable: (1) UT Austin’s understanding was consistent with the understanding of other UT institutions, State agencies, and other Texas higher education institutions, (2) the OGC Opinion acknowledges the statute has “led to confusion on the part of our institutions” and that any analysis may be “formal or informal” (details omitted in the Special Review), and (3) in all events, UT Austin complied with the OGC Opinion because it carried out the analysis commended in the OGC Opinion.

Texas Education Code Section 51.9335(a) provides five ways in which an institution of higher education may acquire goods or services by a method that provides “best value,” including through a group purchasing program. See Tex. Educ. Code Section 51.9335(a)(4). Section 51.9335(b) provides a nine-point analysis for evaluating how “best value” may be determined. The OGC Opinion opines that purchasing offices “must still satisfy [section 51.9335(b)] and consider those nine enumerated elements” even in the context of a purchase made pursuant to subsection (a), however, that conclusion is neither mandated by the statute nor consistent with current practice (within UT Austin or other UT institutions).

There is no judicial or Attorney General guidance interpreting Section 51.9335 that addresses this issue. A plain reading of the statute, however, does not suggest that the criteria listed in subsection (b) must be considered in the context of a purchase made through a method described in subsection (a). Subsection (a) states that higher education institutions may make best value purchases – including (but not only) through the five described methods. “Best value” is then described further in subsection (b) through the nine criteria. Subsection (b) exists because the listing in subsection (a) is not exhaustive – there are some types of procurements that may still be best value even if not identified in subsection (a). For those purchases, the nine elements should be considered; otherwise, if a best value procurement is made through a method identified in subsection (a), UT Austin’s understanding was that Section 51.9335 indicates the purchase has met the best value standard. This interpretation is reasonable since many acquisitions made pursuant to the methods described in subsection (a) already have incorporated most (if not all) of the elements described in subsection (b). For example, with the UT System Supply Chain Alliance process, a rigorous competitive process is used and one award is made to a “preferred supplier,” with pricing and terms negotiated. UT System uniformly bases its “preferred supplier” selections on best value criteria.

UT Austin’s interpretation of Section 51.9335 is also consistent with guidance offered by other State agencies. As noted in the Special Review, UT Austin received guidance from DIR that no further steps must be undertaken when one of their cooperative contracts is
used. See Special Review at 7 ("Mr. Fuller reported speaking with the responsible DIR contract manager (who no longer works for DIR) and receiving confirmation that this was an allowable use of the group contract. We spoke with the current DIR contract manager and confirmed Mr. Fuller’s statement."). UT Austin is also aware that other state agencies, including the Texas A&M System, do not incorporate the best value criteria described in subsection (b) for procurements made pursuant to subsection (a) methods.

To be clear, UT Austin has no objection to the OGC Opinion: fully documenting the basis for a best value procurement represents good business practice, even if the statute makes no such requirement with respect to the kind of group purchase procurements made here. But documentation of that kind was not understood to be required at the time of the procurements, nor was that practice embraced by other UT institutions, Texas State agencies, or at least some other Texas higher education institutions. As the OGC Opinion indicates, there is “confusion” on this issue leading “[s]ome purchasing offices” to “incorrectly believe that if they use a group purchasing program to make a procurement, then they have satisfied their best value obligation.” UT Austin expects it will work closely with UT System and other UT institutions in the coming months to ensure consistency in understanding and implementation with respect to the procurement standards that may apply in the group purchasing context. In the meantime, however, the Special Review ignores the varying interpretations and implementations of the statute and post facto attempts to hold UT Austin accountable to a standard that was neither widely accepted nor implemented at the time of the procurements.

Notably, Mr. Hegarty in fact considered all relevant factors from the list enumerated in Section 51.9335(b) when choosing Accenture, and so the procurements at issue complied in fact with the requirements of the statute as described in the OGC Opinion. For example, Mr. Hegarty considered the reputation of Accenture, the quality of its work, the alignment between Accenture’s skill set and the needs of the work to be done, and cost. Ultimately, he decided Accenture offered the best match of any eligible vendor because Accenture had worked on similar projects at similar institutions (including the University of Michigan), and Mr. Hegarty sought to optimize value and efficiency by having the same Accenture team deployed to UT Austin. In short, even assuming Section 51.9335(b) had to be considered as part of the procurement, it was done here.

- No Violation of UT System Policy

The Special Review concludes that UT Austin’s actions are in violation of UT System policy but does not cite to any specific UT System policy violated. Accordingly, UT Austin responds generally that no UT System policies were violated during the process of procuring the discussed Accenture contracts.

- No Violation of UT Austin policy

UT Austin utilized an existing group cooperative contract approved by DIR for its agreements with Accenture, and the Special Review correctly concludes that the use of
this contract was acceptable for the type of services performed by Accenture. UT Austin agrees.

However, the Special Review incorrectly finds that UT Austin violated its internal Sole Source Purchases policy in its selection of Accenture. The Special Review cites to a description of a “Best Value Sole Source Purchase” contained within UT Austin’s Sole Source Purchases policy and concludes that this description applied to the Accenture selection and required UT Austin to complete the administrative forms listed in its Sole Source Purchases policy. UT Austin responds that the forms listed in the Sole Source Purchases policy were not necessary for the Accenture agreements because the Sole Source Purchases policy was never relevant to this procurement. UT Austin’s Sole Source Purchases policy is only relevant in situations where purchases “eliminate competition.” That was not the case here.

In clear terms, the DIR states that its group cooperative contracts have satisfied all of the State’s competitive procurement requirements, and the DIR instructs State agencies that they can utilize these contracts without additional due diligence. The existence of a DIR group cooperative contract with Accenture necessarily meant that the competition had been considered. UT Austin’s Sole Source Purchases policy was therefore not relevant to the Accenture agreements. Instead, UT Austin followed its Use of Existing Contracts policy, which is the internal policy relevant to UT Austin’s contracts with Accenture. See UT Austin Handbook of Business Procedures 7.5.2 – Use of Existing Contracts; see also UT Austin Handbook of Business Procedures 7.5 – Solicitation Procedures – General Information. The Special Review does not mention Section 7.5 – Solicitation Procedures – General Information of UT Austin’s Handbook of Business Procedures; however, this section is significant and contains a Purchasing Process Flowchart that depicts UT Austin’s standard procurement practices and establishes that UT Austin utilizes either its Use of Existing Contracts policy or its Sole Source Purchases policy, as appropriate. The Special Review misinterprets the Sole Source Purchases policy and ignores the relevant Use of Existing Contracts policy. Similarly, the chart included as Appendix J to the Special Review is incomplete; Special Review Appendix A fails to acknowledge UT Austin’s Use of Existing Contracts policy and the process regularly utilized by UT Austin when purchases are made under a previously approved contract (such as the at-issue DIR contracts).

16 UT Austin Response: See Section A of UT Austin Handbook of Business Procedures 7.5.3 – Sole Source Purchases.
17 UT Austin Response: See the DIR website at http://www2.dir.state.tx.us/faqs/ict/Pages/customerfaqs.aspx#doihavetogothroughcompetitivebidprocess (last visited on October 31, 2014) (explaining in response to a Frequently Asked Question (Question 3) about whether the competitive bidding process is still required when using a DIR contract: “No. DIR has already performed all state of Texas competitive procurement requirements. You no longer have to prepare competitive solicitations or evaluate responses, since we have completed that work for you.”) (emphasis in original).
18 UT Austin Response: As noted above, UT Austin’s standard procurement practices are depicted in the Purchasing Process Flowchart found in UT Austin Handbook of Business Procedures 7.5 – Solicitation Procedures – General Information. See UT Austin Response Exhibit A; UT Austin offers this flowchart as a more accurate and complete alternative to Special Review Appendix A.
The process that UT Austin followed during its procurement of the Accenture contracts did not deviate from its general procurement practices, particularly with respect to existing group purchase agreements. In addition to following its normal protocol and relying on the standing guidance provided on the DIR website, as noted above, UT Austin also sought specific guidance from the DIR with respect to the Accenture contracts. UT Austin requested clarity on what it needed to do to finalize pricing for the contract. In response, the DIR’s contracting officer informed UT Austin’s Director of Procurement that UT Austin could use internal business expertise to assure that the contract included reasonable pricing and that no other additional steps were required to utilize the contract. UT Austin relied on this specific guidance from the DIR, utilized internal business expertise, and negotiated in good faith to obtain a reasonable pricing structure with the Accenture.

Further, as noted above, UT Austin procurement officials recently consulted with peer procurement officials and can confirm that the process employed in the selection of Accenture is consistent with the required processes as understood and utilized by procurement officials in other higher education institutions inside and outside of UT System.

The Special Review’s conclusion of a policy violation is based, at least in part, on the previously referenced OGC Opinion. However, the OGC Opinion addresses only Texas Education Code Section 51.9335—it does not purport to interpret UT Austin policies on the use of existing contracts and sole source purchases or opine on the possible nexus of these policies, and no such written guidance from UT System had been promulgated to UT institution procurement personnel prior to the time of the Accenture procurements. In light of information and guidance available at the time, UT Austin’s decisions related to the Accenture procurement were a reasonable interpretation of internal policies and were consistent with UT Austin’s common practices, as well as the practices of other State agencies and higher education institutions. Additionally, as detailed in UT Austin’s preceding response related to alleged violations of Texas Education Code Section 51.9335(b), Mr. Hegarty did in fact conduct a thorough best value analysis and considered all relevant factors from Section 51.9335(b) when choosing Accenture. Thus, though they were not required in this instance, the substantive justifications that are to be listed in the Sole Source Purchase Forms can be demonstrated here.

If UT System is now issuing definitive guidance to all UT institutions regarding the processes required when there is a potential intersection of policies related to group purchasing contracts and sole source purchases, UT Austin commits that it will work closely with UT System and other UT institutions to ensure consistency. However, UT Austin asserts that it should not be held accountable to an interpretation of internal policies that did not exist when Accenture was engaged.

In short, the record establishes that UT Austin acted in good faith and fully complied with existing internal policy and practice with respect to its selection of Accenture.
**Procurement and Payment Services concurs that it should continue to consider and document best value criteria for any purchase identified by law, UT policy, or other guidance as requiring such documentation or where such documentation represents accepted best practice. In addition, UT Austin commits that it will work closely with UT System and other UT institutions and modify its Handbook of Business Procedures, if necessary, to ensure that any purchase meeting the definition of “Sole Source” is handled in a manner consistent with the “Sole Source” practices of UT System and other UT institutions. Target date for completion will be determined based on discussions with and guidance received from UT System Office of the General Counsel.**

**Procurement Method (Group Purchasing Contract)**

<table>
<thead>
<tr>
<th>Key actions, decisions, and circumstances:</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ A State-wide cooperative contract program (Group Purchasing Contract), traditionally offered for information technology products and services, was used for this management advisory project.</td>
</tr>
<tr>
<td>▪ An existing State-wide cooperative contract between DIR and Accenture was used, with UT Austin issuing purchase orders under that contract.</td>
</tr>
<tr>
<td>▪ Numerous other consulting firms have cooperative contracts available through the DIR’s group purchasing program.</td>
</tr>
</tbody>
</table>

DIR’s Deliverables-Based Information Technology Services (DBITS) group cooperative contracts cover a broad range of consulting services. As the name implies, most of the services are specific to information technology support activities. This engagement with Accenture was not of a technology-specific nature, but utilized the “project management” section of services allowed through DBITS contracts. We contacted the current contract manager at DIR and confirmed that “project management” as allowed under DIR DBITS contracts is broad, and not specific to management of technology-related projects. The services provided to UT Austin by Accenture were within the scope of allowable services and dollar threshold for the DBITS contract used.

Mr. Hegarty instructed Mr. Fuller to procure services from Accenture. He explained to us that he depends on Mr. Fuller to ensure UT Austin is in compliance with any applicable rules. Mr. Fuller indicated to us his reliance on the decision made by Mr. Hegarty, thus he did not request or require documented justification for the selection of Accenture. He further stated his opinion that a justification was unnecessary; he told us that he did not consider the purchase to be “Sole Source” because a group purchasing contract was used. OGC advised us that, “While it is true that selecting a vendor from a group purchasing list satisfies Subsection (a) [TEC §51.9335, Appendix B], they must still satisfy Subsection (b) and consider those nine enumerated elements. This is important when DIR or the State Comptroller may have pre-qualified more than one vendor who can provide the same services. A best value determination must still be made to justify the selection of that one vendor from the list of multiple vendors. Such a process can be formal or informal but the institution must still be able to articulate how consideration of
the nine elements led to the selection of that vendor.”¹⁹ As stated earlier, the decision to hire
Accenture without allowing competing bids or considering other vendors available through the
DIR DBITS program appears to meet the definition of “best value” in UT Austin’s Sole Source
Purchase policy (Appendix D), and written justification for selection was required by that policy.
Selecting a vendor as a “Sole Source” provider does not disqualify use of available group
contracts. Conversely, the use of a group contract does not eliminate the responsibility to select
and justify the vendor of best value to the University as required by TEC §51.9335.

Mr. Fuller advised Mr. Hegarty that the purchase could be handled under an existing DBITS
group cooperative contract between Accenture and DIR. Texas purchasing laws allow State
entities to use certain existing competitively-bid contracts in order to provide efficiencies and
cost savings.²⁰,²¹ The DIR group contract with Accenture is one such contract. Mr. Fuller
reported speaking with the responsible DIR contract manager (who no longer works for DIR)
and receiving confirmation that this was an allowable use of the group contract. We spoke with
the current DIR contract manager who confirmed Mr. Fuller’s understanding.

Under the DIR cooperative contract requirements, a Statement of Work must be prepared and
must include specific deliverables. DIR recommends – but does not require – that at least three
bids be requested from DBITS vendors. Pricing is negotiated between the vendor (in this case
Accenture) and the client (UT Austin) based on details in the Statement of Work.²² At the time
of this review, 77 other vendors were also contracted with DIR to offer project management
services. These included large consulting firms such as Deloitte, Grant Thornton, and KPMG.
According to Mr. Fuller, no other qualified vendors under contract with DIR were considered by
UT Austin because Mr. Hegarty had already determined that Accenture would be hired, as
discussed in the Selection of Accenture section of this report beginning on page 3.

Additional correspondence we reviewed established that the contact for Accenture from that
point forward would be Jamie Wills, Austin-based partner responsible for Accenture’s health and
public service practice in Texas. Both UT Austin staff and Mr. Wills corroborated that he was
the primary Accenture point of contact responsible for the engagement. Mr. Rohleder stated that
he was not directly involved in the Accenture engagement beyond referring UT Austin to Mr.
Wills, and had no role in the day-to-day work of Accenture staff on the project.

**Question 2:** Was the use of an existing Texas Department of Information Resources
(DIR) group cooperative purchasing contract allowable for the types of services
performed?

Yes. Selecting a vendor as a “Sole Source” provider does not disqualify use of available
group contracts, and the types of services provided by Accenture were within the scope
of allowable services and dollar threshold for the DIR group contract used. However, the

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¹⁹ Appendix C: UT System General Counsel Opinion – Best Value Procurement.
²⁰ DIR Cooperative Contracts Program Overview, http://www.dir.state.tx.us/ict/overview/Pages/overview.aspx
²¹ Texas Government Code §2054.0565.
²² DIR Deliverables-Based IT Services: How to Order,
http://www.dir.state.tx.us/ict/contracts/dbits/Pages/dbitshowtoorder.aspx
use of a group purchasing contract does not eliminate the requirement to select and justify the vendor of best value to the University.

**Recommendation:** See recommendations related to Selection of Accenture, page 6.

UT Austin’s response is included, in full, below. It makes statements which disagree with some of our findings and conclusions. Based on information obtained during this engagement, we do not concur with some of the statements made by UT Austin in their response and maintain our positions as stated throughout the report.

**UT Austin Response:** UT Austin agrees with the conclusion reached in Question 2 of the Special Review: UT Austin’s use of the at-issue DIR contract was acceptable for the type of services performed by Accenture. For all other conclusions reached in Question 2, UT Austin disagrees and reiterates the issues it raised in response to Question 1.

Procurement and Payment Services concurs that it should continue to consider and document best value criteria for any purchase identified by law, UT policy or other guidance as requiring such documentation or where such documentation represents accepted best practice. In addition, UT Austin commits that it will work closely with UT System and other UT institutions and modify its Handbook of Business Procedures, if necessary, to ensure that any purchase meeting the definition of “Sole Source” is handled in a manner consistent with the “Sole Source” practices of UT System and other UT institutions. Target date for completion will be determined based on discussions with and guidance received from UT System Office of the General Counsel.

**Purchasing Authority and Approvals**

**Key actions, decisions, and circumstances:**
- The initial purchase order was $995,352, just below the $1 million threshold for purchases requiring Board approval.
- The Statement of Work includes 230 hours of executive management time at $0 cost. The Statement of Work values that time at $97,750.
- A second purchase order was issued to extend the Statement of Work, adding a deliverable and resulting in the total cost of the project exceeding $1 million. The added deliverable was not directly related to support of the Committee, rather it was to prepare a business case for an existing plan to replace the University’s integrated financial management system using supporting data collected by Accenture during the engagement.
- Because a group purchasing contract was used, approval from the Board was not requested or required.

The original Accenture purchase order was for $995,352, with an effective date of May 1 through December 31, 2012. This was just below the $1 million threshold that would have
exceeded the delegated purchase order signature authority of Mr. Hegarty and Mr. Fuller. A later amendment, effective January 1, 2013, added a deliverable at the cost of $87,708 and extended the agreement to January 31, 2013. Mr. Hegarty told us that the added deliverable was not directly related to support of the Committee. Rather, it was to prepare a business case based on supporting data collected by Accenture for an existing plan to replace the University’s integrated financial management system.  

The Statement of Work agreement listed a total of 3,648 hours of labor at hourly rates ranging from $185 to $350 per hour based on labor category (such as “Program Director” or “Lead”), plus an additional amount for estimated travel expenses. The later amendment added 320 hours of labor and estimated travel. In addition, the pricing detailed in the Statement of Work included “approximately 230 hours of pro bono time from [Accenture’s] Senior Executive team in higher education as a demonstration of its commitment to the University of Texas.” This time was valued at $425 per hour, for a total of $97,750 in services included for no charge.  Neither UT Austin nor Accenture staff had recollection of details on price negotiation for the hourly rates or estimated hours, and no documentation currently exists. Thus, it cannot be determined whether the negotiated elements of the first purchase order were structured with consideration of the $1 million threshold that would have exceeded Mr. Fuller’s and Mr. Hegarty’s delegated signature authority for purchase orders.

With the amendment to the Statement of Work, the final cost for Accenture’s work to support the Committee was $1,083,060. Mr. Fuller stated that UT Austin’s normal practice is to issue a new purchase order rather than a change order if the cost increases but funds for the original purchase order were encumbered in a prior fiscal year. Mr. Fuller told us that he believed “UT Austin was being transparent in how the order was being handled” because notations on the new purchase order referred to the original Fiscal Year (FY) 2012 order, Mr. Hegarty was “fully involved in the decision,” and Board approval was not required due to the group purchasing exception (discussed below). Because the subsequent amendment occurred in the following fiscal year, it was handled as a new purchase order. Mr. Fuller signed both the new purchase order that included only the incremental cost of the added deliverable and the amended Statement of Work that now reflected the full cost of over $1 million. Mr. Fuller’s delegated signature authority is $1 million. Mr. Hegarty told us that the new deliverable was added as an amendment to the Statement of Work as an “administrative convenience,” but he viewed it as a separate work product. Regardless, the total cost of the amended Statement of Work surpassed the $1 million threshold exceeding both Mr. Hegarty’s and Mr. Fuller’s delegated signature authority for purchase orders.

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23 UT Austin’s Administrative Systems Master Plan (“ASMP”) recommended replacement of the University’s integrated financial management system (*DEFINE). The ASMP was written by UT Austin’s Business Services Committee (an internal group), and finalized and approved in March 2012. Although features of a financial management system would likely be factors in implementing some recommendations of the Committee, the decision to implement a new system predated formation of the Committee and its recommendations.

24 Mr. Rohleder stated that Mr. Wills was responsible to develop the Statement of Work and pricing, and that the pro bono offer did not include his time because he was not directly involved in the engagement.

25 UT Austin either did not document or did not retain documentation supporting the contract negotiation.

26 Encumbrances are not booked retroactive to a prior fiscal year.
One purchase order and two change orders were issued related to Accenture’s project management services for the second project (Shared Services Planning): an original order in FY 2013 for $2,999,318, and two change orders in FY 2014 that extended the duration of the agreement with no change in cost or deliverables. Because Mr. Hegarty has delegated signature authority only to $1 million, he submitted the purchase order to Dr. Scott Kelley, UT System Executive Vice Chancellor for Business Affairs, for approval, though it should have been authorized by President Powers.27

Regents’ Rules and Regulations 10501: Delegation to Act on Behalf of the Board, states that contracts exceeding $1 million require approval of the Board of Regents unless specifically exempted from that requirement. Supplemental guidance in UT System Systemwide Policy UTS 145: Processing of Contracts defines a “contract” as “contracts of any kind or nature, including, contracts, agreements, purchase orders, vouchers, binding letters or intent, and memoranda of understanding,”28 thus the purchase orders under review were considered contracts for the purpose of compliance with Regents’ Rules and UT System policy. It also states that approval is required if contract amendments, extensions, or renewals cause the value to exceed the $1 million threshold. This occurred with the amendment that increased the cost of the work to $1,083,060. However, purchases made under a group purchasing program are specifically exempt from requiring Board approval.29 For this reason, the Accenture purchase orders did not require Board approval even though they exceeded $1 million. Both could have been appropriately approved by President Powers.

Purchases made under a group purchasing program are only one type of procurement that is currently exempt from Board approval. Other types of contracts exempt from approval include but are not limited to contracts related to previously-approved construction, routine purchase of supplies or equipment, software upgrades and replacements, and line items from approved annual budgets. As part of this review, we collected information from Dr. Kelley on Systemwide use of several types of contracts currently exempt from Board approval. We will analyze the information and offer suggestions to executive leadership for further consideration separate from this review.

Question 3: Was the initial contract negotiated to just under $1 million in order to circumvent Board approval requirements?

No. UT Austin determined prior to negotiating contract price that a group purchasing contract would be used. The $1 million threshold was not applicable because group purchasing contracts are specifically exempted from Board approval. Therefore, UT Austin would not have had a reason to consider Board approval in their negotiations.

The $1 million threshold was not applicable to Board approval in this case, but did apply to the delegated purchasing authority of Mr. Hegarty and Mr. Fuller. Though the negotiated price of the first purchase order was $995,352, an amendment to the Statement

27 Regents’ Rules and Regulations 10501, Section 2.4: Signature Authority.
28 Summary of Contracts Requiring Board Approval (revised 10-11-2011), Appendix H.
29 Regents’ Rules and Regulations 10501, Section 2.2: Contracts Not Requiring Board Approval, Appendix H.
of Work resulted in a total cost of $1,083,060. Because this amendment occurred in the subsequent fiscal year, it was handled in accordance with UT Austin practice to issue a new purchase order for the incremental cost rather than a change order reflecting the total cost. The total cost of the project surpassed the $1 million threshold and exceeded Mr. Fuller’s purchasing authority. Regardless, because a group purchasing contract was used, Board approval was not required.

**Recommendation:** UT Austin Procurement and Payment Services should ensure that all purchase and change orders related to a single Statement of Work are considered collectively for the purpose of determining the appropriate level of signature authority required for approval.

**UT Austin Response:** UT Austin agrees with the conclusion of the Special Review that the $1 million contracting threshold was not relevant because group purchasing contracts are specifically exempted from Board of Regents’ approval. UT Austin officials were aware of this exemption at the time of the Accenture procurements. There simply was no issue with regard to whether the amount of the contract was greater or less than $1 million and there was therefore no intent to circumvent Board approval requirements, nor was there any evidence of such intent.

UT Austin also agrees that the amendment to the first purchase order was properly handled in accordance with UT Austin practice to issue a new purchase order, rather than a change order, because of the amendment occurring in a different fiscal year.

**UT Austin will ensure that all purchase and change orders related to a single Statement of Work are considered collectively to determine appropriate signature authority, effective immediately.**

**Conflicts of Interest**

Key actions, decisions, and circumstances:

- Stephen Rohleder, an Accenture executive officer who participates as a Lifetime Member of the McCombs Advisory Council, was selected to chair a UT Austin committee tasked with reviewing productivity and efficiencies, and suggesting areas for improvement. His involvement with the committee was on a volunteer basis.

- Mr. Rohleder’s employer, Accenture, was chosen by UT Austin to assist in supporting the work of the committee that he chaired. The total cost of the contract was $1,083,060.

- As an executive officer of Accenture, Mr. Rohleder has a direct interest in cultivating a business relationship with UT Austin.
UT Austin Handbook of Operating Procedures 5-2010, Individual Conflicts of Interest, states:

“A conflict of interest exists when an employee owes a professional obligation to the University that is compromised or might be compromised by the pursuit of outside interests. Outside interests, such as professional activities, personal financial interests, or the acceptance of gifts from third parties, can create conflicts between the interests of the University and private interests of an employee and may prevent the employee from making decisions that are in the best interest of the University. Even if those outside interests do not actually impair or intrude upon an employee’s ability to act in the best interest of the University, it may appear to the public that the employee’s independence of judgment or loyalty has been affected.”

There are three potential areas of conflict that UT Austin should have considered: the employees involved in the decision and procurement, the selection of Mr. Rohleder as chairman of the Committee, and any conflicts arising from awarding the contract for services to the Committee chairman’s employer.

Regarding the employees involved, President Powers, Mr. Hegarty, and Dr. Gilligan reported that they did not have “outside interest” in Accenture, thus no conflict existed for the employees involved in the decision. In selecting Mr. Rohleder as chairman of the Committee, they told us they had no prior relationship with him other than casual interaction during McCombs School of Business Advisory Council meetings or events. Mr. Hegarty stated that he, President Powers, and Dr. Gilligan initially discussed potential conflicts of interest in Mr. Rohleder’s involvement as Committee chairman, agreeing that none existed. Although neither President Powers nor Dr. Gilligan recalled this specific discussion regarding potential conflicts, they corroborated that they did not perceive a conflict at that time. We agree that no conflict was present in the selection of Mr. Rohleder as chairman of the Committee.

Due in large part to the lack of contemporaneous documentation, we relied upon the recollection of the individuals interviewed and presume the good faith answers of those involved in this review. Acknowledging the inherent limitations of the process, we found no evidence to indicate that Mr. Rohleder made any attempt to influence Mr. Hegarty in the selection of Accenture. Mr. Hegarty has no financial interest in Accenture, and thus had no outside interest which would support a conclusion that a conflict was present in his decision to hire Accenture. That said, the selection of Accenture created a conflict of interest for Mr. Rohleder. While discussed in more depth below, our office found no evidence of inappropriate conduct by Mr. Rohleder resulting from the conflict of interest.

The third potential area of conflict, UT Austin’s awarding the contract for services to the Committee chairman’s employer, created a conflict of interest for Mr. Rohleder. This circumstance is described by the University’s Individual Conflict of Interest policy as an employee “transact[ing] business in an official capacity with any business entity of which he or she is an officer, agent, or member, or in which he or she owns a substantial interest.” The policy further requires that, “Employees may not transact public business with their private
businesses. The president must approve any purchases from the employee or the employee’s business and the purchase may be made only if the cost is the best value for the University.”30

Mr. Rohleder is not an employee of UT Austin, and thus the policy does not apply to him. Mr. Rohleder was, however, functioning in a University capacity as chairman of the Committee. In such circumstances, the policy can act as a guide to identifying and managing conflicts of interest. Mr. Rohleder has a “substantial interest” with Accenture, as defined by UT Austin’s Individual Conflict of Interest policy.

Furthermore, Accenture considers potential conflicts of interest in their contracting procedures. In the signed Statement of Work, “Accenture certifies that in entering into [the] Agreement, no relationship exists between Accenture (including any related entity or individual) and UT (including any department, organization, or individual) that by its nature may be considered a conflict of interest by influencing or potentially influencing the execution of [the] Agreement or the independent performance of the Services.” Accenture’s Code of Business Ethics states that they “avoid actual and perceived conflicts of interest.” Mr. Wills told us that potential conflicts of interest were considered by Accenture during their usual pre-engagement legal and contract review. He said that Accenture did not deem there to be any conflict of interest because the firm was working with UT Austin and Mr. Hegarty as project sponsor, rather than with Mr. Rohleder or the Committee, and Mr. Rohleder was not a part of the Accenture engagement teams. However, we believe that in Mr. Rohleder’s capacity as chairman of the Committee, he would have had the ability to affect the amount of work that Accenture would do for the committee, thus presenting a conflict of interest. It is important to note that our office found no evidence of inappropriate conduct by Mr. Rohleder.

The existence of conflicts of interest may not always be avoidable, but strategies can be used to manage those conflicts. Further, the existence of a conflict does not necessarily result in inappropriate actions or influence. For the University, the most effective way to handle the conflict of interest would have been avoidance, in this case hiring a firm other than Accenture. President Powers, Dean Gilligan, and Mr. Hegarty told us that they believed Accenture to be a recognized industry leader at the time. As such, Mr. Hegarty thought Accenture would provide the best quality and value for the University, so avoidance was not considered to be an option.

A practical strategy to handle the conflict would have required that Mr. Rohleder and the University both formally recognize, document, and manage the conflict. Documentation prepared by UT Austin should have described the nature of the conflict and steps to be taken to ensure that Mr. Rohleder had no influence on subsequent procurement decisions and negotiations, or the work Accenture was to do for UT Austin. The University’s Individual Conflict of Interest policy could also have been used as guidance, requiring that Presidential approval be obtained and best value justification be documented.

While Mr. Hegarty, President Powers, and Dr. Gilligan did not acknowledge to us that hiring Accenture created a conflict for Mr. Rohleder, Mr. Hegarty told us that any conflict that might have been created was appropriately managed because Accenture’s work was directed by his

30 UT Austin Handbook of Operating Procedures 5-2010, section VII.G: Self-dealing/Transactions with Employees.
office. However, in an email to Dr. Reyes dated December 13, 2013 (included by reference in Appendix I, page 2), Mr. Hegarty stated, “[Accenture’s] work was completely directed by the Committee and their work product was the Committee’s.”

**Question 4:** Were there any conflicts of interest present in the hiring of a committee chairman’s employer to support the work of that committee?

Yes. Although we found no conflict of interest in the decision by Mr. Hegarty to hire Accenture, that action created a conflict of interest for Mr. Rohleder. Mr. Rohleder’s employer was selected to support the committee he chaired. In his capacity as chairman, he had the ability to affect the amount of support needed by the Committee, which could financially impactAccenture. To be clear, there is no evidence to suggest he did so. While there is no evidence of inappropriate conduct, it still may appear to the public that judgment has been affected. The conflict should have been recognized, documented, and properly managed by UT Austin.

**Recommendation:** UT Austin Procurement and Payment Services should implement a comprehensive and formal approach to evaluate and document potential conflicts of interest and resulting mitigation strategies. Any reasonably perceived conflict, whether in appearance or fact, should be disclosed and documented, with a clear mitigation strategy outlined.

UT Austin’s response is included, in full, below. It makes statements which disagree with some of our findings and conclusions. Based on information obtained during this engagement, we do not concur with some of the statements made by UT Austin in their response and maintain our positions as stated throughout the report.

**UT Austin Response:** UT Austin agrees with the conclusion that there was “no conflict of interest in the decision by Mr. Hegarty to hire Accenture” to assist Mr. Hegarty’s office in supporting the work of the Committee but UT Austin disagrees with the ultimate conclusion reached with regard to Question 4, namely that the hiring of Accenture “created a conflict of interest for Mr. Rohleder.”

The Special Review erroneously concludes that in his capacity as chairman of the Committee, Mr. Rohleder “had the ability to affect the amount of support needed by the committee which could financially impact Accenture.” This is factually incorrect for several reasons.

First, the scope of work and the contracted amount for Accenture’s engagement were set at the time of the procurement. As the Special Review acknowledges, Mr. Rohleder was not involved in the hiring of Accenture and there was no conflict on Mr. Hegarty’s part in hiring Accenture. Mr. Rohleder’s actions as chairman of the Committee subsequent to the hiring of Accenture would not have had any effect on the amount paid to Accenture because both the scope of work and maximum financial compensation were already “set in stone” prior to Accenture beginning work.
Second, the Special Review appears to mistakenly assume that Accenture worked directly for and took its direction from the Committee. To support this view, the Special Report cites to one sentence in an email from Mr. Hegarty to Dr. Reyes that is quoted in a spreadsheet found in the Special Review’s Appendix I, page 2, which states “[Accenture’s] work was completely directed by the Committee and their work product was the Committee’s.” This sentence was taken completely out of context. It was part of a longer email that was one of a series of emails in which Mr. Hegarty was attempting to correct the mistaken belief that Accenture had been hired to produce, and had produced, a report. In the email in question, Mr. Hegarty was writing informally and was attempting to emphasize the fact that Accenture was acting only in a support role and that any raw material produced by Accenture was conveyed to the Committee and the final work product, the Committee report, was the work of the Committee and not Accenture.

In fact, Accenture assisted Mr. Hegarty’s staff in supporting the Committee. In requesting the reports and other data they needed, the Committee interacted with senior personnel in Mr. Hegarty’s office, rather than directly with Accenture, and those senior staff members then decided how to proceed with the request. They would determine whether the request could be filled by UT Austin staff, whether it needed to be passed on to Accenture or whether a combination of Accenture and UT Austin staff needed to work on the request.

The Special Review notes that Accenture itself considered whether Mr. Rohleder’s chairing of the Committee presented a conflict and concluded there was not “any conflict of interest because the firm was working with UT Austin and Mr. Hegarty as project sponsor, rather than with Mr. Rohleder or the Committee, and Mr. Rohleder was not a part of the Accenture engagement teams.”

UT Austin believes the conclusion reached by Accenture is correct and that the hiring of Accenture to assist the Committee did not create a conflict of interest for Mr. Rohleder because Accenture worked with UT Austin staff rather than directly for the Committee; Mr. Rohleder did not have the ability to affect the scope of work or the amount paid on the Accenture contract; and Mr. Rohleder was not involved in the hiring of Accenture.

UT Austin will review its existing procedures to determine whether such an evaluation process would be effective. It will also ensure that when it undertakes conflict management or mitigation efforts, such efforts are documented. Target date for completion will be determined based on discussions with and guidance received from UT System Office of the General Counsel.
Appendix A
Vendor Selection Diagram

Note: This diagram was prepared by the System Audit Office, based on State law, University policy, and discussion with UT System Office of General Counsel, to demonstrate the basic elements of a “Sole Source” decision. It is not intended to represent all possible decision points or procurement methods. Once a vendor has been selected, contracting options include use of an existing contract at the institution, use of an existing group purchasing contract through a group purchasing organization, or executing a new contract.
Appendix B

Texas Education Code §51.9335
Acquisition of Goods and Services

Sec. 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.

(c) The state auditor may audit purchases of goods or services by an institution of higher education or by a component of an institution of higher education that purchases goods and services.

(d) Subtitle D, Title 10, Government Code, and Subchapter B, Chapter 2254, Government Code, do not apply to the acquisition of goods and services under this section, except that an institution of higher education must comply with any provision of those laws, or a rule adopted under a provision of those laws, relating to contracting with historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities. An institution of higher education may, but is not required to, acquire goods or services as provided by Subtitle D, Title 10, Government Code.

(e) In this section, "institution of higher education" has the meaning assigned by Section 61.003 and includes a school of veterinary medicine and a health care facility operated by a medical and dental unit, except that the term does not include The University of Texas M. D. Anderson Cancer Center or a public junior college.

(f) This section does not apply to professional services as defined by Section 2254.002, Government Code. Professional services shall be procured in accordance with Subchapter A, Chapter 2254, Government Code.

(g) An institution of higher education may adopt rules and procedures for the acquisition of goods or services.
(h) In any contract for the acquisition of goods and services to which an institution of higher education is a party, a provision required by applicable law to be included in the contract is considered to be a part of the executed contract without regard to:

(1) whether the provision appears on the face of the contract; or
(2) whether the contract includes any provision to the contrary.
Appendix C
UT System General Counsel Opinion
Best Value Procurement

The following opinion was provided to the System Audit Office on September 5, 2014, in response to questions regarding Texas Education Code §51.9335 – Acquisition of Goods and Services.

“Note that the procurement methods enumerated in Subsection (a) are permissive and are not exclusive. We counsel our institutions that competitive bidding should be the default method and is the surest method of achieving “best value”, but we recognize that institutions have flexibility in achieving the statutory standard, including using the “group purchasing program” specified in Subsection (a)(4). Such group purchasing programs include the Department of Information Resources’ Cooperative Contract program and the State Comptroller’s TXMAS program.

“The statute does not preclude the use of sole source, or exclusive acquisition, procurements. Although this statute exempts us from the requirements of Texas Government Code Chapter 2254, Subchapter B, which is the elaborate procedure other state agencies must follow when contracting for consulting services, even that statute states that it does not “prohibit the making of a sole-source contract for consulting services…” or “require or prohibit the use of competitive bidding procedures to purchase consulting services.” See Texas Government Code §2254.022(b)(2) and (3).

“In making a “best value” determination, the institution must consider the nine elements specified in Subsection (b)(1-9). We consider these elements mandatory and the OGC Request for Proposal template, for example, specifies these nine elements as the scoring elements to be applied to each proposal before selecting the winning proposal. You asked whether consideration of these elements must be documented at the time of the procurement. The statute does not contain an explicit requirement that such documentation must be created and maintained, although that would certainly be our strong recommendation. Note that the state auditor has the right to audit our procurements and institutions’ policies should require contemporaneous documentation of consideration of the nine best value elements or risk an audit exception. Full documentation is certainly a best practice that our institutions should adopt but failure to do so would not be an explicit violation of the statute.

“The use of group purchasing programs, while streamlining the procurement process, as the legislature intended, by pre-qualifying vendors through competitive bidding conducted by DIR or the State Comptroller, has led to confusion on the part of our institutions. Some purchasing offices incorrectly believe that if they use a group purchasing program to make a procurement, then they have satisfied their best value obligation, relying on subsection (a) of the statute. While it is true that selecting a vendor from a group purchasing list satisfies Subsection (a), they must still satisfy Subsection (b) and consider those nine enumerated elements. This is important when DIR or the State Comptroller may have pre-qualified more than one vendor who can provide the same services. A best value determination must still be made to justify the selection of that one vendor from the list of multiple vendors. Such a process can be formal or informal
but the institution must still be able to articulate how consideration of the nine elements led to the selection of that vendor.”
Appendix D
UT Austin Handbook of Business Procedures
Part 7. Purchasing

7.5.3. SOLE SOURCE PURCHASES

A. Introduction

Most purchases at The University of Texas at Austin are made on a competitive basis. However, there may be times when competition does not exist or it is in the university’s best interest to use a particular product or service. Since these purchases eliminate competition, the university requires that justification be submitted with any sole source purchase request that exceeds $5,000. The justification does not require departments to defend the need for the product or service, but it is necessary to:

1. Identify the unique features of the particular product or service.
2. Explain the need for the unique features of the product or service.
3. Explain why other products/vendors are not acceptable.

For more information, see examples of sole source justification forms on the Purchasing Forms and Templates Web page.

B. Types of Sole Source Purchases

There are two types of sole source purchases.

1. Proprietary
   A proprietary purchase is used when the goods or services are only available through a single source. Examples: Original equipment manufacturer (OEM) repair/maintenance or replacement parts, some software, or some service contracts.

2. Best Value
   A best-value purchase is used when it is in the best interest of the university to use the particular product or service, but there is actually more than one source available. Example: Specific reagents used in long-term experiments. For continuity of research, a lab would need to continue using the same products for the duration of the experiment.

C. Resources

Request for Sole Source Purchase Forms

- Request for Sole Source Purchase (blank form)
- Original Equipment Manufacturer (OEM) for Maintenance and Repair (template)
- Software Maintenance Agreement with Original Licensor (template)
Appendix E

Interviews

UT Austin
Bradley G. Englert Associate Vice President and Chief Information Officer
Jerry A. Fuller Assistant Vice President and Director, Procurement and Payment Services
Thomas W. Gilligan, Ph.D. Dean, McCombs School of Business
Kevin P. Hegarty Vice President and Chief Financial Officer
Mary E. Knight Associate Vice President for Financial Affairs
William C. Powers, Jr. President

Texas Department of Information Resources
Aiko M. Morales Contract Manager

Accenture, LLP
Stephen Rohleder Group Chief Executive – North America
Jamie Wills Partner, Health and Public Service Group (Texas)

Resources

UT System Administration
Scott C. Kelley, Ed.D. Executive Vice Chancellor for Business Affairs
Jason D. King Senior Attorney and Deputy Ethics Officer, Office of General Counsel
James M. Phillips Managing Attorney, Office of General Counsel
Daniel H. Sharphorn Vice Chancellor and General Counsel
REQUEST FOR SOLE SOURCE PURCHASE
(For Noncompetitive Purchases over $5000)

The competitive bidding process is the foundation of government purchasing. In rare situations though, due to the unique nature of some goods and services, competition may not be possible. It is the responsibility of the Purchasing Office to determine if a proprietary designation can be applied.

In order to make this determination, the Purchasing Buyer must understand the unique characteristic(s) of the good or service. This form is designed to assist faculty and staff in communicating the required information to Purchasing.

Please answer the questions below as completely as possible. Additional pages may be attached, if more space or additional documentation is needed. Requests should be typed.

GENERAL INFORMATION

Today’s Date: 

Document ID #: 

Estimated Dollar Amount: $ 

Requesting Department: 

UT CONTACT INFORMATION (Person to contact if Purchasing has questions on this order)

Name: 

Campus Phone: 

Email Address: 

VENDOR INFORMATION

Vendor Name: 

Vendor Contact: 

Phone: 

Fax: 

Email Address: 

Vendor Type: Service Provider, Manufacturer, Distributor
## GOODS/SERVICES INFORMATION

<table>
<thead>
<tr>
<th>PRODUCT MAKE/MODEL</th>
</tr>
</thead>
<tbody>
<tr>
<td>(If applicable)</td>
</tr>
<tr>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>SPECIAL USE REQUIREMENTS (equipment only)</th>
</tr>
</thead>
<tbody>
<tr>
<td>To be compatible with existing equipment:</td>
</tr>
<tr>
<td>For the repair, maintenance or modification of existing equipment:</td>
</tr>
<tr>
<td>For use as spare or replacement equipment:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DESCRIPTION OF REQUEST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Describe in detail the good or service to be procured and how it meets your needs. Include a brief description of project for which the good or service will be used.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>UNIQUE FEATURES</th>
</tr>
</thead>
<tbody>
<tr>
<td>List the specific feature(s) or characteristic(s) that are required which are unique to the good or service. Describe the importance of the unique feature(s) as it applies to the intended use and project goals.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EVALUATION OF OTHER SOURCES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identify other sources that were evaluated (including the names, manufacturers, model numbers, etc.) and the reason they were found to be unsatisfactory for the intended use or in meeting project goals. (Attach copies of any quotes collected from other vendors)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>RISK ELEMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Describe any substantial risks that could not be overcome if the product or service was procured from another vendor.</td>
</tr>
</tbody>
</table>
CONFLICT OF INTEREST STATEMENT

I, ______________________, the undersigned, hereby certify that the following statements are true and correct and that I understand and agree to be bound by the commitments contained herein. I am acting on my own accord and am not acting under duress. I am not currently employed by, nor am I receiving any compensation from, nor have I been the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in connection with this vendor in return for favorable consideration of this request.

Signature ______________________ Date: ________________
(Primary User)

DEPARTMENT APPROVAL – Dean/Chair/Business Officer

By signing below, the department certifies that the information submitted on this form has been reviewed and this purchase has departmental approval. The final determination of sole source approval shall be made by the Purchasing Office.

Signature: ______________________ Date: ________________
(Dean/Department Head/Business Officer)

Printed Name: ______________________
(Dean/Department Head/Business Officer)

*Departmental Approver should be senior to the Primary User.
PROCUREMENT APPROVAL – TO BE FILLED OUT BY THE PURCHASING OFFICE

DETERMINATION:

___ Approved

___ Not Approved

Rationale for determination/comments:

Signature: ____________________________ Date: __________

(Buyer)

Signature: ____________________________ Date: __________

(Procurement Management)
Appendix G
Email Relevant to the Selection of Accenture

From: stephen.j.rohleder@accenture.com
Sent: Tuesday, April 03, 2012 3:09 PM
To: Hegarty, Kevin P
Subject: RE:

One thought to kick around.

If we were engaged to help, we run the risk of the report becoming an Accenture study versus a Committee effort.

Don't get me wrong, I'll help in any way, just want to make sure the final product is something the University will be able to use.

Thanks,
Steve

Stephen J. Rohleder
Group Chief Executive, Health and Public Services
stephen.j.rohleder@accenture.com
AIM: RohlederACN
(202) 255-7506 (c) (703) 947-1100 (w)
11951 Freedom Drive
Reston, VA 20190

From: Hegarty, Kevin P
Sent: Tuesday, April 03, 2012 3:03 PM
To: Rohleder, Stephen J.
Subject: RE:

I agree. The timelines for delivery could be staggered. Bill has talked about engaging consultants if needed. I think that this would be required. Therefore, I would propose that we engage Accenture to assist the
Committee with its work. Of course we at this end would assist with the data mining and analysis and serve as the sounding board for the consultants and the Committee. Kevin

From: stephen.j.rohleder@accenture.com
[mailto:stephen.j.rohleder@accenture.com]
Sent: Tuesday, April 03, 2012 2:00 PM
To: Hegarty, Kevin P
Subject: RE:

The areas of focus are definitely specific enough. The work can be organized along these lines without any problem.

The only thing to think about is how much work do we have time and resources to tackle. All three areas are big, meaty areas. To do them justice, will require some serious leadership time and staff resources. My suggestion is a dedicated team for each work stream and someone to drive the work on a day-to-day basis. Just something to think about as you talk to Bill.

Thanks,

Steve

---

Stephens J. Rohleder
Group Chief Executive, Health and Public Services
stephens.j.rohleder@accenture.com
AIM: RohlederACN
(202) 258-7586 (c) (703) 947-1100 (w)
11951 Freedom Drive
Reston, VA 20190

From: Hegarty, Kevin P
[mailto:hegartykp@austin.utexas.edu]
Sent: Tuesday, April 03, 2012 2:52 PM
To: Rohleder, Stephen J.
Subject:

Steve,

I have been thinking about what I might propose to Bill and team tomorrow afternoon in terms of charging the committee with a specific scope of work. My thoughts are as follows:

1) The Committee will examine the economic impact the federated model of administration has on the economic efficiency at The University of Texas at Austin and will
make recommendations to improve that efficiency. Specifically, the Committee will examine how the federated model has been deployed at each college and within the central administrative units and make recommendations concerning how it might be changed to increase efficiency and effectiveness specifically in the areas of financial services, human resource services, technology infrastructure and related support services and other administrative support that represents a significant cost to the college and/or university.

2) The Committee will examine the University's current structures and practices intended to promote commercialization at the University of Texas at Austin and will make recommendations for improvement. Specifically, the Committee will examine the current structure and practices deployed by the Office of the Vice President for Research and Office of Technology Commercialization as it relates to identifying technologies with commercial potential and support for taking them to market in a manner that is most attractive to the private commercialization markets.

3) The Committee will examine the current utilization of tangible and intangible assets of the University of Texas at Austin and make recommendations for improvement for the benefit of students. Assets to be examined might include such assets as university-owned lands, trademarks and brands, physical facilities and services such as for housing, food, parking and books.

I would assume this approach would require that the committee be subdivided into three subcommittees.
Do these charges to the Committee resonate with you? Does it give you a better sense of the scope of work? Is this too general?

Kevin

Subject to local law, communications with Accenture and its affiliates including telephone calls and emails (including content), may be monitored by our systems for the purposes of security and the assessment of internal compliance with Accenture policy.

www.accenture.com
<Kevin P Hegarty.vcf>
<Margo Iwanski.vcf>
Appendix H
Summary of Contracts Requiring Board Approval

<table>
<thead>
<tr>
<th>Contracts Requiring Board Approval</th>
<th>Any Amount</th>
<th>More than 25% of Value of Original Contract</th>
<th>Increases Value of Original Contract to More than $1 million</th>
<th>More than $1 Million</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contracts¹, Purchase Orders, Vouchers, Binding Letters of Intent and Memoranda of Understanding, Generalⁱ [ref. Sections 3 and 3.1.1, Rule 10501 of the Regents’ Rules]</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Contracts, Amendments, Extensions or Renewals [ref. Sections 3 and 3.1.2, Rule 10501 of the Regents’ Rules]</td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Contracts, with a Foreign Government or an Agency thereof⁴ [ref. Section 3.2, Rule 10501 of the Regents’ Rules]</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contracts, Involving Certain Uses of Institution Names, Trademarks, or Logos in association with the provision of a material medical-related service or physical improvements located on property not owned or leased by the contracting UT institution [ref. Section 3.3 Rule 10501 of the Regents’ Rules]</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Contracts, Significant contracts identified by UT presidents and executive officers that are of such significance to require the prior approval of the Board [ref. Section 1.1, Rule 10501 of the Regents’ Rules]</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Contracts with Certain Officers [ref. Section 3.4, Rule 10501 of the Regents’ Rules]</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insurance Settlements [ref. Section 3.5, Rule 10501 of the Regents’ Rules]</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Purchases, Sales or Leases of Real Property [ref. Sections 3 and 3.1, Rule 10501 and Rule 70301 of the Regents' Rules]</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Settlements of Disputes [ref. Section 3.6, Rule 10501 of the Regents’ Rules]</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

¹ The term “contract” means contracts of any kind or nature, including, contracts, agreements, purchase orders, vouchers, binding letters or intent, and memoranda of understanding. [ref. Section 3, Rule 10501 of the Regents’ Rules]
Exceptions to Board approval requirements for Contracts, General [ref. Section 2.2, Rule 10501 of the Regents’ Rules]:

2.2.1 Construction Projects, contracts and documents relating to construction projects previously approved by the Board 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 as outlined in Rule 90105;

2.2.4 Replacements, contracts 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 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;

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 that have been approved as provided in UTS166 and UTS167;

2.2.9 Certain Employment Agreements, contracts with administrators employed by the UT System or any of its institutions, so long as the agreements fully comply with the requirements of Ed. Code Section 51.948 including the requirement to make a finding that the agreement is in the best interest of the UT System or any of its institutions;

2.2.10 Energy Resources, contracts for utility services or energy resources and related services, if any, which have been approved in advance by the Chancellor or the Chancellor’s delegate, the EVC for Business Affairs;

2.2.11 Library Materials and Subscriptions, contracts for the purchase or license of library books and library materials;

2.2.12 Athletic Employment Agreements, contracts with head coaches and athletic directors except those with total annual compensation of $250,000 or greater, as covered by Rule 20204;

2.2.13 Bowl Games, contracts related to postseason bowl games, subject to a requirement that the contract has been submitted to the Executive Vice Chancellor for Academic Affairs and is in a form acceptable to the Vice Chancellor and General Counsel;

2.2.14 Property or Casualty Losses, contracts with a cost or monetary value to the UT 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 in consultation with the institutional President, if applicable;

2.2.15 Health Operations, contracts 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, if it is determined that the institution has the expertise to negotiate, review, and administer such contracts (except Special Procedure Contracts, unless specifically approved);

2.2.17 Group Employee Benefits, contracts for the uniform group employee benefits offered pursuant to Chapter 16012, Texas Insurance Code.

Exceptions to Board approval requirements for Contracts, with a Foreign Government or an Agency thereof [ref. Section 3.2, Rule 10501 of the Regents’ Rules]:
1. Affiliation agreements, cooperative program agreements, material transfer agreements, sponsored research agreements, licenses, or other conveyances of intellectual property owned or controlled by the Board prepared on an approved standard form or satisfying the requirements set by the Office of the General Counsel, or

2. 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 General Counsel.
### Chronology of Events related to Accenture Request

<table>
<thead>
<tr>
<th>DATE</th>
<th>ACTIVITY</th>
<th>RESPONSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>7/12/2013</td>
<td>Called UT Austin, Kevin Hegarty's office to request a copy of the Accenture report which was used to assist the Task Force on Business Productivity.</td>
<td>Was told that there was no such report.</td>
</tr>
<tr>
<td>7/12/2013</td>
<td>Called the CFO's office at Accenture</td>
<td>Was told that there was no such report.</td>
</tr>
<tr>
<td>10/12/2013</td>
<td>Article in Austin American Statesman references</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Accenture and $1.0 million contract with UT Austin</td>
<td></td>
</tr>
<tr>
<td>10/12/2013</td>
<td>Regent Cranberg requests a copy of Accenture's report.</td>
<td></td>
</tr>
<tr>
<td>10/25/2013</td>
<td>Regent Cranberg asks Board Office if there has been any feedback on the Accenture Analysis. Regent Cranberg states: &quot;I assure there must have been some considerable deliverables for a $1M contract.&quot;</td>
<td>OAA was told there was no report.</td>
</tr>
<tr>
<td>10/30/2013</td>
<td>OAA requested the Accenture report again from Kevin Hegarty's office, due to an article which was printed regarding UT Austin's $1M contract with Accenture.</td>
<td>HEGARTY RESPONSE (10/30/13): &quot;As I previously reported to your office (someone who called on your behalf weeks ago, Stephanie I believe and to the Board office, Ms. Fredrick), there is no Accenture report. The report of the Task Force on Business Productivity, &quot;Smarter Systems for a Greater UT&quot;, is a report of an independent committee of 13 business people. Two on the committee were Accenture partners, one current and one retired. The Committee, as the suggestion of the University was assisted by Accenture staff because the committee's data needs and analytical needs quickly outgrew the university's ability to support the committee. The University paid for the cost of the staff to assist the committee. There is no Accenture report in this matter. UT's Shared Services plan is just that, UT's. While we have continue to rely on the direct experience of Accenture to assist us in developing our recommendation to implement Shares Services, the plan we are now discussing with the campus is a UT plan based on our own data.&quot;</td>
</tr>
</tbody>
</table>

Prepared by the Office of Academic Affairs

2/3/2014
## Chronology of Events related to Accenture Request

<table>
<thead>
<tr>
<th>DATE</th>
<th>ACTIVITY</th>
<th>RESPONSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/13/2013</td>
<td>Regent Hall asked who was responsible for responding to his July Accenture request.</td>
<td>Ms. Frederick responded that Dr. Reyes was responsible and that she meant to remind him but had not had the chance to do so yet.</td>
</tr>
<tr>
<td>12/16/2013</td>
<td>Ms. Frederick contacted Dr. Reyes to ask him to call Regent Hall directly to discuss next steps and planned timing of response.</td>
<td></td>
</tr>
<tr>
<td>12/16/2013</td>
<td>Regent Hall emails Board Office that he is interested in completing the line of inquiry. He asks for all materials related to Accenture involvement.</td>
<td></td>
</tr>
</tbody>
</table>
| 12/16/2013 | OAA follow-up to original request – Requested any Accenture invoices from UT Austin, Kevin Hegarty’s office | Received invoices and purchase orders from UT Austin for Accenture’s work to support the Committee on Business Productivity, totaling $1,052,495.  
**HEGARTY RESPONSE (12/17/13):**  
"Attached is information you requested regarding billings by Accenture for their work to support the Committee on Business Productivity. The first page is a summary of the invoices. You will note that as reported to the public, the University paid Accenture $980,000 for their support of the Committee plus expenses. Their work was completely directed by the Committee and their work product was the Committee’s. The University simply did not have the knowledgeable resources to support them. The following three pages are the original and modified purchase order. Note that the Accenture work was procured under a previously competitively bid contract for such services by the Texas State Department of Information Resources. The remaining pages are the actual paid invoices.  
Please let me know if I can provide you with any additional information." |

Prepared by the Office of Academic Affairs  
2/3/2014
## Chronology of Events related to Accenture Request

<table>
<thead>
<tr>
<th>DATE</th>
<th>ACTIVITY</th>
<th>RESPONSE</th>
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</thead>
<tbody>
<tr>
<td>12/17/2013</td>
<td>Follow-up to Regent Hall’s original request – “I would like to review the SOW associated with this committee’s efforts and I would like to review the DIR contract DIR-SDD-983 as well. Many thanks”</td>
<td>HEGARTY RESPONSE (12/18/13): “To my knowledge, there is no specific statement of work from the campus. We hired Accenture to support the work needs of the committee. That was the work they were charged to do. Perhaps what is missed by the person posing the question is that UT Austin engaged Accenture via a Department of Information Resources (DIR) contract competitively bid by the DIR and not UT Austin. We will contact DIR and obtain a copy of the statement of work might have been submitted to DIR by Accenture when submitting their bid on the contract and forward to you. This method of contacting is a legally allowed procurement method and avoids each state agency from having to go through an expensive bidding process on every procurement.”</td>
</tr>
<tr>
<td>12/18/2013</td>
<td>Dr. Reyes called Mr. Hegarty to relay the request for Statement of Work and DIR Contract.</td>
<td></td>
</tr>
<tr>
<td>1/7/2014</td>
<td>Regent Hall asked for an update to the request for Statement of Work and DIR contract.</td>
<td></td>
</tr>
</tbody>
</table>
## Chronology of Events related to Accenture Request

<table>
<thead>
<tr>
<th>DATE</th>
<th>ACTIVITY</th>
<th>RESPONSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/8/2013</td>
<td>Dr. Reyes made a second request for documents:</td>
<td>HEGARTY RESPONSE (1/8/14):</td>
</tr>
<tr>
<td></td>
<td>&quot;On December 18th, you committed to obtaining a copy of the statement of work for the contract between DIR and Accenture referenced in the purchase order between UT Austin and Accenture that you sent me. This was in response to Regent Hall’s request on December 17th. Regent Hall had also requested, at that time, a copy of the DIR contract DIR-SDD-983; also referenced in the UT Austin purchase order. Can you please forward to me those documents? If you can send me the documents by the end of the week, I would really appreciate it. If not able to do so by the end of the week, please let me know by when you can deliver the documents. Thank you for your help with this matter. pr&quot;</td>
<td>&quot;I am sorry to only now be responding to your request. I lost track of it over the holidays and simply forgot to forward the information you requested in response. The following URL will get one to the base contract put into place by the Texas State Department of Information Resources: <a href="http://www2.dir.state.tx.us/ict/contracts/Details.aspx?dir_contract_number=DIR-SDD-983">http://www2.dir.state.tx.us/ict/contracts/Details.aspx?dir_contract_number=DIR-SDD-983</a>. It is possible that the contract may have been modified and amended by them over time. To my knowledge this is the latest base contract. The attached document is the Statement of Work (SOW) put into place by UT with Accenture for the support work they did for the Committee for Business Productivity under the base contract referenced above. Please me know if you require any additional information. pr&quot;</td>
</tr>
<tr>
<td>1/8/2014</td>
<td>Received Statement of Work and copy of DIR contract DIR-SDD-983 from UT Austin</td>
<td></td>
</tr>
<tr>
<td>1/9/2014</td>
<td>Ms. Frederick sends Statement of Work and DIR contract to Regents Hall and Cranberg.</td>
<td></td>
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### Chronology of Events related to Accenture Request

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| 1/9/2014 | Follow up request from Regent Hall (With document request underlined): I have reviewed the SOW and the Contract and now have a much more clear understanding of the relationship(s). A few thoughts and questions to consider when you have a moment. While the Contract is between the DIR and Accenture, the University of Texas at Austin is the Customer and Accenture is the Vendor. While utilizing an existing contract between the DIR and Accenture may be the favored option by Austin, I'm not sure that this is in anyway a good idea or complies with the spirit of the rules/law.   | (1) By using this method, Austin bypassed a competitive bidding process and all of the potential financial benefits. Transparency with the public was diminished as well.  
(2) The $995,352 estimate for costs associated with this SOW coincidently fell just beneath the $1 million threshold requiring Board approval, although expenses exceeded the $1mm mark soon thereafter. I do not recall if this was ever presented to the Board for its review and consideration before or after the mark was exceeded. 
(3) Under 12 (h), "Terms & Conditions" in the SOW, "Accenture certifies that in entering into this Agreement, no relationship exists between Accenture (including any related entity or individual) and UT (including any department, organization, or individual) that by its nature may be considered a conflict of interest by influencing or potentially influencing the execution of this Agreement or the independent performance of the Services. Accenture agrees to disclose to UT any such conflict of interest should it become known or arise during the term of this Agreement. UT may, in its sole and absolute discretion, terminate this Agreement immediately if such conflict of interest exists." I do not know how Accenture was selected or who first recommended the DIR/Accenture route versus an RFP but the optics of Mr. Rohleder serving as Chair of the UT Committee on Business Productivity while also serving as a senior employee/officer of Accenture is not a favorable one.  
(4) A signed copy of the Statement of Work (original and amended versions) would be nice to see when possible.  
(5) Dec. 18th, 2013, in an email from CFO Kevin Hargrave to you, he wrote "To my knowledge, there is no specific statement of work from the campus." Obviously, there is a Statement of Work by and between UT and Accenture. I am surprised that the CFO was not aware of its existence. Was this SOW reviewed by Austin's legal department?  
(6) Who at UT made the decision that Accenture would be the Vendor for this Project?                                                                                                                                                                                                                                                                 |

Prepared by the Office of Academic Affairs  
2/3/2014
### Chronology of Events related to Accenture Request

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<tr>
<th>DATE</th>
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<tbody>
<tr>
<td>1/11/2014</td>
<td>Dr. Reyes emails Regent Hall that UT System is seeking the information.</td>
<td></td>
</tr>
<tr>
<td>1/13/2013</td>
<td>VC Powell sends email to Chairman, Chancellor and Frederick asking about delay in responding to Regent Hall's request and asks to see all of the items requested by Regent Hall.</td>
<td></td>
</tr>
<tr>
<td>1/17/2014</td>
<td>Follow-up Request from Regent Hall: Other than the Accenture S.O.W. that was recently utilized by UT Austin Committee on Business Productivity, what other Contracts, S.O.W. or Agreements are in place or currently being negotiated with Accenture by UT Austin or any of their component entities? Details on each would be good.</td>
<td></td>
</tr>
<tr>
<td>1/17/2014</td>
<td>Regent Hall emails to the Chancellor the proposed resolution concerning Accenture, to be considered by UT Austin's Faculty Council.</td>
<td></td>
</tr>
<tr>
<td>1/17/2014</td>
<td>OAA requested the information from Mr. Hegarty's office.</td>
<td>HEGARTY RESPONSE: (1/17/14) &quot;Thank you Pedro. I will work to get answers to these questions to you by the end of next week. Please let me know who is asking these questions so that I might document it and know who I am responding to.&quot;</td>
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Prepared by the Office of Academic Affairs
2/3/2014
### Chronology of Events related to Accenture Request

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<tr>
<td>1/18/2014</td>
<td>Mr. Hegarty sends another email regarding the request.</td>
<td>&quot;Pedro and Scott, After reviewing this request in greater detail and discussing it with people who will have to pull and organize the data, I have determined it will take at least a couple of weeks to respond. Therefore you should expect a response sometime the first week of February. Of course if it takes less time I will send it sooner. Kevin&quot;</td>
</tr>
<tr>
<td>1/19/2014</td>
<td>Mr. Hegarty sends another email regarding the request:</td>
<td>&quot;I apologize for the multiple email notes on this second request for data about UT Austin’s engagement of Accenture to support the voluntary work of the Task Force on Business Productivity. Something about this follow-on request bothered me. I now communicate this to you along with the hope that we might jointly address my concerns. Regent Hall’s approach to looking into this contract and Task Force of Business Productivity’s work appears to be the same approach as used by him previously on open records matters: request everything without stating a purpose or articulating the specific questions for which he seeks answers. Such a wide and nonspecific approach can appear to some to be engaging in &quot;fishing expeditions&quot; or &quot;investigations&quot; rather than simply efforts to address reasonable questions for which there is benefit in answering. Personally, Regent Hall’s approach is felt to be an effort to find and highlight something wrong rather to understand and promote efforts to work together to improve something. The campus will produce all of the data he has requested unless you instruct me otherwise. The Accenture contract, like all of our contracts, was done in accord with State, System and campus laws, regulations and policy. And the result of the work covered by the contract, the ultimate deliverable of the Task Force, is the public report you have seen, Smarter Systems for a Greater UT. As you know, that report has resulted, amongst other efforts, in the shared services activities now in planning on our campus. But you should know that accumulating the data Regent Hall has requested will be a burden. Most importantly, I also fear that it will promote and perpetuate the distressed relationship between the campus, System and Board at a time when I believe we all desire and seek to improve the relationship; you should know that this is certainly the desire of our campus. The campus time it will take to accumulate the data and respond could be reduced and likelihood of Regent Hall achieving his purpose increased if we knew the purpose for his request and the very specific questions he seeks to answer by requesting all of this data. Certainly, knowing his purpose and questions would promote our desire to collaborate in these matters and nurture a positive working relationship with the system and Board. Therefore, before the campus blindly produces data for Regent Hall related to this request, I ask that you consider discussing this matter with the Chancellor and sharing my thoughts with him for the purpose of determining whether a new different approach to such data requests might be instituted, an approach that is positive and productive to all. Again, I think a better approach is to for a requester to articulate the purpose for requesting information, the goal so to speak, and the specific questions for which answers are sought. This allows the responder to focus the work effort and possibly to work side-by-side with the requester in a positive fashion, all of which can promote a productive work environment. I think that this approach can minimize the investment of time required to answer questions of the System and Board and increase the likelihood of success and, most importantly, help improve and promote a productive and positive relationship between the campus, system and Board. I hope that you will consider my request. Please let me know if you would like me to participate in any conversations about my concerns and suggestions for issues. Prepared by the Office of Academic Affairs. 2/3/2014</td>
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APPENDIX J – UT Austin Response
(Prepared by The University of Texas at Austin)

Purchasing Process Flowchart

Need for product or service identified

Available in UT Market?

Yes

Existing Contract?

OR

Expected Amount > $5K?

Yes

Only One Source

OR

Multiple Sources

No

Process PO document & Issue Purchase Order

Yes

Process PO4 Document & Process purchase on existing contract

7.5.2. Use of Existing Contracts

Process PO4 Document and Submit Sole Source Justification

7.5.3. Sole Source Purchases

Price/Delivery

Yes

Award Criteria?

Best Value

Obtain 3 bids and process PO3 document

7.5.4. Informal Bids

Process PO4 Document & Issue Invitation to Bid (ITB)

7.5.5. Invitation to Bid (ITB)

Process PO4 Document & Issue Request for Proposal

7.5.6. Request for Proposal (RFP)
MEMORANDUM

TO: Mr. Kevin Hegarty, Vice President and Chief Financial Officer
FROM: Patti Ohlendorf, Vice President for Legal Affairs
DATE: November 3, 2014
SUBJECT: UT System Special Review titled “UT System Administration Special Review of The University of Texas at Austin Procurement of Consulting Services from Accenture, LLP” dated November 2014 (the “Special Review”)

Background

The Office of the Vice President and Chief Financial Officer asked the Office of the Vice President for Legal Affairs (Legal Affairs) to review and provide its analysis of the factual and legal issues presented in the above-referenced UT System Special Review. In addition to me, Associate Vice Presidents Jeff Graves and Steve Rosen, Assistant Vice Presidents Jessica Sentz and Zeena Angadicheril, and Associate Counsel Chris Hutto contributed to this analysis.

Because UT Austin’s procurement of services to be performed by Accenture was made in the ordinary course of business and was not perceived to present any novel legal issues, Legal Affairs had not previously been involved in any of the transactions at issue in the Special Review. Although Legal Affairs did not have access to the records and interviews of the UT System auditors, since receiving the Special Review, Legal Affairs has conducted interviews of relevant officials, reviewed relevant records and has carefully analyzed the Special Review and its appendices. Because the legal issues that arise in the Special Review present matters of first impression for Legal Affairs, we believe that our analysis and conclusions are objective and independent. As noted in greater detail herein, UT Austin contends that there are multiple, reasonable yet differing conclusions about the legal issues presented in the Special Review.

Analysis

The questions presented in the Special Review are as follows:
1. Did the selection of Accenture without a competitive bidding process violate any State law, or System or UT Austin policy?

2. Was the use of an existing Texas Department of Information Resources (DIR) group cooperative purchasing contract allowable for the types of services performed?

3. Was the initial contract negotiated to just under $1 million in order to circumvent Board approval requirements?

4. Were there any conflicts of interest present in the hiring of a committee chairman’s firm to support the work of that committee?

Below we provide our detailed analysis of each question and some suggested responses.
UT Austin Management Response to the Executive Summary: At the request of the Vice President and Chief Financial Officer for The University of Texas at Austin ("UT Austin"), the Vice President for Legal Affairs and campus Ethics Officer, Patti Ollendorf, and her legal staff conducted an independent review of the questions presented in and the comments and conclusions made by The University of Texas System Office of Internal Audits in its Special Review report titled, “UT System Administration Special Review of The University of Texas at Austin Procurement of Consulting Service from Accenture LLP” dated November 2014. The UT Austin responses contained in this report are those of its management and reflect the findings resulting from this independent review.

UT Austin believes the Executive Summary does not accurately summarize the content of the Special Review in that the Executive Summary does not address the four questions presented in the Special Review and the conclusions contained therein. UT Austin believes that:

(1) UT Austin did not violate any state law, or UT System or UT Austin Policy in the engagement of Accenture to assist UT Austin’s Business office in supporting the President’s Committee on Business Productivity. More specifically, at the time of its engagement of Accenture, UT Austin interpreted the relevant underlying procurement statute reasonably and consistent with other UT institutions and State agencies.

(2) UT Austin’s use of an existing Texas Department of Information Resources (“DIR”) group cooperative purchasing contract was allowable for the types of services performed by Accenture.

(3) There is no evidence of any intent on UT Austin’s part to negotiate the initial contract with Accenture to just under $1 million in order to circumvent Board of Regents’ contract approval requirements. In fact, the $1 million contract threshold is completely irrelevant in this type of procurement scenario because group cooperative purchasing contracts are specifically exempted from Board approval.

(4) There was no conflict of interest in UT Austin’s decision to hire Accenture, no UT Austin employee had a conflict of interest, and the engagement of Accenture did not create a conflict of interest for the chair of the Committee on Business Productivity.

Finally, UT Austin disagrees with the Executive Summary’s repeated suggestion that UT Austin’s documentation regarding the Accenture procurement was inappropriately “minimal.” UT Austin believes that all required documentation was created and maintained in the procurement process and that the documentation was consistent with relevant University policies and practice.
Question 1 – Did the selection of Accenture without a competitive bidding process violate any State law, or System or UT Austin policy?

UT Austin Management’s Response to Conclusions: The record as discussed in the Special Review indicates that UT Austin fully complied with State law, as well as existing UT System and UT Austin policy and practice, with respect to its selection of Accenture. UT Austin agrees.

- No Violation of State Law

The Special Review relies upon portions of a recent Office of General Counsel ("OGC") Opinion dated September 2014, that did not exist at the time of the 2012 and 2013 Accenture procurements (the “OGC Opinion”). UT Austin did not interpret the underlying procurement statute in 2012 and 2013 in a manner similar to the analysis advanced in the OGC Opinion. While the OGC Opinion differs from the interpretation of the underlying procurement statute as understood by UT Austin at the time of the procurements, both interpretations are reasonable and supportable: (1) UT Austin’s understanding was consistent with the understanding of other UT institutions, State agencies, and other Texas higher education institutions, (2) the OGC Opinion acknowledges the statute has “led to confusion on the part of our institutions” and that any analysis may be “formal or informal” (details omitted in the Special Review), and (3) in all events, UT Austin complied with the OGC Opinion because it carried out the analysis commended in the OGC Opinion.

Texas Education Code Section 51.9335(a) provides five ways in which an institution of higher education may acquire goods or services by a method that provides “best value,” including through a group purchasing program. See Tex. Educ. Code Section 51.9335(a)(4). Section 51.9335(b) provides a nine-point analysis for evaluating how “best value” may be determined. The OGC Opinion opines that purchasing offices “must still satisfy [section 51.9335(b)] and consider those nine enumerated elements” even in the context of a purchase made pursuant to subsection (a), however, that conclusion is neither mandated by the statute nor consistent with current practice (within UT Austin or other UT institutions).

There is no judicial or Attorney General guidance interpreting Section 51.9335 that addresses this issue. A plain reading of the statute, however, does not suggest that the criteria listed in subsection (b) must be considered in the context of a purchase made through a method described in subsection (a). Subsection (a) states that higher education institutions may make best value purchases – including (but not only) through the five described methods. “Best value” is then described further in subsection (b) through the nine criteria. Subsection (b) exists because the listing in subsection (a) is not exhaustive – there are some types of procurements that may still be best value even if not identified in subsection (a). For those purchases, the nine elements should be considered; otherwise, if a best value procurement is made through
a method identified in subsection (a), UT Austin’s understanding was that Section 51.9335 indicates the purchase has met the best value standard. This interpretation is reasonable since many acquisitions made pursuant to the methods described in subsection (a) already have incorporated most (if not all) of the elements described in subsection (b). For example, with the UT System Supply Chain Alliance process, a rigorous competitive process is used and one award is made to a “preferred supplier,” with pricing and terms negotiated. UT System uniformly bases its “preferred supplier” selections on best value criteria.

UT Austin’s interpretation of Section 51.9335 is also consistent with guidance offered by other State agencies. As noted in the Special Review, UT Austin received guidance from DIR that no further steps must be undertaken when one of their cooperative contracts is used. See Special Review at 7 (“Mr. Fuller reported speaking with the responsible DIR contract manager (who no longer works for DIR) and receiving confirmation that this was an allowable use of the group contract. We spoke with the current DIR contract manager and confirmed Mr. Fuller’s statement.”). UT Austin is also aware that other state agencies, including the Texas A&M System, do not incorporate the best value criteria described in subsection (b) for procurements made pursuant to subsection (a) methods.

To be clear, UT Austin has no objection to the OGC Opinion: fully documenting the basis for a best value procurement represents good business practice, even if the statute makes no such requirement with respect to the kind of group purchase procurements made here. But documentation of that kind was not understood to be required at the time of the procurements, nor was that practice embraced by other UT institutions, Texas State agencies, or at least some other Texas higher education institutions. As the OGC Opinion indicates, there is “confusion” on this issue leading “[s]ome purchasing offices” to “incorrectly believe that if they use a group purchasing program to make a procurement, then they have satisfied their best value obligation.” UT Austin expects it will work closely with UT System and other UT institutions in the coming months to ensure consistency in understanding and implementation with respect to the procurement standards that may apply in the group purchasing context. In the meantime, however, the Special Review ignores the varying interpretations and implementations of the statute and post facto attempts to hold UT Austin accountable to a standard that was neither widely accepted nor implemented at the time of the procurements.

Notably, Mr. Hegarty in fact considered all relevant factors from the list enumerated in Section 51.9335(b) when choosing Accenture, and so the procurements at issue complied in fact with the requirements of the statute as described in the OGC Opinion. For example, Mr. Hegarty considered the reputation of Accenture, the quality of its work, the alignment between Accenture’s skill set and the needs of the work to be done, and cost. Ultimately, he decided Accenture offered the best match of any eligible vendor because Accenture had worked on similar projects at similar
institutions (including the University of Michigan), and Mr. Hogarty sought to optimize value and efficiency by having the same Accenture team deployed to UT Austin. In short, even assuming Section 51.9335(b) had to be considered as part of the procurement, it was done here.

- **No Violation of UT System Policy**

The Special Review concludes that UT Austin’s actions are in violation of UT System policy but does not cite to any specific UT System policy violated. Accordingly, UT Austin responds generally that no UT System policies were violated during the process of procuring the discussed Accenture contracts.

- **No Violation of UT Austin policy**

UT Austin utilized an existing group cooperative contract approved by DIR for its agreements with Accenture, and the Special Review correctly concludes that the use of this contract was acceptable for the type of services performed by Accenture. UT Austin agrees.

However, the Special Review incorrectly finds that UT Austin violated its internal Sole Source Purchases policy in its selection of Accenture. The Special Review cites to a description of a “Best Value Sole Source Purchase” contained within UT Austin’s Sole Source Purchases policy and concludes that this description applied to the Accenture selection and required UT Austin to complete the administrative forms listed in its Sole Source Purchases policy. UT Austin responds that the forms listed in the Sole Source Purchases policy were not necessary for the Accenture agreements because the Sole Source Purchases policy was never relevant to this procurement. UT Austin’s Sole Source Purchases policy is only relevant in situations where purchases “eliminate competition.”

That was not the case here.

In clear terms, the DIR states that its group cooperative contracts have satisfied all of the State’s competitive procurement requirements, and the DIR instructs State agencies that they can utilize these contracts without additional due diligence. The existence of a DIR group cooperative contract with Accenture necessarily meant that the competition had been considered. UT Austin’s Sole Source Purchases policy was therefore not relevant to the Accenture agreements. Instead, UT Austin followed its Use of Existing Contracts policy, which is the internal policy relevant to UT Austin’s

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1 See Section A of UT Austin Handbook of Business Procedures 7.5.3 - Sole Source Purchases.

2 See the DIR website at [http://www2.dir.state.tx.us/facts/site/Pages/customerfaqs.aspx?do=ihavetogothroughcompetitivebidprocess](http://www2.dir.state.tx.us/facts/site/Pages/customerfaqs.aspx?do=ihavetogothroughcompetitivebidprocess) (last visited on October 31, 2014) (explaining in response to a Frequently Asked Question (Question 3) about whether the competitive bidding process is still required when using a DIR contract: “No, DIR has already performed all state of Texas competitive procurement requirements. You no longer have to prepare competitive solicitations or evaluate responses, since we have completed that work for you.”) (emphasis in original).
contracts with Accenture. See UT Austin Handbook of Business Procedures 7.5.2—Use of Existing Contracts; see also UT Austin Handbook of Business Procedures 7.5—Solicitation Procedures—General Information. The Special Review does not mention Section 7.5—Solicitation Procedures—General Information of UT Austin’s Handbook of Business Procedures; however, this section is significant and contains a Purchasing Process Flowchart that depicts UT Austin’s standard procurement practices and establishes that UT Austin utilizes either its Use of Existing Contracts policy or its Sole Source Purchases policy, as appropriate. The Special Review misinterprets the Sole Source Purchases policy and ignores the relevant Use of Existing Contracts policy. Similarly, the chart included as Appendix A to the Special Review is incomplete; Special Review Appendix A fails to acknowledge UT Austin’s Use of Existing Contracts policy and the process regularly utilized by UT Austin when purchases are made under a previously approved contract (such as the at-issue DIR contracts).³

The process that UT Austin followed during its procurement of the Accenture contracts did not deviate from its general procurement practices, particularly with respect to existing group purchase agreements. In addition to following its normal protocol and relying on the standing guidance provided on the DIR website, as noted above, UT Austin also sought specific guidance from the DIR with respect to the Accenture contracts. UT Austin requested clarity on what it needed to do to finalize pricing for the contract. In response, the DIR’s contracting officer informed UT Austin’s Director of Procurement that UT Austin could use internal business expertise to assure that the contract included reasonable pricing and that no other additional steps were required to utilize the contract. UT Austin relied on this specific guidance from the DIR, utilized internal business expertise, and negotiated in good faith to obtain a reasonable pricing structure with the Accenture.

Further, as noted above, UT Austin procurement officials recently consulted with peer procurement officials and can confirm that the process employed in the selection of Accenture is consistent with the required processes as understood and utilized by procurement officials in other higher education institutions inside and outside of UT System.

The Special Review’s conclusion of a policy violation is based, at least in part, on the previously referenced OGC Opinion. However, the OGC Opinion addresses only Texas Education Code Section 51.9335—it does not purport to interpret UT Austin policies on the use of existing contracts and sole source purchases or opinion on the possible nexus of these policies, and no such written guidance from UT System had been promulgated to UT institution procurement personnel prior to the time of the

³ As noted above, UT Austin’s standard procurement practices are depicted in the Purchasing Process Flowchart found in UT Austin Handbook of Business Procedures 7.5—Solicitation Procedures—General Information. See UT Austin Response Exhibit A; UT Austin offers this flowchart as a more accurate and complete alternative to Special Review Appendix A.
Accenture procurements. In light of information and guidance available at the time, UT Austin's decisions related to the Accenture procurement were a reasonable interpretation of internal policies and were consistent with UT Austin's common practices, as well as the practices of other State agencies and higher education institutions. Additionally, as detailed in UT Austin’s preceding response related to alleged violations of Texas Education Code Section 51.9335(b), Mr. Hegarty did in fact conduct a thorough best value analysis and considered all relevant factors from Section 51.9335(b) when choosing Accenture. Thus, though they were not required in this instance, the substantive justifications that are to be listed in the Sole Source Purchase Forms can be demonstrated here.

If UT System is now issuing definitive guidance to all UT institutions regarding the processes required when there is a potential intersection of policies related to group purchasing contracts and sole source purchases, UT Austin commits that it will work closely with UT System and other UT institutions to ensure consistency. However, UT Austin asserts that it should not be held accountable to an interpretation of internal policies that did not exist when Accenture was engaged.

In short, the record establishes that UT Austin acted in good faith and fully complied with existing internal policy and practice with respect to its selection of Accenture.

**UT AUSTIN MANAGEMENT RESPONSE TO RECOMMENDATION 1:**

Procurement and Payment Services concurs that it should continue to consider and document best value criteria for any purchase identified by law, UT policy, or other guidance as requiring such documentation or where such documentation represents accepted best practice. In addition, UT Austin commits that it will work closely with UT System and other UT institutions and modify its Handbook of Business Procedures, if necessary, to ensure that any purchase meeting the definition of “Sole Source” is handled in a manner consistent with the “Sole Source” practices of UT System and other UT institutions.

*Question 2 – Was the use of an existing Texas Department of Information Resources (DIR) group cooperative purchasing contract allowable for the types of services performed?*

**UT Austin Management Response to Conclusions:** UT Austin agrees with the conclusion reached in Question 2 of the Special Review: UT Austin’s use of the at-issue DIR contract was acceptable for the type of services performed by Accenture. For all other conclusions reached in Question 2, UT Austin disagrees and reiterates the issues it raised in response to Question 1.
UT AUSTIN MANAGEMENT RESPONSE TO RECOMMENDATION 2:

Procurement and Payment Services concurs that it should continue to consider and document best value criteria for any purchase identified by law, UT policy or other guidance as requiring such documentation or where such documentation represents accepted best practice. In addition, UT Austin commits that it will work closely with UT System and other UT institutions and modify its Handbook of Business Procedures, if necessary, to ensure that any purchase meeting the definition of “Sole Source” is handled in a manner consistent with the “Sole Source” practices of UT System and other UT institutions.

Question 3: Was the initial contract negotiated to just under $1 million in order to circumvent Board approval requirements?

UT Austin Management Response to Conclusions: UT Austin agrees with the conclusion of the Special Review that the $1 million contracting threshold was not relevant because group purchasing contracts are specifically exempted from Board of Regents’ approval. UT Austin officials were aware of this exemption at the time of the Accenture procurements. There simply was no issue with regard to whether the amount of the contract was greater or less than $1 million and there was therefore no intent to circumvent Board approval requirements, nor was there any evidence of such intent.

UT Austin also agrees that the amendment to the first purchase order was properly handled in accordance with UT Austin practice to issue a new purchase order, rather than a change order, because of the amendment occurring in a different fiscal year.

UT AUSTIN MANAGEMENT RESPONSE TO RECOMMENDATION 3:

UT Austin will ensure that all purchase and change orders related to a single Statement of Work are considered collectively to determine appropriate signature authority.

Question 4: Were there any conflicts of interest present in the hiring of a committee chairman’s firm to support the work of that committee?

UT Austin Management Response to Conclusions: UT Austin agrees with the conclusion that there was “no conflict of interest in the decision by Mr. Hegarty to hire Accenture” to assist Mr. Hegarty’s office in supporting the work of the Committee but UT Austin disagrees with the ultimate conclusion reached with regard to Question 4, namely that the hiring of Accenture “created a conflict of interest for Mr. Rohleder.”

The Special Review erroneously concludes that in his capacity as chairman of the Committee, Mr. Rohleder “had the ability to affect the amount of support needed by
the committee which could financially impact Accenture.” This is factually incorrect for several reasons.

First, the scope of work and the contracted amount for Accenture’s engagement were set at the time of the procurement. As the Special Review acknowledges, Mr. Rohleder was not involved in the hiring of Accenture and there was no conflict on Mr. Hegarty’s part in hiring Accenture. Mr. Rohleder’s actions as chairman of the Committee subsequent to the hiring of Accenture would not have had any effect on the amount paid to Accenture because both the scope of work and maximum financial compensation were already “set in stone” prior to Accenture beginning work.

Second, the Special Review appears to mistakenly assume that Accenture worked directly for and took its direction from the Committee. To support this view, the Special Report cites to one sentence in an email from Mr. Hegarty to Dr. Reyes that is quoted in a spreadsheet found in the Special Review’s Appendix I, page 2, which states “[Accenture’s] work was completely directed by the Committee and their work product was the Committee’s.” This sentence was taken completely out of context. It was part of a longer email that was one of a series of emails in which Mr. Hegarty was attempting to correct the mistaken belief that Accenture had been hired to produce, and had produced, a report. In the email in question, Mr. Hegarty was writing informally and was attempting to emphasize the fact that Accenture was acting only in a support role and that any raw material produced by Accenture was conveyed to the Committee and the final work product, the Committee report, was the work of the Committee and not Accenture.

In fact, Accenture assisted Mr. Hegarty’s staff in supporting the Committee. In requesting the reports and other data they needed, the Committee interacted with senior personnel in Mr. Hegarty’s office, rather than directly with Accenture, and those senior staff members then decided how to proceed with the request. They would determine whether the request could be filled by UT Austin staff, whether it needed to be passed on to Accenture or whether a combination of Accenture and UT Austin staff needed to work on the request.

The Special Review notes that Accenture itself considered whether Mr. Rohleder’s chairing of the Committee presented a conflict and concluded there was not “any conflict of interest because the firm was working with UT Austin and Mr. Hegarty as project sponsor, rather than with Mr. Rohleder or the Committee, and Mr. Rohleder was not a part of the Accenture engagement teams.”

UT Austin believes the conclusion reached by Accenture is correct and that the hiring of Accenture to assist the Committee did not create a conflict of interest for Mr. Rohleder because Accenture worked with UT Austin staff rather than directly for the Committee; Mr. Rohleder did not have the ability to affect the scope of work or the amount paid on the Accenture contract; and Mr. Rohleder was not involved in the hiring of Accenture.
UT AUSTIN MANAGEMENT RESPONSE TO RECOMMENDATION 4:

UT Austin will review its existing procedures to determine whether such an evaluation process would be effective. It will also ensure that when it undertakes conflict management or mitigation efforts, such efforts are documented.

cc: Mr. William Powers, President, The University of Texas at Austin
    Mr. Michael Vandervort, Director, Office of Internal Audit
    Mr. Jeffery Treichel, Associate Director, Office of Internal Audit
    Mr. Jerry Fuller, Assistant Vice President and Director of Procurement and Payment Services
    Ms. Linda Shaunessy, Business Contracts Administrator, Office of the Vice President and Chief Financial Officer
UT Austin Response Exhibit A
Purchasing Process Flowchart

- Need for product or service identified
  - Resolve to UT Market?
    - Yes, Resolve to UT Market
    - No, Proceed to Next Step
  - Purchase amount valid?
    - Yes, Proceed to Next Step
    - No, Proceed to Next Step

- Existing Contract?
  - Yes, Proceed to Next Step
  - No, Proceed to Next Step

- Only One Source?
  - Yes, Proceed to Next Step
  - No, Proceed to Next Step

- Multiple Sources
  - Yes, Obtain 3 bids and process PO3 document
  - No, Proceed to Next Step

- Awarded to Supplier
  - Yes, Proceed to Next Step
  - No, Proceed to Next Step

- UT Market Ordering Process
  - 7.3.1. eCommerce - UT Market

- Process PO4 Document & Process purchase (no existing contract)
  - 7.3.2. Use of Existing Contracts

- Process PO4 Document & Submit sole source justification
  - 7.3.3. Sole Source Purchase

- Obtain 3 bids and process PO3 document
  - 7.3.4. Informal Bid

- Process PO4 Document & Issue Invitation to Bid (IFB)
  - 7.3.5. Invitation to Bid (IFB)

- Process PO4 Document & Issue Request for Proposal
  - 7.3.6. Request for Proposal (RFP)