

1. Title

Vending Machine Contracts

2. Policy

Sec. 1 Policy Statement. It is the Policy of The University of Texas System that all contracts for vending machine services be awarded in accordance with applicable laws and rules and that those involved in the procurement process perform their responsibilities in a fiscally prudent and ethical manner.

Sec. 2 Purpose. This policy provides requirements and guidelines for entering into contracts for installation and operation of vending machines for auxiliary enterprise purposes on property owned or controlled by U. T. System institutions.

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

2.2 Operation. The Board of Regents' *Rules and Regulations*, Rule 80103, Section 2.2 authorizes the operation of vending machines at U. T. System institutions, under the following requirements:

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

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

2.4 Student Participation. Section 51.945, *Texas Education Code*, requires the Board of Regents to implement policies to provide an opportunity for students to appear before any University

officer or group deciding whether a food service provider should be selected or retained. The statute specifies that any contract between an institution and a food service contractor must require the contractor to hold periodic meetings or forums to provide students with a reasonable opportunity to discuss the contractor's performance. The Board of Regents' *Rules and Regulations*, Rule 50302, requires each U. T. System institution offering degree programs to include in its *Handbook of Operating Procedures* a policy and procedure for student participation in selecting and monitoring on-campus food service vendors. The *Rules* specify minimum requirements for the institutional policies applicable to contracts for food and beverage services located in or in conjunction with student unions, residence halls, or campus-wide cafeterias, and contracts for vending machine food and beverage services.

Sec. 3 Standard U. T. System Vending Machine Agreement.

- 3.1 Development of Agreement. The recommended Standard Agreement was developed by the Office of General Counsel (OGC) for use by U. T. System institutions for vending machine arrangements entered into after the effective date of this policy.

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

- 3.2 Inclusion of Agreement in Solicitation Document. Except as provided in Section 3.1, U. T. System institutions issuing a solicitation for proposals for vending machine services should include a copy of the Standard Agreement in the solicitation document, with a statement that the selected contractor (if any) will be expected to sign the Standard Agreement and comply with all applicable statutory and Regental requirements.

Sec. 4 Solicitation of Vending Contractors.

- 4.1 Selection Process. U. T. System institutions should use either an appropriate competitive selection process or other method that will achieve best value in selecting a contractor or contractors to provide vending services.

In developing the desired qualifications and selecting a contractor, a U. T. System institution will comply with Board of Regents' *Rules and Regulations*, Rule 50302 and its institutional policy concerning student participation in selection of food service providers.

U. T. System institutions should solicit and obtain proposals from prospective contractors far enough in advance of the projected start date for the contractor's operations to allow sufficient time for (1) a review of the proposed vending machine agreement by OGC, as necessary under 5.1 of this Policy, (2) negotiation of the vending machine agreement, and (3) scheduling the vending machine agreement for approval by the Board of Regents at a regular Board Meeting.

- 4.2 Term of Agreement. An institution's vending machine agreement should normally have a term of either two years or four years, with the expiration date of August 31, the end of the State fiscal year or biennium. The Standard Agreement form provides that the term may be extended for an additional two years beyond the original term.
- 4.3 Contractor Submission Requirements. Institutional officers should note the requirements of *Texas Government Code*, Sections 2252.062, 2252.063, and 2252.064, concerning the contractor's submittal of financial statements, posting of a performance bond, and reporting of sales information. Those statutory requirements are specified in the Standard Agreement, and should be stated in an institution's solicitation specifications.

The U. T. System institution should request that each prospective contractor submit its financial statement as part of the prospective contractor's proposal. Note that the Standard Agreement requires the contractor to pay a royalty to the U. T. System institution based on a percentage of gross receipts before exclusion of sales tax. Institutions should ensure that this requirement is clearly indicated in the solicitation specifications.

Sec. 5 Contract Processing Procedures.

- 5.1 Legal Review. U. T. System institutions entering into vending machine agreements using the Standard Agreement, with no modifications except completing the blanks, need not obtain review as to legal form from OGC prior to Board approval. Contracts that deviate in any way from the Standard Agreement or that contain addenda must be reviewed and approved as to legal matters by OGC prior to Board approval only if approval is required under UTS145, *Processing of Contracts*.

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

- 5.2 Board Approval. U. T. System institutions should submit vending machine agreements to the Board of Regents' Office for approval to comply with the requirements of *Texas Government Code*, Section 2203.005(a).

After the Board of Regents' approval and execution by the contractor and the U. T. System institution's president or the president's delegate, it is the responsibility of the U. T. System institution to forward an executed copy of the agreement to the Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts, indicating that the agreement was approved by the Board of Regents and including a description of the locations of the vending machines, as required by Section 2203.005(b), *Texas Government Code*.

- 5.3 Renewing Contracts. Renewals by U. T. System institutions of vending machine agreements that (1) do not modify in any way the form of the original contract and (2) are documented by using the standard U. T. System [Extension and Amendment of Vending Machine Services Agreement](#) without modifying the substance of that standard form, do not require review or approval by OGC.

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

Sec. 6 Use of Funds Derived from Vending Machines Operations. All revenue earned from auxiliary enterprises at U. T. System institutions should be retained and deposited (or invested) by each institution under Sections 51.003 and 51.0031, *Texas Education Code*.

3. Definitions

Auxiliary Enterprise - a business activity that is conducted at a State agency, provides a service to the agency, and is not paid for with appropriated money.

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

4. Relevant Federal and State Statutes

[Texas Government Code Section 2203.005, Use of State Property, Vending Machines Authorized](#)

[Texas Government Code Chapter 2252, Subchapter C, Private Auxiliary Enterprise Providing Services to State Agencies or Institutions of Higher Education](#)

[Texas Government Code, Chapters 2252.062 - .064, Contracts with Governmental Entities, Financial Statement](#)

[Texas Education Code Chapters 51.002 - .003, Provisions Generally Applicable to Higher Education, Funds Subject to Control](#)

[Texas Education Code Chapters 51.008 - .009, Provisions Generally Applicable to Higher Education, Certain Receipts to be Deposited in State Treasury](#)

[Texas Education Code, Chapter 51.0031, Provisions Generally Applicable to Higher Education, Deposits and Investments](#)

[Texas Education Code Section 51.945, Provisions Generally Applicable to Higher Education, Student Participation in Selection of Food Service Contracts](#)

[Texas Education Code Section 65.31, Administration of The University of Texas System, General Powers and Duties](#)

5. Relevant System Policies, Procedures, and Forms

[Board of Regents' Rules and Regulations, Rule 80103, Section 2.2, Solicitation](#)

[Board of Regents' Rules and Regulations, Rule 50302, Student Participation in Selection and Monitoring of Food Service Contracts](#)

[UTS145, Processing of Contracts](#)

[UTS150, Access by Persons with Disabilities to Electronic and Information Resources Procured or Developed by The University of Texas System Administration and The University of Texas System Institutions](#)

[Standard U. T. System Vending Machine Agreement](#)

[Legal Opinion regarding Use of Funds Derived from Vending Machines Operations](#)

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

6. System Administration Office(s) Responsible for Policy

The University of Texas System Office of General Counsel

7. Dates Approved or Amended

February 14, 2004

June 7, 2010

May 30, 2012