

**UNIVERSITY OF HOUSTON SYSTEM
ADMINISTRATIVE MEMORANDUM**

SECTION: Fiscal Affairs
AREA: General
SUBJECT: Contract Administration

NUMBER: 03.A.05

1. PURPOSE

This document sets forth guidelines for the approval and awarding of contracts for services, including but not limited to contractual documents, terms and conditions, leases, letters of agreement, letters of intent, memoranda of understanding, and interagency or intrasystem agreements. This document does not apply to procurement of supplies, goods or equipment that is normally provided by component university purchasing departments.

2. POLICY

2.1. No person has the authority to bind the System or any of its component universities contractually except in accordance with this document. The Board must approve certain contracts in accordance with Board Policy 47.01 and Board Bylaws. The Board delegates to the Chancellor the authority to negotiate, execute, and administer all other contracts or delegate said authority.

2.2. Each component university shall develop procedures to implement this policy.

2.3. All contracts shall have all applicable administrative and legal reviews completed and be signed by all parties prior to commencement of any duties/actions by the parties as stipulated in the contract. Board approval must be obtained in an open meeting for certain contracts (see section 4 of this document).

2.4. Contracts are legally binding on the System and/or its component universities only upon execution of the contract by the System and/or component university official with delegated contractual signatory authority.

2.5. Amendments, changes, extensions, or renewals to the original contract using non- standard agreement forms (agreements that have not been approved by the Office of General Counsel denoted by OGC-S-_____) must be processed in the same manner as the original contract. A copy of the original contract must be included with the amendment, change, extension, or renewal at the time the documents are processed for approval. In instances where the original contract was approved by the Board and the amount under this section is not greater than section 4.1.f, the Chancellor is authorized to execute the amendment, change, extension or renewal without further action by the Board. The Chancellor shall provide the Board Chairman a report of any such actions at the next regularly scheduled Board meeting following the action.

3. GENERAL PROVISIONS

3.1. Contract Management:

- a. Each component university shall retain at least one executed copy of every contract into which it enters. These copies may be retained by the unit that originated the contract or by a central repository as specified by the component university. Although original and signed contracts are required by this document, certain limited situations exist, i.e., contracting parties located overseas, etc., that may require facsimile copies of the contract and contract signatures so that contract performance may begin. In these rare and limited situations, original signed agreements (not facsimiles) must be forwarded to the originating unit within 10 business days from the date the contract facsimile is received and processed by the originating unit and/or applicable contracting office. Notwithstanding the above, all personnel responsible for contracts within the originating units should anticipate the time needed to receive fully signed originals and plan accordingly so that contract facsimiles are the rare exception.

- b. Each component university shall develop and maintain a contract management system to ensure that the terms and conditions of each contract are performed in an appropriate manner. The individual(s) responsible for ensuring that the terms and conditions of the contract are met shall sign an appropriate statement acknowledging this important responsibility. Such documentation, to include an acknowledgement statement and the person's name, title (if appropriate or required), signature and date of signature shall be maintained with the records associated with each contract.

3.2. Audit Clause: All revenue generating contracts and all contracts where payment by a component university is contingent upon records processed and maintained by another party to the contract shall contain an audit clause. This clause shall give the System and/or its component universities the right to access and audit any and all documents pertaining to the contractual relationship held by any party to the contract.

4. CONTRACTS REQUIRING BOARD APPROVAL

4.1. Board approval must be obtained in an open meeting for the following contracts (refer to Board Policy 47.01.01):

- a. Contracts for the purchase, gift or acquisition of real property;
- b. Contracts for the sale of real property or conveyance of any rights in real property, if the value of the property is more than \$300,000;
- c. Real estate leases, lease renewals and extensions, whether as lessor or lessee, if the obligation of the lease is equal to or greater than the submittal threshold requiring Texas Higher Educations Coordinating Board (THECB) action;
- d. Banking and investment agreements;
- e. Any single procurement contract for any equipment, goods and services, not specified above, that is expected to exceed \$1,000,000 in a fiscal year;
- f. Any extension, modification, or renewal of an existing contract that is expected to exceed \$1,000,000 in a fiscal year;
- g. Any series of contracts that are initiated in the same department for the same goods or services with the same party within a fiscal year, that if combined in one contract, would require Board approval or reporting; and
- h. Any other contract the Board might designate as having significant importance to require Board approval.

4.2. The Board holds four regularly scheduled meetings per year. The current meetings schedule can be accessed at <http://www.uhsa.uh.edu/BRMTGS.HTM>. With the exception of Division of Research and Intellectual Property contracts, in order to submit a contract for Board approval, each component must send the contract with a completed Board of Regents' Agenda Cover Sheet (Exhibit A) to the Office of the Vice Chancellor for Administration and Finance.

5. PROCEDURES FOR CONTRACTS REQUIRING BOARD APPROVAL

5.1. The Chancellor shall execute all contracts approved by the Board.

5.2. All delegations of contracting authority must be made in writing, approved by the Chancellor, and filed with the Board. No employee, officer or agent of the System shall have the authority to execute contracts unless expressly delegated such authority pursuant to this document.

5.3. All contracts must be reviewed and approved by the Office of General Counsel before execution.

5.4. All expenditures for professional services or consulting contracts must be coded to the accounts listed in Exhibit B or associated accounts which may be approved in the future.

5.5. In the event of a bona fide emergency, as declared by the Chairman of the Board upon consultation with the Chancellor, the Chancellor may execute a contract that would otherwise require Board approval. The Chancellor must then submit the contract to the Board for ratification at its next regular meeting.

6. DELEGATION OF AUTHORITY FOR CONTRACTS NOT REQUIRING BOARD APPROVAL

6.1. Each President or President's designee may negotiate, execute, and administer all contracts and related legal documents that do not require Board approval, except as otherwise noted in this section. No President or President's designee shall have authority to execute contracts unless expressly delegated such authority pursuant to this policy.

6.2. All contracts must be reviewed and approved as to form by the Office of General Counsel before execution. The Office of General Counsel may approve standard contracts for use without additional review and approval by the Office of General Counsel.

6.3. Each President or President's designee, delegated the authority described in Section 6.1., may execute the following contracts when the total budget is not expected to exceed \$300,000:

- a. Contracts for new construction;
- b. Contracts for repair and rehabilitation;
- c. Contracts for furnishings and equipment related to new construction or repair and rehabilitation;
- d. Contracts for architects, engineers and general contractors supporting projects noted in this Section a.-c. above; or
- e. Contracts for professional services firms relating to testing, environmental issues and HVAC systems supporting projects noted in this Section a.-c. above.

6.4. Contracts greater than \$300,000 require the approval of the Chancellor; Vice Chancellor for Administration and Finance; component university President; component university Chief Financial Officer; and the Executive Director, FP&C.

6.5. Contracts greater than \$1 million must be approved by the Chancellor, following approval by the Board.

6.6. The Vice Chancellor for Administration and Finance shall present for approval to the Board projects for new construction or major repair and rehabilitation of buildings and facilities when the total cost is equal to or greater than the submittal threshold requiring Texas Higher Education Coordinating Board (THECB) action. In such cases, the Board will be presented with the project, budget, schedule and, if applicable, a program and schematic design. Once a project is approved, the Chancellor is authorized to negotiate and execute all appropriate contracts and easements required to accomplish the project, provided it is within the approved scope and budget of the project.

6.7. When total project costs of a new construction and/or renovation project are \$300,000 or less, each component university shall ensure that all plans, specifications and bidding documents are reviewed for compliance with applicable state laws prior to being released for bidding. When total project costs are greater than \$300,000, the System FP&C Department shall manage the projects. This includes the review of all plans, specifications and bidding documents for compliance with applicable state laws prior to being released for bidding.

6.8. The following contracts must be routed through the Executive Director for Contracts Administration/Associate General Counsel for Contract Compliance for the Chancellor's approval and execution. Delegated authority is not given to the component university Presidents in this regard.

- a. Contracts for the purchase, gift or acquisition of real property;
- b. Contracts for the sale of real property or conveyance of any rights in real property; and
- c. Contracts for real estate leases, lease renewals and extensions, as lessor or lessee.

6.9. All expenditures for professional services or consulting contracts must be coded to the accounts listed in Exhibit B or associated accounts which may be approved in the future.

6.10. Each President has, or may delegate, the authority to negotiate, execute, and administer all contracts and grants pertaining to sponsored activities, including externally-funded research contracts, cooperative agreements, joint research projects and similar agreements. The presidents must report all such contracts to the Board.

7. SPECIAL CONTRACTING REQUIREMENTS

7.1. Competitive Procurement Requirements:

- a. The System and its component universities may acquire goods or services by the method that provides the best value to the institution, including
 - Competitive bidding;
 - Competitive sealed proposals;
 - A catalog purchase;
 - A group purchasing program; or
 - An open market contract.
- b. The following criteria shall be considered in determining best value:
 - The purchase price;
 - The reputation of the vendor and of the vendor's goods or service,;
 - The quality of the vendor's goods or services;
 - The extent to which the goods or services meet the institution's needs;
 - The vendor's past relationship with the institution;
 - 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 for persons with disabilities;
 - The long-term cost to the institution of acquiring the vendor's goods or services;
 - Any other relevant factor that a private business entity would consider in selecting a vendor; and

- 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.

7.2. Lease of Space by a Component Unit: The Chancellor must approve all leases, regardless of the source of funding.

- a. State Funds: State law requires that state agencies afford the Texas Building and Procurement Commission (formerly the General Services Commission) the opportunity to obtain leased space, if the lease will be paid from state funds. An originating unit desiring to lease space with state funds should anticipate working with UHS Facilities Planning and Construction Department and the UHS Contracts Administration Office; who shall coordinate the required activities with the Texas Building and Procurement Commission (TBPC) leasing department, after obtaining approval of the Chancellor as noted in this section.
- b. Local Funds: The TBPC has delegated authority to the System to execute lease agreements for which no state funds will be expended. An originating unit desiring to lease space under System delegated authority must work with the System FP&C Department and the System Contracts Administration Office for assistance in ensuring compliance with all legal and administrative requirements.

7.3. Consulting or Professional Services Contracts: See Texas Government Code, Chapter 2254.

- a. Consulting Services: There are numerous state requirements governing filing of notices to solicit and award consulting contracts and to process renewals, amendments and extensions. An originating unit must work with the appropriate contracting office and/or the system Contracts Administration Office and allow sufficient time to complete publication and notice requirements. Failure to comply with these requirements will render the contracts as void.
- b. Professional Services: State law requires that selection and award of contracts for professional services be based on (a) the professional's demonstrated competence, (b) the professional's qualifications for the type of services to be performed, and (c) a fair and reasonable price, rather than on the basis of competitive bids.
- c. State Agency Reporting: Each component is required by the Legislative Budget Board (LBB) by directive letter dated December 2001; and by law to provide written notice to the LBB not later than the 10th day after the date on which the component enters into contracts, if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$14,000, including but not limited to: (a) contracts for construction projects (Government Code §2166.2551); (b) contracts for professional services (Government Code §2254.006), other than contracts for physician or optometric services; and (c) contracts for consulting services (Government Code 2254.0301).
- d. Yearly Report to the Board of Regents: The Associate Vice Chancellor for Administration, in consultation with the Associate Vice Chancellor for Finance, shall compile a report of all contracts for consulting or professional services, where total compensation from Systemwide sources to a single entity exceeded \$250,000 during the fiscal year, for submission by the Vice Chancellor for Administration and Finance to the Board of Regents at the first meeting of the next subsequent fiscal year (refer to Board Policy 47.01.4).

7.4. Revenue-Generating Contracts: All contractual transactions for which revenues will be generated for the component university and/or any unit of the component university must comply with requirements set forth in this document, including review by the Office of Contracts Administration. Associate Vice Chancellor for Finance and/or Associate Vice Chancellor for Administration (or designee at each component university), processing by the applicable contracting office, and execution by the appropriate component university official. Component university units are authorized to arrange for contractual opportunities that generate revenue, if the transaction is directly related to furthering the component university's educational, research, extension, and public service or campus support functions.

7.5. Contracts for Legal Services: Originating units cannot initiate contracts for legal services. All contracts for

legal services are initiated only by the Office of General Counsel and only after approval has been obtained from the Office of the Attorney General for the State of Texas (refer to SAM 01.D.02, Employment of Outside Legal Counsel).

7.6. Contracts for Major Information Systems: The component university is required by law (Government Code §2054.008) to provide written notice to the LBB, not later than the 10th day after the date on which the component university enters into a contract for a major information system. A “major information system” includes:

- a. One or more computers that, in the aggregate, cost more than \$100,000;
- b. A service related to computers, including computer software, that costs more than \$100,000; and
- c. A telecommunications apparatus or device that serves as a voice, data, or video communications network for transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on the network and costs more than \$100,000.

7.7. Contracts Awarded to Non-Resident Bidders: During January and July of each year, each component must file a report with the LBB that identifies each non-resident bidder (one who does not maintain a permanently staffed full-time office in Texas and as defined by Texas Government Code, Title 10, Subtitle D, Section 2152.064) to whom the component university awarded a contract that has a value of \$25,000 or more for the purchase of supplies, materials, services or equipment during the six calendar months preceding the month in which the report is filed, if the component university awarded such a contract during the reporting period. For contracts with a value of \$250,000 or more, the component university must include an explanation for the need to use a non-resident bidder.

7.8. Texas Electronic Marketplace: The System and its component universities may post notification on the Texas Electronic Marketplace of procurements for which the agency expects to pay more than \$25,000, regardless of the funding source. The Texas Electronic Marketplace can be accessed at <http://www.texas-one.org/home.htm>. A unit that desires to post notification should contact the appropriate contracting office and/or the System Contracts Administration Office for assistance with Texas Electronic Marketplace posting requirements.

7.9. Vendor Identification: The University shall report to the Texas Office of the Comptroller each vendor who is indebted to the State or has a tax delinquency. The report must contain information and be submitted in a manner and frequency required by the Texas Office of the Comptroller. The contracting unit must obtain the needed vendor information by accessing the Texas Office of the Comptroller at <http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>; or by contacting the appropriate contracting office and/or the System Contracts Administration Office.

7.10. Agreements With Other State and Local Government Entities: The System and component universities may contract with another state agency for the provision of necessary and authorized services and resources by Interagency Agreement subject to the requirements of this policy. Assistance may be requested from the appropriate contracting office and/or the System Contracts Administration Office.

7.11. Contracting With Historically Underutilized Businesses (HUBs): The System and component universities will comply fully with the letter and spirit of Chapter 2161 of the Texas Government Code (refer to Board Policy 47.04 and System Administrative Memorandum 03.B.02).

8. REVIEW AND RESPONSIBILITIES

Responsible Party: Associate Vice Chancellor for Administration

Review: Every three years on or before May 1

9. APPROVAL

Approved: Arthur K. Smith

Date: November 5, 2002

10. INDEXING TERMS

Contract
Contract administration
Consulting services
Delegated authority
Professional services
Service contract

Exhibit A - Board of Regents Cover Sheet

Exhibit B - Professional/Consulting Services Account Numbers