



Handbook of Operating Procedures

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CONSULTING SERVICES CONTRACTS POLICY (THE “POLICY”)

A. Purpose

The purpose of this policy is to provide operational guidelines for The University of Texas-Pan American’s consulting services contracts in order to ensure compliance with Texas law and to ensure such consulting contracts are processed in a uniform manner.

B. Authority

[Texas Government Code, Chapter 2254, Subchapter B](#), governs consulting services contracts entered into by Texas state agencies. The University of Texas System [Business Procedure Memoranda \(BPM\) Nos. 43 and 48](#) provide additional guidelines on UT System requirements regarding contracts for consulting services and contract processing.

This Policy does not apply to any consulting services that are exempt from [Texas Government Code, Chapter 2254, Subchapter B](#), as more specifically identified in [Texas Government Code, Section 2254.024](#). Such exempt consulting services include those provided by:

1. practitioners of Professional Services (as defined below);
2. private legal counsel;
3. investment counselors;
4. actuaries; or
5. medical or dental services providers.

C. Definitions

1. "Consulting service" means the service of studying or advising a state agency under a contract that does not involve the traditional employer/employee relationship. ([Texas Government Code, Section 2254.021\(1\)](#))
2. "Consultant" means a person that provides or proposes to provide a consulting service. The term includes a political subdivision but does not include the federal government, a state agency, or a state governmental entity. ([Texas Government Code, Section 2254.021\(3\)](#))
3. "Major Consulting Services Contract" means a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$25,000.



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[\(Texas Government Code, Section 2254.021\(2\)\)](#)

4. "State governmental entity" means any state department, commission, board, office, institution, facility, or other agency the jurisdiction of which is not limited to a geographical portion of the state. The term includes a university system and an institution of higher education other than a public junior college as defined in the [Texas Education Code, Section 61.003](#). The term does not include a political subdivision. [\(Texas Government Code, Section 2254.021 \(6\)\)](#)
5. "Professional Services" are defined in [Texas Government Code, Section 2254.002 \(2\)](#), and in the UTPA [Handbook of Operating Procedures Section 8.2.6.B](#).
6. An "Unforeseen Emergency" means a situation that suddenly and unexpectedly causes a state agency to need consulting services ([Texas Government Code, Section 2254.025](#)). The term includes, but is not limited to, the issuance of a court order, an actual or imminent natural disaster, and new state or federal legislation. An emergency is *not* unforeseen if a state agency was negligent in foreseeing the occurrence of the emergency.
7. "State agency" means:
 - a. a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute;
 - b. the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council; or
 - c. a university system or an institution of higher education as defined by [Texas Education Code, Section 61.003](#), except a public junior college.

[\(Texas Government Code, Sections 2151.002, 2254.021\(5\)\)](#)

8. The “Director of Materials Management” or the “Director” means the UTPA Director of Materials Management or his/her designee.
9. A consulting services contract that is identified as “void” means that
 - a. the Texas Comptroller of Public Accounts may not draw a warrant or transmit money to satisfy an obligation under that contract; and,
 - b. UTPA may not make any payment under that contract with state or federal



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money or money held in or outside the state treasury.

Furthermore, this definition of a “void” consulting services contract applies to all consulting services contracts, including renewals, amendments, and extensions of consulting services contracts. ([Texas Government Code, Sections 2254.034\(c\) and 2254.034\(d\)](#))

10. The “Policy” means this Section 8.2.5 of the UTPA *Handbook of Operating Procedures*.
11. “GOBP” means the Governor’s Budget and Planning Office.
12. The “LBB” means the Legislative Budget Board.

D. Funding

All proposed contracts for consulting services must comply with the requirements set forth in this Policy and be submitted through the Materials Management Contracts Office for handling regardless of their method of finance. This includes those consulting contracts that are funded by appropriated funds, non-appropriated funds, local funds, institutional funds, educational and general funds, federal funds, and revenue generated by statutory duties of the agency. These requirements are to ensure that all consulting contracts are in compliance with all applicable laws and with UTPA policies and procedures.

E. Consulting Contract Requirements

1. UTPA may contract with a consultant only if:
 - a. there is a substantial need for the consulting services; and
 - b. UTPA cannot adequately perform the consulting services with its own personnel or obtain the consulting services through a contract with a state governmental entity.

([Texas Government Code, Section 2254.026](#))

2. In selecting a consultant, UTPA shall:
 - a. base its choice on demonstrated competence, knowledge, and qualifications, and on the reasonableness of the proposed fee for the services; and,



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- b. if other considerations are equal, give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

(Texas Government Code, Section 2254.027)

3. UTPA may not (1) accept a person's offer or proposal to provide consulting services to UTPA or (2) award a consulting services contract that includes proposed financial participation by a person if:
 - a. that person received compensation from UTPA to participate in the preparation of the specifications or request for proposals on which the offer, proposal or contract is based (see [Texas Government Code, Section 2155.004](#)); or,
 - b. that person participated to any extent in preparing the specifications or request for proposals on which the offer, proposal, or contract is based and thereby obtained a competitive advantage over other consultants.
4. Any UTPA officer or employee that
 - a. has any financial interest in a private consultant that submits an offer to provide consulting services to UTPA, UT System, or any other UT component institution; or,
 - b. is related to an individual within the second degree by consanguinity or affinity (as determined under [Chapter 573 of the Texas Government Code](#)) who has a financial interest in a private consultant that submits an offer to provide consulting services to UTPA, UT System, or any other UT component institution

shall report such financial interest to the President and to the Director no later than the 10th day after the date on which the private consultant submits such an offer to provide consulting services to UTPA, UT System, or any other UT component institution. For the purposes of this Subsection E.4, an “offer to provide consulting services” includes offers to perform consulting services under a new consulting services contract or under a renewal, amendment, or extension of an existing consulting services contract. ([Texas Government Code, Section 2254.032](#))



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5. Any individual who offers to provide consulting services to UTPA and who has been employed by UTPA or by another state agency at any time during the two years preceding the making of the offer shall disclose in the offer:
 - a. the nature of the previous employment with UTPA or the other agency;
 - b. the date the employment was terminated; and,
 - c. the annual rate of compensation for the employment at the time of its termination.

(Texas Government Code, Section 2254.033(a)) Any consulting services contract that UTPA enters into with a consultant that does not comply with Subsection E. 5. of this Policy is void. *(Texas Government Code, Section 2254.034(b))*

6. UTPA may not enter into a consulting services contract with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by UTPA, if UTPA will use appropriated money to make payments under that consulting services contract *(Texas Government Code, Section 2252.901(a))*. For the purpose of this prohibition, a "retired agency employee" means a person:
 - a. whose last state service before retirement was for UTPA; and,
 - b. who is a retiree of:
 - i. the employee class of membership of the Employees Retirement System of Texas; or,
 - ii. the Teacher Retirement System of Texas, the majority of whose service was credited in that system in a position with a state agency.

(Texas Government Code, Section 2252.901(d) (2))

F. Procedure for Consulting Contracts

1. Whenever a UTPA department wishes to procure or enter into a proposed contract, UTPA must determine whether UTPA will be obtaining consulting services under that contract. For assistance, please consult Section 4 of [BPM 43](#). The Director of Materials Management shall make the final determination as to



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whether a UTPA procurement or contract is for consulting services.

2. The UTPA departments requiring consulting services must submit a properly approved “Request for Consulting Services Contract” with all necessary documentation (collectively, a “Request”) to the Materials Management Contracts Office, regardless of the dollar amount of the proposed consulting services contract. A Request form is attached as Attachment A to this Policy. The UTPA department must ensure that each Request that it submits includes the following information:
 - a. The funding source to be used to pay for such consulting services.
 - b. A justification of why the UTPA department needs such consulting services.
 - c. Documentation of how the final product(s) that the Consultant will deliver to UTPA under the proposed consulting services contract will be incorporated into UTPA’s operations or into future legislative appropriations requests.
 - d. A statement indicating why the UTPA department has determined that such consulting services cannot be performed by UTPA’s own personnel or obtained through a contract with another UT component or other state governmental entity. Such a statement shall identify all of the UTPA individuals and state governmental entities that the UTPA department actually contacted in the course of making such a determination.
 - e. The projected start and end dates for such a consulting services contract.
 - f. The projected scope of services and deliverables that the UTPA department expects to obtain under the proposed consulting services contract.
 - g. The evaluation and selection criteria that the UTPA department shall use to procure such consulting services.
 - h. The name of the UTPA project coordinator who will manage the consulting services contract.
 - i. All anticipated UTPA responsibilities under the consulting services contract
 - j. A list of prospective consultants from whom UTPA might obtain such consulting services.



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- k. Notice of whether the UTPA department considers this a Major Consulting Services Contract and, if so, a draft of a written finding of fact setting forth why these consulting services are necessary and an explanation of that finding of fact, which shall be suitable for forwarding to the President, the Governor’s Budget and Planning Office, and the Legislative Budget Board.
- l. Whether the UTPA department asserts that an Unforeseen Emergency exists with regard to this consulting services contract.

The requesting UTPA department is responsible for allowing the Materials Management Contracts Office sufficient time to process a Request and for providing complete and accurate information to the Materials Management Contracts Office in accordance with this procedure.

3. The Director of Materials Management will review and approve each Request prior to initiating the appropriate process to procure the consulting services contract identified in that Request. A UTPA department may not proceed to execute a proposed consulting services contract and/or obtain consulting services under that proposed consulting services contract until the Director has approved in writing the Request for that proposed consulting services contract.
4. Unforeseen Emergency – Limited Waiver
 - a. If a UTPA department’s Request asserts that an Unforeseen Emergency exists regarding the requested consulting services contract, the Director shall determine if such an Unforeseen Emergency requires UTPA to seek from the Governor a limited waiver from the provisions of [Texas Government Code, Chapter 2254, Subchapter B](#) for the consulting services contract identified in that Request, as authorized by [Texas Government Code, Section 2254.025](#).
 - b. In the event that the Director determines that UTPA requires such a limited waiver, the Director shall submit to the Governor all requests and information necessary to obtain such a limited waiver, as more specifically set forth in [Texas Government Code, Section 2254.025](#). If necessary, the Director will submit to the Governor’s Budget and Planning Office (the “GOBP”) a copy of the UTPA department’s Request for Consulting Services Contract as well as a cover letter that fully describes the emergency and justification for such a limited waiver. The requesting UTPA department will provide the Director with all information and



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support needed to submit such requests and information to the Governor.

- c. As soon as possible after the Governor grants UTPA such a limited waiver, the Director shall ensure that UTPA complies with [Texas Government Code, Chapter 2254, Subchapter B](#) with regards to the consulting services contract for which the limited waiver was obtained, to the extent that the requirements of that Subchapter B are not superfluous or ineffective because of the waiver. Specifically, the Director shall ensure that all information concerning that consulting services contract that UTPA files with the Secretary of State for publication in the *Texas Register* includes a detailed description of the emergency on which the request for waiver for that consulting services contract was predicated. (See Subsections G.1.e.vii and G.2.a of this Policy.)
 - d. If a UTPA department’s Request does not assert that an Unforeseen Emergency exists with regard to the requested consulting services contract, then the Director shall proceed to process that Request as more specifically set forth in Subsections F.5, F.6, and F.7 of this Policy.
5. After receiving a Request for a new consulting services contract, the Director will determine whether the requested new contract is a Major Consulting Services Contract. If the requested new contract is a Major Consulting Services Contract, then, the Director shall be obligated to perform all of the activities set forth in Subsection G of this Policy in addition to those activities set forth in this Subsection F. However, if the requested new contract is not a Major Consulting Services Contract, then the Director and the requesting UTPA department shall only be obligated to perform all of the activities set forth in this Subsection F. Please note that this Subsection F. 5. only applies to new consulting services contracts, and does not apply to renewals of consulting services contracts (which are instead addressed in Subsection H.)
 6. The Director will review the Request and, if the Director determines that the Request is accurate, the Director will approve the Request so long as the Director has completed all actions that this Policy specifies must be completed prior to such approval. Following Request approval, the Director will ensure that all applicable laws, regulations, and policies are complied with in the procurement of the consulting services identified in that Request requested by UTPA, including [Texas Government Code Chapter 2254, Subchapter B](#), The University of Texas System Board of Regents’ [Rules and Regulations](#), BPM Nos. [43](#) and [48](#), and this Policy.



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7. Within 10 days after UTPA enters into a consulting services contract, UTPA shall provide the Legislative Budget Board (the “LBB”) with written notice of that consulting services contract if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$14,000. The notice must be on a form prescribed by the LBB. ([Texas Government Code, Section 2254.0301](#)) Any consulting services contract that UTPA enters into in violation of this Subsection F.7 of this Policy is void under Texas law. ([Texas Government Code, Section 2254.034\(a\)](#))

G. Additional Procedures for Major Consulting Services Contracts

1. Prior to Request Approval. Before approving a Request for a Major Consulting Services Contract, the Director must perform the following tasks in the order set forth below:
 - a. Texas law requires state agencies to obtain a finding of fact that the consulting services set forth in a Major Consulting Services Contract are necessary before that state agency can enter into that Major Consulting Services Contract (a “Finding of Fact”). ([Texas Government Code, Sections 2254.028\(a\)\(3\) and 2254.028\(c\)](#)) If a state agency does not obtain such a Finding of Fact before entering into a Major Consulting Services Contract, then that Major Consulting Services Contract is void under Texas law. ([Texas Government Code, Section 2254.028\(b\)](#))
 - b. The Director must determine how UTPA should obtain such a Finding of Fact for the Major Consulting Services Contract. Under [Texas Government Code, Sections 2254.028\(a\)\(3\) and 2254.028\(c\)](#), there are two alternatives:
 - i. If the Director decides that the President should make the Finding of Fact, then the Director must obtain such a written Finding of Fact signed by the President.
 - ii. If the Director decides that the GOBP should make the Finding of Fact, then the Director must create a written draft of that proposed Finding of Fact.
 - c. Next, the Director must obtain approval of the Major Consulting Services Contract by the UT System Executive Vice Chancellor for Academic Affairs (the “EVC”) by submitting a Major Consulting Services Contract Approval Request Form to the EVC as required by [Section 3.2.2 of BPM](#)



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43. The Director shall submit the Major Consulting Services Contract Approval Request Form to the EVC via the Office of the President or the Vice President for Business Affairs.

- i. If the Director has obtained the Finding of Fact for the Major Consulting Services Contract from the President, then the Director must attach such a Finding of Fact to the Major Consulting Services Contract Approval Request Form that is submitted to the EVC.
 - ii. If the Director has decided that the Finding of Fact for the Major Consulting Services Contract should be obtained from the GOBP, then the Director must attach the written draft of the proposed Finding of Fact to the Major Consulting Services Contract Approval Request Form that is submitted to the EVC.
- d. After receiving approval of the Major Consulting Services Contract by the EVC, the Director must notify the LBB and the GOBP of UTPA’s intent to contract with a consultant and supply the LBB and the GOBP with information demonstrating that UTPA has complied or will comply with Subsections E.1 and E.2 of this Policy, as set forth above ([Texas Government Code, Sections 2254.028\(a\) \(1\) and 2254.028\(a\) \(2\)](#)). Additionally, if the Director has decided to obtain the Finding of Fact for the Major Consulting Services Contract from the GOBP, then the Director shall additionally submit the written draft of that Finding of Fact to the GOBP for approval.

Note: For scheduling purposes, it is recommended that the UTPA department requesting a Major Consulting Services Contract anticipate that it will require at least ten (10) working days to complete the requirements set forth in the above Subsections a, b, c and d of this Subsection G. 1.

- e. After the Director has notified the GOBP and the LBB of the Major Consulting Services Contract and obtained a written Finding of Fact for the Major Consulting Services Contract from the GOBP or from the President, the Director shall create a written notice for publication in the *Texas Register* as required by [Texas Government Code, Section 2254.029](#). The notice created by the Director shall meet the following requirements:



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- i. The notice shall contain an invitation for consultants to provide UTPA with offers to perform the Major Consulting Services Contract. ([Texas Government Code, Section 2254.029\(a\) \(1\)](#))
- ii. The notice shall identify the individual at UTPA who should be contacted by a consultant who intends to make such an offer. ([Texas Government Code, Section 2254.029\(a\) \(2\)](#))
- iii. The notice shall identify the closing date for the receipt of offers. ([Texas Government Code, Section 2254.029\(a\) \(3\)](#))
- iv. The notice shall identify the procedure by which UTPA will award the Major Consulting Services Contract. ([Texas Government Code, Section 2254.029\(a\) \(4\)](#))
- v. If the consulting services sought by UTPA under the Major Consulting Services Contract relate to services previously provided by a consultant, the notice should disclose that fact. ([Texas Government Code, Section 2254.029\(b\)](#))
- vi. If UTPA intends to award the Major Consulting Services Contract to a consultant that previously provided the services, unless a better offer is received, the notice should disclose that fact. ([Texas Government Code, Section 2254.029\(b\)](#))
- vii. In the event that UTPA has obtained a limited waiver from the provisions of [Texas Government Code Chapter 2254, Subchapter B](#) for this consulting services contract due to the existence of an Unforeseen Emergency (see Subsection F.4 of this Policy), then this notice shall include a detailed description of the emergency on which the request for such a waiver was predicated. ([Texas Government Code, Section 2254.025\(c\)](#))
- viii. In the event that the Director has obtained the Finding of Fact from the President, such a Finding of Fact and an explanation of that finding should be included in the notice. ([Texas Government Code, Section 2254.028\(c\)](#))

Once such a written notice is completed, the Director shall submit that notice to the Office of the Board of Regents of The University of Texas System (the “Regents’ Office”) who will, in turn, file that written notice



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with the Texas Secretary of State for publication in the *Texas Register* ([Section 3.1.3 of BPM 43](#)). The Regents’ Office will provide the Director with a copy of the “*Texas Register* Submission Form” by which the Secretary of State was requested to publish such notice in the *Texas Register*. However, the Director must ensure that under no circumstances does UTPA enter into the Major Consulting Services Contract earlier than the 30th day after the Regents’ Office files such written notice with the Texas Secretary of State for publication in the *Texas Register*, unless such a requirement is rendered superfluous or ineffective due to a limited waiver provided by the Governor for this consulting services contract due to an Unforeseen Emergency, as set forth in Subsection F.4 of this Policy. ([Texas Government Code, Sections 2254.025 and 2254.029\(a\)](#)) Any Major Consulting Services Contract entered into by UTPA in violation of this Subsection G.1.e of this Policy is void under Texas law. ([Texas Government Code, Section 2254.034\(a\)](#))

NOTE: If the Director obtains the Finding of Fact for a consulting services contract from the President, then the Director may choose to proceed with requesting that the notice set forth in this Subsection G.1.e be submitted to the Texas Secretary of State for publication in the *Texas Register* before the Director submits the notices to the LBB and the GOBP that are more specifically set forth in Subsection G.1.d of this Policy. In such event, the Director should attach a copy of the *Texas Register* Submission Form that is submitted to the Secretary of State to the notices that the Director sends to the LBB and the GOBP under Subsection G.1.d of this Policy.

2. Provision of Notice Within 20 Days After a Major Consulting Services Contract is Executed. The Director shall ensure that all of the following activities are completed on or before the 20th day after the date that UTPA enters into a Major Consulting Services Contract:
 - a. The Director and the UTPA department that requested that Major Consulting Services Contract must create a written notice that contains the following information about the Major Consulting Services Contract:
 - i. a description of the activities that the consultant will conduct under that Major Consulting Services Contract,
 - ii. the name and business address of the consultant under that Major Consulting Services Contract,



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- iii. the total value and the beginning and ending dates of the Major Consulting Services Contract, and
- iv. the dates on which documents, films, recordings, or reports that the consultant is required to present to UTPA are due under that Major Consulting Services Contract.

[*\(Texas Government Code, Section 2254.030\)*](#)

- b. If in entering into the Major Consulting Services Contract, UTPA accepted an offer to perform consulting services from an individual who was employed by UTPA or by another state agency at any time during the two years preceding the making of such an offer (as more specifically described in Subsection E.5 of this Policy), then the notice set forth in Subsection G.2.a of this Policy must also contain a statement about that individual's previous employment with UTPA or other state agency and the nature of the employment. ([*Texas Government Code, Section 2254.033\(b\)*](#))
- c. In the event that UTPA has obtained a limited waiver from the provisions of [*Texas Government Code Chapter 2254, Subchapter B*](#) for this consulting services contract due to the existence of an Unforeseen Emergency (as more specifically set forth in Subsection F.4 of this Policy), then the notice set forth in Subsection G.2.a of this Policy shall also include a detailed description of the emergency on which the request for such a waiver was predicated. ([*Texas Government Code, Section 2254.025\(c\)*](#))
- d. The Director shall submit the written notice set forth in this Subsection G.2 to the Regents’ Office. The Regents’ Office will file such written notice with the Texas Secretary of State for publication in the *Texas Register*.
- e. A Major Consulting Services Contract entered into in violation of Subsection G.2.a of this Policy is void under Texas law. ([*Texas Government Code, Section 2254.034\(a\)*](#))

H. Renewal of a Consulting Services Contract.

- 1. If the original consulting services contract was a Major Consulting Services Contract, the Director shall determine if the renewal consulting services contract,



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on its own, would also qualify as a Major Consulting Services Contract:

- a. If the answer is yes, then the UTPA department, the Director, and the Materials Management Contracts Office must comply with Subsections F.2, F.3, F.4, F.6, F.7, and G.1 of this Policy with regards to that renewal contract. ([Texas Government Code, Sections 2254.0301 and 2254.031\(a\)\(2\)](#))
 - b. If the answer is no, then the UTPA department, the Director, and the Materials Management Contracts Office must comply with Subsections F.2, F.3, F.4, F.6, F.7, and G.2 of this Policy with regards to that renewal contract. ([Texas Government Code, Sections 2254.0301 and 2254.031\(a\)\(1\)](#))
2. If the original consulting services contract was not a Major Consulting Services Contract, then the Director shall determine if the original consulting Services contract and the renewal consulting services contract, *considered together*, would qualify as a Major Consulting Services Contract. If the answer is yes, then the UTPA department, the Director, and the Materials Management Contracts Office must comply with Subsections F.2, F.3, F.4, F.6, F.7, and G.1 of this Policy with regards to that renewal contract. ([Texas Government Code, Sections 2254.0301, 2254.031\(b\)](#))
 3. Any renewal of a consulting services contract that UTPA enters into in violation of Subsections H.1 or H.2 of this Policy is void under Texas law. ([Texas Government Code, Section 2254.034\(a\)](#))
 4. Provision of Notice Within 20 Days After Renewal of a Consulting Services Contract. The Director shall ensure that all of the following activities are completed on or before the 20th day after the date that UTPA enters into a renewal of any consulting services contract:
 - a. The Director and the UTPA department that requested the renewal of that consulting services contract must create a written notice that contains the following information about that consulting services contract:
 - i. a description of the activities that the consultant will conduct under that consulting services contract,
 - ii. the name and business address of the consultant under that consulting services contract,



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- iii. the total value and the beginning and ending dates of the consulting services contract, and
- iv. the dates on which documents, films, recordings, or reports that the consultant is required to present to UTPA are due under that consulting services contract.

[\(Texas Government Code, Section 2254.030\)](#)

- b. If in entering into or renewing the consulting services contract UTPA accepted an offer to perform consulting services from an individual who was employed by UTPA or by another state agency at any time during the two years preceding the making of such an offer (as more specifically described in Subsection E.5 of this Policy), then the notice set forth in Subsection H.4.a of this Policy must also contain a statement about that individual's previous employment with UTPA or other state agency and the nature of the employment. [\(Texas Government Code, Section 2254.033\(b\)\)](#)
- c. In the event that UTPA has obtained a limited waiver from the provisions of [Texas Government Code Chapter 2254, Subchapter B](#) for this consulting services contract due to the existence of an Unforeseen Emergency (as more specifically set forth in Subsection F.4 of this Policy), then the notice set forth in Subsection H.4.a of this Policy shall also include a detailed description of the emergency on which the request for such a waiver was predicated. [\(Texas Government Code, Section 2254.025\)](#)
- d. The Director shall submit the written notice set forth in this Subsection H.4 to the Regents’ Office. The Regents’ Office will file such written notice with the Texas Secretary of State for publication in the *Texas Register*.
- e. Note that while it is unclear whether the written notice set forth in this Subsection H.4 is required by [Chapter 2254 of the Texas Government Code](#), it appears that such a notice is nevertheless required by the GOBP (see the “Renewals, Extensions, And Amendments” provisions in the GOBP’s Consultant Contract Guidelines set forth at www.governor.state.tx.us/divisions/bpp/guidelines.)



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I. Amendment or Extension of a Consulting Services Contract

1. If the original contract was a Major Consulting Services Contract, the Director shall determine if, after such amendment or extension, the consulting services contract will continue to be a Major Consulting Services Contract.
 - a. If yes, then the UTPA department, the Director, and the Materials Management Contracts Office must comply with Subsections F.2, F.3, F.4, F.6, F.7, and G.1 of this Policy with regards to the amended or extended contract. ([Texas Government Code, Sections 2254.0301, 2254.031\(c\)\(2\)](#))
 - b. If no, then the UTPA department, the Director, and the Materials Management Contracts Office must comply with Subsections F.2, F.3, F.4, F.6, F.7, and G.2 of this Policy with regards to the amended or extended contract. ([Texas Government Code, Sections 2254.0301, 2254.031\(c\)\(1\)](#))
2. If the original contract was not a Major Consulting Services Contract, the Director shall determine if, after such amendment or extension, the consulting services contract will be a Major Consulting Services Contract. If yes, then the UTPA department, the Director, and the Materials Management Contracts Office must comply with Subsections F.2, F.3, F.4, F.6, F.7, and G.1 of this Policy with regards to the amended or extended contract. ([Texas Government Code, Sections 2254.0301, 2254.031\(d\)](#))
3. Any amendment or extension of a consulting services contract that UTPA enters into in violation of Subsections I.1 or I.2 of this Policy is void under Texas law. ([Texas Government Code, Section 2254.034\(a\)](#))
4. Provision of Notice Within 20 Days After Amendment or Extension of a Consulting Services Contract. The Director shall ensure that all of the following activities are completed on or before the 20th day after the date that UTPA amends or extends any consulting services contract:
 - a. The Director and the UTPA department that requested the amendment or extension of that consulting services contract must create a written notice that contains the following information about that consulting services contract:
 - i. a description of the activities that the consultant will conduct under that consulting services contract,



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- ii. the name and business address of the consultant under that consulting services contract,
- iii. the total value and the beginning and ending dates of the consulting services contract, and
- iv. the dates on which documents, films, recordings, or reports that the consultant is required to present to UTPA are due under that consulting services contract.

([Texas Government Code, Section 2254.030](#))

- b. If in entering into, amending, or extending the consulting services contract UTPA accepted an offer to perform consulting services from an individual who was employed by UTPA or by another state agency at any time during the two years preceding the making of such an offer (as more specifically described in Subsection E.5 of this Policy), then the notice set forth in Subsection I.4.a of this Policy must also contain a statement about that individual's previous employment with UTPA or other state agency and the nature of the employment. ([Texas Government Code, Section 2254.033\(b\)](#))
- c. In the event that UTPA has obtained a limited waiver from the provisions of [Texas Government Code Chapter 2254, Subchapter B](#) for this consulting services contract due to the existence of an Unforeseen Emergency (as more specifically set forth in Subsection F.4 of this Policy), then the notice set forth in Subsection I.4.a of this Policy shall also include a detailed description of the emergency on which the request for such a waiver was predicated. ([Texas Government Code, Section 2254.025\(c\)](#))
- d. The Director shall submit the written notice set forth in this Subsection I. 4 to the Regents’ Office. The Regents’ Office will file such written notice with the Texas Secretary of State for publication in the *Texas Register*.
- e. Note that while it is unclear whether the written notice set forth in this Subsection I.4 is required by [Chapter 2254 of the Texas Government Code](#), it appears that such a notice is nevertheless required by the GOBP (see the “Renewals, Extensions, And Amendments” provisions in the GOBP’s Consultant Contract Guidelines set forth at www.governor.state.tx.us/divisions/bpp/guidelines).



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NOTE: In the event that there is a question as to what the difference is between the “renewal” of a consulting services contract under Subsection H of this Policy and the “extension” of a consulting services contract under Subsection I of this Policy, it appears that such a “renewal” occurs where the consulting services contract, by its terms, permits the contract to be renewed, but that an “extension” of a consulting services contract occurs when the contract has to be amended to increase the term of that contract. In any event, the statutory requirements related to renewals and extensions are very similar.

J. Dividing Contracts

Neither UTPA nor any UTPA department or individual may divide a consulting services contract or renewals, amendments, or extensions of a consulting services contract into more than one contract, renewal, amendment, or extension in order to avoid the requirements set forth in [Texas Government Code Chapter 2254, Subchapter B](#) or set forth in this Policy. ([Texas Government Code, Section 2254.035](#))

K. Additional Reporting

1. On request, the Director shall, after UTPA’s consulting services contract with a consultant has ended, supply the LBB and the GOBP with copies of all documents, films, recordings, or reports compiled by the consultant under that contract. ([Texas Government Code, Section 2254.036\(a\)](#)) The UTPA department that requested and/or managed that contract will forward all such requested documents, films, recordings, or reports to the Materials Management Contracts Office for transmittal to the LBB or the GOBP.
2. The Director will file copies of all documents, films, recordings, or reports compiled by a consultant with the Texas State Library. The Texas State Library will retain the copies at least five years after their receipt, and shall list each such document, film recording, and report given to it by UTPA and shall file the list at the end of each calendar quarter with the Texas Secretary of State for publication in the *Texas Register*. ([Texas Government Code, Sections 2254.036\(b\) and 2254.036\(c\)](#)) After the UTPA department that requested and/or manages a consulting services contract receives a copy of a document, film, recording, or report from the consultant under that contract, that UTPA department must forward to the Materials Management Contracts Office:
 - a. the number of copies of that document, film, recording, or report that are required by the Texas State Library, and



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- b. at least one copy of that document, film, recording, or report for use by the Materials Management Contracts Office (unless additional copies are requested by the Materials Management Contracts Office.)
3. As part of the biennial budgetary hearing process conducted by the LBB and the GOBP, the Director will provide the Vice President for Business Affairs with a summary report on any actions taken in response to the recommendations of any consultant with whom UTPA contracts during the previous biennium. The Vice President for Business Affairs will present such a summary report to the LBB and GOBP. ([Texas Government Code, Section 2254.037](#))

L. Mixed Contracts

When a UTPA contract involves both consulting services and one or more types of other services, this Policy applies only if the primary objective of the contract is the acquisition of consulting services. ([Texas Government Code, Section 2254.038](#)) For example, if a contractor under a UTPA contract is to analyze and prepare a study of the UTPA Information systems needs as well as develop and implement an automated information system for UTPA, the primary objective of that contract may not be the analysis or advice provided by the contractor, but may instead be the contractor’s development and implementation of the automated information system for UTPA. Provided however, all such mixed use contracts must comply with all applicable laws and regulations, including UT System and UTPA purchasing policies and procedures, including (but not limited to) those set forth in [Regents’ Rules and Regulations](#) and the [UTPA Handbook of Operating Procedures](#). The Director will determine whether the primary objective of a University mixed services contracts is the acquisition of consulting services and therefore subject to this Policy.

M. U.T. System Employees and Other State of Texas Employees as Consultants

1. UTPA employee may serve as a consultant to another UT component institution provided that (1) a written description of the nature and extent of the employment of the UTPA employee as a consultant to that UT component institution has been filed with and approved in advance by the component presidents of both UTPA and the other UT component institution, and (2) any such employment complies with all applicable laws and regulations, including all applicable provisions of the Regents’ [Rules and Regulations](#). (See [Regents’ Rules Series 30103, Number 2, Sections 10 and 11](#))
2. A UTPA employee may serve as a consultant to another institution or agency of testate of Texas provided that (1) a written description of the nature and extent of



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the employment of the UTPA employee as a consultant to that institution or agency of the State of Texas has been filed with and approved in advance by the President and the chief executive officer of the other State of Texas institution/agency, and (2) any such employment complies with all applicable laws and regulations, including all applicable provisions of the Regents’ *Rules and Regulations*. (See [Regents’ Rules Series 30103, Number 2, Sections 10 and 11](#))

3. If UTPA wants to enter into a consulting services contract with an employee of another UT component institution or other State of Texas institution or agency under which that employee will perform consulting services for UTPA, then such a consulting services contract will only be permitted so long as (1) a written description of the nature and extent of the employment of that state employee as a consultant to UTPA has been filed with and approved in advance by the President and the chief executive officer of the other UT component institution or other State of Texas institution or agency, and (2) any such employment complies with all applicable laws and regulations, including all applicable provisions of the Regents’ *Rules and Regulations*. (See [Regents’ Rules Series 30103, Number 2, Sections 10 and 11](#))

N. Code of Ethics

UTPA will process, approve, and execute all consulting services contracts in accordance with all established purchasing/contracting laws, practices, and procedures including but not limited to, the following provisions of the Regents’ *Rules and Regulations*:

1. [Series 10501](#), “Delegation to Act on Behalf of the Board”;
2. [Series 30104](#), “Conflict of Interest”; and
3. [UTS159](#), “Purchasing”

O. Processing and Record Keeping

The Materials Management Contracts Office will maintain complete files on all consulting contracts for UTPA and will make all notices and awards required by this policy.

P. Determination of Consultant Contract

Any requests for services that may constitute consulting services will be reviewed and the final determination as to whether such services are, in fact, consulting services will be made by the Director.



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Q. Payment

In connection with a consulting services contract, the Materials Management Contracts Office will create a purchase order for encumbrance and payment purposes only. The purchase order will include a statement indicating that it is subject to the terms of the consulting services contract and the terms of the consulting services contract will control over any conflict between the terms of the purchase order and the consulting services contract. Insufficiency of funds will cause the Director to reject a UTPA department's Request for Consulting Services Contract, in which case the Director will return that Request to the requesting UTPA department. The payment terms under which a consultant is to be compensated by UTPA must be defined in the UTPA consulting services contract with that consultant.

R. Compliance with HUB Requirements

If a consulting services contract will have a value of \$100,000 or more, the Director shall require UTPA (including the UTPA department requesting such a contract) to comply with the [UTPA Handbook of Operating Procedures Section 8.2.8](#) and UT System [Business Procedures Memorandum 58](#) relating to the Historically Underutilized Business Program.

S. Review

This Policy shall be reviewed every 5 years or as needed due to legislative changes by the Director of Materials Management.

Attachments: A - Request for Consulting Services Contract
B - Time Frames and Requirements for Consulting Services Contracts



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ATTACHMENT A

THE UNIVERSITY OF TEXAS-PAN AMERICAN

REQUEST FOR CONSULTING SERVICES CONTRACT

Date: _____

Requisition No. _____

Funding Source/Acct #: _____

TO: Department of Materials Management,
Contracts Office

Account Name: _____

From: _____
Department Head Date

Grants and Contracts Approval: _____
(For accounts starting with 5, e.g., 512345)

Signature: _____
Department Head Date

For Materials Management Use Only:		
Q # _____	Date: _____	Initials: _____
R # _____	Date: _____	Initials: _____
PCC: _____	O/C: <u>3240/8240</u>	Other: _____

Signature: _____
Account Manager Date
(If different than Department Head)

Provide a complete and detailed response to the following items. Responses herein will be submitted to UTPA's President, the Governor's Office of Budget and Planning, and the Legislative Budget Board if this request is expected to exceed **\$25,000**.

All terms used in this request have the meanings assigned to them in the *Handbook of Operating Procedures*, Section 8.2.5.

1. Project Coordinator: _____ Bldg/ Rm #: _____
Extension: _____ E-mail address _____

2. Projected Contract Dates: From: _____ To: _____

3. Estimated cost for these services:

Item	Description	Cost
1.	Consultation fee	\$
2.	Travel expenses (if applicable)	\$
3.	Other (explain):	\$
	Total Cost	\$

4. Need for Contract:



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- a. Explain why the consulting services contract is needed. Such justification should describe: the need to be addressed; the proposed role of the consultant; the consequence of not procuring the assistance of a consultant; how the cost was determined; and how the cost relates to the expected benefits or level of effort to be undertaken.

- b. Explain how the final product to be delivered under contract will be incorporated into UTPA's operations or into UTPA's future legislative appropriations requests.

5. Alternatives: Performance of Consulting Services by UTPA Personnel / Obtaining Consulting Services from Another State Governmental Entity:

- a. Indicate why performance of the requested consulting services by UTPA personnel is not a more feasible alternative. Explain the priority process which determined that other UTPA activities require personnel allocations which prevent UTPA personnel from performing these consulting services. Identify all UTPA individuals contacted:

- b. List other state governmental entities that have actually been contacted to determine if such entities could perform the requested consulting services. If none were contacted, list the reasons why the requested consulting services described cannot be performed by another state governmental entity.

6. Scope of Services:

7. Project Deliverables:

8. UTPA Responsibilities:



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9. Consultant Evaluation and Selection Criteria (list the following):

- a. The requirements for demonstrating competence, knowledge, and qualification of the consultant; and

- b. A confirmation that preference will be given, all other considerations being equal, to a consultant whose principal place of business is within the state or who will manage the contracted project entirely from its office within the state.

10. List of prospective consultants: (Provide names, addresses, telephone numbers and e-mail addresses)

11.

Materials Management Approvals:	
<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> Contracts Coordinator	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> Date
<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> Director of Materials Management	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> Date



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ATTACHMENT B - Time Frames and Requirements for Consulting Services Contracts

NEW CONSULTING SERVICES CONTRACTS	The following requirements apply to a new contract for consulting services. (See Tex. Govt. Code, Sections 2254.028, 2254.029, 2254.030, 2254.036) For additional information and additional requirements applicable to consulting services contracts, see the Policy to which this Attachment is attached.				
Value of New Consulting Services Contract Reasonably Foreseeable To Be:	Requirements for New Consulting Services Contract:				
	Notice of Intent to GOBP / LBB before Contract entered into? (Tex. Govt. Code, §2254.028 (a))	Publication in <i>Texas Register</i> no later than 30 days before Contract entered into? (Tex. Govt. Code, §2254.029)	Finding of Fact from GOBP or UTPA’s President? (Tex. Govt. Code, §2254.028 (a), (c))	Publication in <i>Texas Register</i> 20 days after entering into Contract? (Tex. Govt. Code, §2254.030)	Consultant documents, films, recordings, or reports to Texas State Library? (Tex. Govt. Code, §2254.036 (b))
	Less than or equal to \$25,000	No	No	No	No
Greater than \$25,000 (a Major Consulting Services Contract)	Yes	Yes	Yes	Yes	Yes



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RENEWALS OF CONSULTING SERVICES CONTRACTS		The following requirements apply when a consulting services contract is renewed. (See Tex. Govt. Code, Sections 2254.031 (a), 2254.031 (b)) For additional information and additional requirements applicable to consulting services contracts, see UTPA HOP Policy 8.2.5 to which this Attachment is attached.				
Requirements for Renewal of Consulting Services Contract						
Value of Original Consulting Services Contract:	Reasonably Foreseeable Value of:	Notice of Intent to GOBP / LBB before Renewal entered into? (Tex. Govt. Code, §2254.028 (a))	Publication in Texas Register no later than 30 days before Renewal entered into? (Tex. Govt. Code, §2254.029)	Finding of Fact from GOBP or UTPA’s President? (Tex. Govt. Code, §2254.028 (a), (c))	Publication in Texas Register 20 days after entering into Renewal? (Tex. Govt. Code, §2254.030)	Consultant documents, films, recordings, or reports to Texas State Library? (Tex. Govt. Code, §2254.036 (b))
Greater Than \$25,000	Renewal is Less Than or Equal to \$25,000	No	No	No	Yes (see Texas Govt. Code, §2254.031 (a) (1))	Yes
Greater Than \$25,000	Renewal is Greater than \$25,000	Yes	Yes	Yes	Yes (see Section H. 4 of UTPA HOP Policy 8.2.5)	Yes
Less Than or Equal to \$25,000	The Total of the Value of the Original Consulting Services Contract <i>plus</i> the Value of the Renewal is Greater Than \$25,000	Yes	Yes	Yes	Yes (see Section H. 4 of UTPA HOP Policy 8.2.5)	Yes
Less Than or Equal to \$25,000	The Total of the Value of the Original Consulting Services Contract <i>plus</i> the Value of the Renewal is Less Than or Equal to \$25,000	No	No	No	Yes (see Section H. 4 of UTPA HOP Policy 8.2.5)	Yes



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AMENDMENT / EXTENSION OF CONSULTING SERVICES CONTRACTS		The following requirements apply when a consulting services contract is amended or extended. (See Tex. Govt. Code, Sections 2254.031 (c), 2254.031 (d)) For additional information and additional requirements applicable to consulting services contracts, see the Policy to which this Attachment is attached.				
		Requirements for Amendment / Extension of Consulting Services Contract				
Value of Original Consulting Services Contract:	Reasonably Foreseeable Value of:	Notice of Intent to GOBP / LBB before Amendment / Extension entered into? (Tex. Govt. Code, §2254.028 (a))	Publication in Texas Register no later than 30 days before Amendment / Extension entered into? (Tex. Govt. Code, §2254.029)	Finding of Fact from GOBP or UTPA’s President? (Tex. Govt. Code, §2254.028 (a), (c))	Publication in Texas Register 20 days after entering into Amendment / Extension? (Tex. Govt. Code, §2254.030)	Consultant documents, films, recordings, or reports to Texas State Library? (Tex. Govt. Code, §2254.036 (b))
Greater Than \$25,000	Consulting Services Contract After Amendment / Extension is Less Than or Equal To \$25,000	No	No	No	Yes (see Texas Govt. Code, §2254.031 (c) (1))	Yes
Greater Than \$25,000	Consulting Services Contract After Amendment / Extension is Greater Than \$25,000	Yes	Yes	Yes	Yes (see Section I. 4 of UTPA HOP Policy 8.2.5)	Yes
Less Than or Equal to \$25,000	The Total of the Value of the Original Consulting Services Contract <i>plus the</i> Value of the Amendment / Extension is Greater Than \$25,000	Yes	Yes	Yes	Yes (see Section I. 4 of UTPA HOP Policy 8.2.5)	Yes
Less Than or Equal to \$25,000	The Total of the Value of the Original Consulting Services Contract <i>plus the</i> Value of the Amendment / Extension is Less Than or Equal to \$25,000	No	No	No	Yes (see Section I. 4 of UTPA HOP Policy 8.2.5)	Yes