

the purposes of this procedure, "Contractor" is used interchangeably with the term "Vendor".

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The TSUS Office of General Counsel.

The department from which a solicitation or procurement is originated.

A bond solely for the protection and use of Payment Bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply labor or materials in fulfillment of contractual obligations.

An instrument executed, subsequent to award, by a successful proposer, bidder, or respondent that protects the University

The furnishing of labor, time, and effort by a contractor or auxiliary enterprise, including for a Construction Project, which may involve to a lesser degree, the delivery or supply of products.

Description of the requirements for goods or services including the Scope of Work, to be fulfilled by a contractor.

The State of Texas.

A law enacted by a legislature.

An individual or business entity retained by a contractor to perform part of a contractor's duties under a contract.

The Texas State University System and its Universities.

Rules established by the TSUS Board of Regents that govern all TSUS Universities. <http://www.tsus.edu/ab6> (h)-0.9.3 (w)4.5 (w)-6.4 (w)-6.4 (.)-2 (t5b/P M (d)5.3 (g)()-28577Tf 6 (t)-6 (h)-0-9

TSUS personnel involved with procurement and contract management must adhere to the highest level of professionalism in discharging their official duties. The nature of procurement and contracting functions makes it critical that everyone in the process remain independent and free from the perception of impropriety. Any erosion of public trust or any shadow of impropriety is detrimental to the integrity of the process. Consequently, the credibility of a procurement and contracting program requires that a clear set of guidelines and rules be established. Such guidelines and rules are designed to prevent actual and

3. Accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;
4. Make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the University's interest; or
- 5.

execution and any qualified contractor is eligible for the contract (Texas Government Code §2252.908 (c)).

2. In responses, potential contractors and respondents are required to:
 - a. Represent and warrant that contractor's or respondent's provision of services or other performance under the contract will not constitute an actual or potential conflict of interest and represent and warrant that it will not reasonably create even the appearance of impropriety.
 - b. Disclose any current or former employees who are current or former employees of the University.
 - c. Disclose any proposed personnel who are, or are related to, current or former employees of the University.
 - d. Represent and warrant that contractor or respondent has not given and will not give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant or employee or
 - e. representative of the University in connection with the solicitation or any resulting contract.

Verify that it or any of its principals (including, but not limited to, an owner, proprietor, sole or majority shareholder, director, president, or managing partner) are not debarred, suspended, or otherwise excluded from doing business with the TSUS. The University may also verify that an entity or principals are not debarred, suspended or otherwise excluded to confirm that no contracts are awarded, extended or renewed.

The following restrictions also apply to potential contractors and respondents:

1. Texas Government Code: 14.1 (m), 7.6 (t), 2-310.44 (m), (T)-32(c) (n), (R) 1.2 (n), 13-0.002 (w), 3.2 (n), 3.2 (n), 10

of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the officer's or employee's service or employment with the state agency ceased.

Contractors are not allowed to assign their duties and obligations under a contract to others such as 2(o)-6411 (e)-4.(o)u6.6 (o)t2.6(t)-.3 (t)7.9 (y)3T12Tc 0 Tw 6.97

Small dollar value or less complex contracts normally require little, if any, monitoring. However, that does not preclude the possibility of more detailed monitoring if deemed necessary by the Contract/Evaluation Review Team. Conversely, large dollar contracts may need little monitoring if the goods or services procured are not complex, and the University is comfortable with the contractor's performance and the level of risk associated with the contract.

There are different types of monitoring available, including but not limited to:

- Site Visits
- Desk Review
- Expenditure Document Review

For some contracts, especially highly technical contracts, the obligation of monitoring the progress is best assigned to another contractor. Per TSUS Contract Management Handbook the University shall identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the Board of Reg6 -1.217 T-2.9 3 ()11.2 (o)-6.0.008 Tw 0 -1.20i2.9 (h1-3 (o)-6 t)-14 (s9 (p)2.3 3)2.6 (0 -1. (e)-3

The Procurement and Business Services Office is responsible for protecting the interests of SHSU and under appropriate circumstances, it may be necessary to withhold payments from contractors. Circumstances where it may be necessary to withhold payment include, but are not limited to:

1. There is a material breach of the contract by a contractor;
2. Errors in the invoice;
3. Unsupported or undocumented costs;
4. To remedy previous overpayments on the same contract; and
5. Contractor's performance is non-conforming or unacceptable.

Throughout the term of the contract it may become necessary to make changes to the contract. These changes can be minor, administrative changes such as a change of address, or they can be substantial changes that affect the price, delivery and other material provisions.

Changes can be by mutual agreement, in which all parties to the contract agree in writing that a modification is necessary to alter a provision of the contract. Contact Procurement & Business Services Contract Manager for assistance in amending the contract, and we will consult with the Office of General Counsel if necessary.

Failure to manage and control changes can result in an unintended modification to the SOW, extension of the schedule, increase in the contract cost, circumvention of the procurement process, and diminished contractor accountability. An effective change management process may include, but is not limited to:

1. Formal, written approval by all parties of contracts changes prior to the change taking place;
2. Evaluation of the impact of each change to the contract objective;
3. If the contract contains a contingency allowance, a plan for deductions against this allowance will be requested and approved in writing;
4. Formal documentation of all changes in compliance with the University's operating policies and procedures; and
5. The Procurement and Business Services will review and authorization any formal Change Order document.

1. Material Contract Changes

Whether or not a change is considered a material change to the contract depends upon the

In order to determine what constitutes a change to the specifications, a Contract Manager will determine whether the changes are material. Material changes are measured by whether the changes would substantially alter the work.

7 Interfere with or hinders performance.

The Contract Administrator is responsible for managing the performance of a contract and is charged with managing the contract in a way to prevent constructive changes.

Dispute resolution is governed by Texas Government Code Chapter 2260 for certain contract claims against the University and the state. The goal of any dispute resolution process is to resolve problems before these escalate to the next level. To avoid escalation, and avoid University personnel actions exacerbating potential problems, it is imperative that the Contract Administrator respond promptly to all

accordance with the agreed terms and conditions. A contract may be terminated under the following processes.

1. Termination for Convenience

A termination for convenience, also known as no-fault termination (or “without cause”), allows the University to terminate a contract, in whole or in part, at any time in its sole discretion, if it is determined that such termination is in the best interest of the University.

The Procurement and Business Services Office shall provide a contractor with written notice specifying whether the University

6. Availability of funds or resources to re-purchase in the event such costs cannot be recovered from the delinquent contractor. Under a termination for default, the University is within its rights to demand additional costs from the defaulting contractor. Nevertheless, a contractor may not be financially capable to finance the costs or such demand may result in protracted legal action.

A contract must describe in detail the default obligations of the parties. A defaulting party may have additional financial obligations to the other party.

3. Force Majeure Termination

A contract shall not be terminated for default when the failure to perform is due to excusable causes. In order to qualify as an excusable cause, the cause must be beyond the control, and without the fault or negligence of the defaulting party. Such excusable causes include, but are not limited to:

- 1 Acts of God or a public enemy.
- 2 Acts of the University.
- 3 Fire.
- 4 Floods.
- 5 Epidemics.
- 6 Strikes.
- 7 Freight embargos.
- 8 Unusually severe weather. Severe weather, although beyond the control of either party, will not generally consr,eno4l7o9.6 (h)2.3 (la1.3 (it)7.9 (y)16Tc 0.001 Tw 6.859 0 Td()Tj6.001 Tc 930.029 Twif 1.4029

