



# TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER AT EL PASO

## Operating Policy and Procedure

**HSCEP OP:** 54.02, **Contracting Procedures**

**PURPOSE:** The purpose of this Texas Tech University Health Sciences Center at El Paso (TTUHSC El Paso) Operating Policy and Procedure (HSCEP OP) is to outline the procedures to be followed in the development, negotiation, and approval of all contracts and agreements, except for those for construction, for any purpose and for any amount between TTUHSC El Paso and other parties.

**REVIEW:** This HSCEP OP will be reviewed on June 15 of each odd-numbered year by the senior managing director of contracting, with recommendations for revisions submitted to the vice president of clinical administration, or designee by July 1.

### **POLICY/PROCEDURE:**

For the following definitions, contract type excludes those for research construction and other sponsored projects executed by TTUHSC El Paso.

#### **I. Definition of Contract Manager**

The contract manager (CM) is a customer of the contract process and is typically a stakeholder within the department responsible for the contracted goods or services. The CM is responsible for the proper implementation of all contract specifications. Ideally, the CM will be named prior to the beginning of the contract process and be involved in defining the scope of work. By participation in the creation of contractual requirements, the CM is better prepared for later contract decisions concerning changes or disputes.

If the CM is not involved in the contract process, the CM should familiarize him/herself with the history of the contract, the nature of negotiations, the possibility of verbal promises outside of the contract document, and the vendor's performance.

The CM ensures the contract is satisfactorily performed and the responsibilities of both parties are properly discharged. The CM is responsible for ensuring all contract provisions are adhered to and for coordinating all contract issues (e.g., renewals, amendments, and terminations) as well as vendor performance problems with contract services and closeouts.

#### **II. Definition of Contract Management**

The specific nature and extent of management varies by contract but typically means ensuring quality of scope and performance, documenting nonperformance, facilitating resolution of problems, reporting to departmental management, and coordinating contract and legal issues with Contract Services.

Factors that influence the level of contract management include the type of contract, subject matter, dollar amount, and experience and commitment of the department personnel involved. Contract management starts with developing clear, concise, performance-based specifications for the work and by preparing a contract management plan that allows stakeholders to effectively measure the vendor's performance throughout the life of the contract. The management plan must also provide documentation regarding methods, manners, and frequency of goods and services.

### **III. Contract Manager Responsibilities and Assignments**

- A. In compliance with Texas Education Code 51.9337, CMs must complete the required Contract and Procurement training biannually within the defined thirty day (30) time period prior to obtaining the Advanced Software Concepts (ASC) license and access. If the required training is not completed within the thirty days, then access to ASC will be terminated.
- B. Assist Contracting Office in developing the requirements or specifications of a desired contract.
- C. Monitor the vendor's progress and performance pursuant to the terms of the contract.
- D. Manage any university resources used in contract performance.
- E. Authorize payments consistent with contract documents.
- F. Exercise remedies, in conjunction with the Contracting Office, when a vendor's performance is deficient.
- G. Provide enhanced monitoring reporting if applicable.
- H. Resolve minor disputes in a timely manner and coordinate correspondence with Procurement Services, if necessary.
- I. Document significant events or milestones.
- J. Maintain appropriate records as required by applicable record retention laws and guidelines.

### **IV. Approval and Execution of Contracts**

No person has the authority to commit TTUHSC El Paso for any purpose (i.e., enter into agreements), except as authorized in the Regents' Rules, Section 07.12, and HSCEP OP 10.11, Delegation of Authority by the President.

A brief summary of the proper procedures to follow to enter into an agreement with a third party can be obtained from the contracting website or by contacting Contracting Office personnel. The Contracting Office is the office of record for all TTUHSC El Paso contracts. The original contract will be maintained in that office except those for research construction and other sponsored projects executed by TTUHSC El Paso.

### **V. Management of Contracts**

Each contract must have a CM to oversee all aspects of the contracting process and to ensure that the parties meet their contractual responsibilities. The CM would normally be the department administrator or an employee with job skills similar to that of a department administrator. Effective contract management practices by the CM help ensure that TTUHSC El Paso receives full value for each dollar spent and collects all funds to which it is entitled to under the contract. The CM will have the following responsibilities:

- A. Negotiate and draft the initial contract.
- B. Develop the contract as outlined in section VI below and include contract provisions that hold all parties accountable for performance results and outcomes.
- C. Manage the contract to ensure that TTUHSC El Paso receives the agreed consideration

provided for in the terms of an income contract or receives the goods and services at the cost provided for in an expense contract.

- D. Monitor the contract to initiate timely amendments, renewals, and termination notices as required.
- E. Address all issues concerning the contract that may arise during the term of the agreement, including monitoring and enforcement of contract terms.
- F. Monitor the income or expense amounts to ensure compliance with Section 07.12 of the Regents' Rules, as it relates to contracts that require approval of the Board of Regents.

## VI. Development of Contract

- A. The TTUHSC El Paso department, office, or function desiring to contract with an outside party shall develop the initial contract, address possible fiscal implications, and consider any other matters that may be significant. All aspects of the contract will be the responsibility of the CM, whose duties are fully described in paragraph three above. The Contracting Office is available to assist in contract negotiations or questions upon request of the TTUHSC El Paso department. This procedure should begin 90 days in advance of the effective date in order to process the contract in a timely fashion. The responsibility for drafting the written contract will be with the agency or the CM requesting the service. See the Contracting Manual and the TTUS Contracting Share Point at the Contracting Office website for contract templates and drafting assistance located at <https://texastechuniversity-my.sharepoint.com>. All CMs should be familiar with the Contracting Office website and tools available to assist in drafting and monitoring contracts.
- B. The Contracting Office will then review the contract in accordance with institutional policy, determine potential legal and/or fiscal problems, and determine the proper signatory authority in accordance with Regents' Rules, Section 07.12.
- C. Once the contract has been developed, the Contracting Office will then obtain necessary departmental approvals via an ELECTRONIC CONTRACT ROUTING SHEET. Expense contracts are subject to additional procedures, as noted below in section VII.
- D. The Contracting Office will process **all** contracts to obtain final approval and signatures, as required in Regents' Rules, Section 07.12. **CMs are cautioned that no commitments or other action should be taken on the contract until final execution by the authorized officers or approval by the Board of Regents has been obtained.**

## VII. Expense Contracts

- A. When the contract is fully executed, the CM will submit a TechBuy requisition. Although certain areas of the requisition are not applicable to a contract—such as the shipping terms—these areas must be completed. It will not matter how these non-applicable items are completed.
- B. In the “Purchasing Category” section of the TechBuy requisition, it is requested that “Other” be selected for all requisitions submitted to process contracts handled by the Contracting Office.
- C. The quantity and unit must be applied as appropriate to the terms of the contract. The dollar value of the requisition should be provided as the best estimate of the current fiscal year (FY) anticipated expense.
- D. The requisition will not be processed to a purchase order until all of the required signatures have been obtained and the contract is fully executed. All tracking and electronic

notifications will be processed in the same manner as the requisitions processed by Purchasing.

- E. The contract number assigned in the contracting database will not be the same number provided in the purchase order number field by contracting.
- F. Individual departments do not have the authority to obligate the institution. Therefore, services are not to begin without a properly and fully executed contract (i.e., a contract that has been (1) submitted via the appropriate TTUHSC El Paso HSCEP OP review and approval process, and (2) signed by the authorized signatories of each party to the contract). CMs must submit the contract allowing enough lead time for the contracting process to be completed prior to the date services are needed. No invoice will be paid until the contract has been fully executed.

#### **VIII. Renewal Contracts**

- A. The CM is responsible for maintaining a schedule of contract expiration dates and for beginning negotiations well in advance of the expiration date when it is necessary to renew an expiring contract.
- B. After renegotiations are complete, the approval process, as outlined in section IV, should be followed. Expense contracts are subject to additional procedures, as noted below in section IX.

#### **IX. Expense Contract Renewal**

- A. Expense contract renewals or expense contracts that automatically renew require the submission of a new requisition to appropriately encumber for each FY. Therefore, each CM will need to review their open expense contracts and submit a requisition for the next FY stating the amount of funds that are appropriate for that contract for the FY. The Purchasing Office should receive these FY encumbrance requisitions for all contracts at least 45 days prior to the beginning of the new FY.
- B. The following specific information is needed within the requisition form when submitting encumbrance-only orders for contracts:
  - 1. Select "Edit" in the "Billing Options" option and change the date to the current date for current FY orders, or change the date to 09/01/XXXX, where XXXX is the start date for the next FY.
  - 2. Provide the specific compensation factors of your contract in the "General Item Information" section of the TechBuy order form. Consider all amendments when applying this information. The Contracting Office will verify the accuracy of this information when reviewing the requisition.
  - 3. The quantity and unit must be applied as appropriate to the terms of the contract. The dollar value of the requisition should be provided as the best estimate of the current FY anticipated expense. If it is felt that encumbrance for the entire year isn't possible, a dollar amount should be provided that will take the contract as far out as possible before a manual encumbrance modification is required.
  - 4. Provide the five-digit numerical contract number in the "Prior Year" field in the "Contract" box.

- 5. Attach an electronic Word document of the contract, if available.
- C. When reviewing contracts for the purpose of submitting a requisition, be sure to note the contract start and end dates, rates, renewal clauses, etc. If anything requires amending, please contact the Contracting Office to draft the amendment.
- D. If a contract is expired or if funds have not been encumbered for the new FY, payment of invoices will be delayed until the problems are rectified.

**X. Distribution of Signed Agreements**

- A. It is the responsibility of the Contracting Office to provide the agency, department, Accounting Services, etc. with copies of the fully-executed agreement for documentation and billing purposes.
- B. The Contracting Office may request to take the distribution responsibility upon itself for designated contracts.

**XI. Vendor Performance Form**

A Vendor Performance Form (VPF) must be submitted by the CM prior to closeout. A copy of the audit and documentation of any action taken, if applicable, will be documented and forwarded to the vendor.

**XII. Contract Closeout**

Contract closeout begins when the contract has been completed (i.e., all services have been performed and products delivered). Closeout is completed when all administrative actions have been completed, all disputes settled, and final payments have been made. This process requires close coordination between Contracting Office, the CM, and the vendor. The VPF will be reviewed and uploaded into the contract database and the contract will be terminated.