

# **Sam Houston State University**

## ***Contract Administration Procedures***

### **SECTION I - INTRODUCTION**

#### **A. Purpose**

As an agency of the State of Texas, Sam Houston State University (SHSU) is governed by the Texas State University System (TSUS) Board of Regents. TSUS contracting policy is established pursuant to Texas Education Code, § 51.9335, which grants authority to acquire goods or services for the University. To exercise this authority, The University must also comply with Texas Education Code § 51.9337.

Accordingly, TSUS has developed a Contract Management Handbook (CMH), the purpose of which is to comply with the above statutory requirements, and to coordinate with the TSUS Rules and Regulations and the University's operating policies and procedures. SHSU has established this Contract Administration procedure to coordinate with the TSUS Rules and Regulations and SHSU's operating policies and procedures.

#### **B. Order of Control**

In the event there is a conflict with language of this Procedure, applicable federal or state statutes and regulations shall prevail, followed by TSUS Rules and Regulations, and then SHSU operating policies and procedures.

#### **C. Contract Administration**

Contract Administration is the administrative actions, following the award of a contract, to oversee full compliance with all of the terms and conditions contained within the contract. Various types of contracts may be subject to different statutory standards, practices, processes, and strategies for successful implementation.

#### **D. Definitions**

**Addendum:** A written change, addition, alteration, correction, or revision to a solicitation document or a contract.

**Amendment:** An agreed addition to, deletion from, correction, or modification of a contract signed by all authorized parties. An amendment may include a renewal or extension of a contract.

**Assignment:** An authorized legal transfer of contractual rights from one party to another party.

**Auxiliary Enterprise:** A business activity that is conducted at a state agency, providing a service to the agency and is not paid for with appropriated money (Texas Government Code § 2252.061 (1)).

**Best Value:** Factors to be considered in determining best overall value for the TSUS and the University in

accordance with Texas Education Code §51.9335 (b).

**Change Order:** A written alteration that is issued to modify or amend a purchase order.

**CMH:** TSUS Contract Management Handbook. <http://www.tsus.edu/offices/finance/procurement.html>

**Comptroller:** The Texas Comptroller of Public Accounts.

**Conflict of Interest:** A conflict of interest refers to a situation in which an employee's financial, professional, or other personal considerations may directly or indirectly affect, or have the appearance of affecting, the employee's judgment in exercising any duty or responsibility, including the conduct or reporting of research, owed to the University.

**Contract:** A legally binding written agreement executed between the System or the University and a third party in which the parties agree to perform in accordance with the obligations therein. Contracts include, but are not limited to: letter agreements, co-operative agreements, memorandums of understanding (MOU), interagency contracts, inter-local contracts, easements, licenses, leases, and purchase orders.

**Contract Administration:** Following the award of a contract, the administrative actions to oversee full compliance with all of the terms and conditions contained within the contract.

**Contract Administrator:** The Contract Administrator is the department-level individual responsible for adherence to all provisions contained within a contract and for managing the performance of a contract.

**Contract Close-out:** The process conducted at the completion of the contract during which the Contract Administrator confirms and documents compliance with the terms and conditions of the contract, which final deliverables are received, and outstanding payments are made.

**Contract Management:** The complete contracting process from planning through contract administration and concluding with contract close-out.

**Contract Manager:** An individual who is: 1) employed by the University in the Procurement and Business Services Office and 2) is responsible for coordinating the processes required for effective Contract Management. For construction project contracts, the Contract Manager will be an individual within the University's Facilities Management charged with the duty to oversee the construction project. The Contract Manager will provide guidance to Contract Administrators.

**Contract/Evaluation Review Team:** A team comprised of such members as the Contract Manager, the Contract Administrator, and as needed, cross-functional members such as: subject matter experts, information technology, risk management, legal, and price/cost analysts. The size and the members of the team are dependent on the nature and complexity of the project.

**Contracting Office:** The Procurement & Business Services office, designated by the University to review contracts for compliance, and where appropriate, seek additional review and approval of the Office of General Counsel for compliance with applicable statutes, TSUS Rules and Regulations, and the University's operating policies and procedures. See also "Procurement and Business Services Office" below.

**Contractor:** An entity or individual that has a contract to provide goods or services to the University. For

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

**Cooperative Agreement:** A cooperative arrangement in which several government agencies agree to aggregate demand in order to contract for best value. The cooperative conducts the procurement process and provides general contract oversight. The University is allowed to utilize the competitively procured contracts in accordance with Texas Education Code § 51.9335 and any University operating policies and procedures.

**Cure Notice:** Notice used if the vendor fails to make progress or fails to perform any other provision of the contract. A cure notice should not be sent if delivery is late, because late delivery by itself is cause for a default termination.

**Deliverable:** A unit or increment of work required by the contract, including such items as goods, services, reports, or documentation.

**Goods:** Supplies, materials, or equipment as defined in Texas Government Code § 2155.001. Goods do not include services or real property.

**Historically Underutilized Business (HUB):** A for-profit entity with its principal place of business in the State of Texas that is at least 51% owned by a Black American, Hispanic American, Woman, Asian Pacific American, Native American or Disabled Veteran as defined in Texas Government Code § 2161.001. See also the Comptroller HUB website, <https://comptroller.texas.gov/purchasing/vendor/hub/>.

**Independent Contractor:** An individual or company who contracts to perform work for the University according to his or her own processes and methods. The contractor is not subject to another’s control except for what is specified in a mutually binding agreement.

**Interagency Contract:** A contract between one or more agencies of the State of Texas as defined by Texas Government Code § 771.002.

**Interlocal Contract:** A contract between one or more agencies of the State of Texas and local government as defined by Texas Government Code § 791.003.

**SHSU Policies and Procedures:** [Policies & Procedures](#) established by and which govern SHSU.

**Liquidated Damages:** A specified contract provision which entitles the University to demand a set monetary amount determined to be reasonable estimate of damages the University will incur due to contractor’s failure to fulfill contract requirements.

**Major Construction Project:** a Construction Project with a budget \$4,000,000 or more. See TSUS Rules and Regulations.

**Minor Construction Project:** a Construction Project with a budget less than \$4,000,000. See TSUS Rules and Regulations.

**Negotiation(s):** Conferring, discussing, or bargaining to reach a mutual agreement between two or more parties.

**Office of General Counsel:** The TSUS Office of General Counsel.

**Originating Department:** The department from which a solicitation or procurement is originated.

**Payment Bond:** 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.

**Performance Bond:** An instrument executed, subsequent to award, by a successful proposer, bidder, or respondent that protects the University from loss due to the contractor's inability to complete the contract as agreed.

**Person:** An individual or a business entity. Texas Government Code § 572.002(7).

**Payment Bond:** 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.

**Performance Bond:** An instrument executed, subsequent to award, by a successful proposer, bidder, or respondent that protects the University from loss due to the contractor's inability to complete the contract as agreed.

**Procurement (Procure):** Purchasing, renting, leasing, or otherwise acquiring any goods and services, including all functions that pertain to the acquisition through contract close-out.

**Procurement and Business Services Office:** The office designated by SHSU to purchase goods or services and oversee compliance with federal, state, System, and University procurement operating policies and procedures. Procurement and Business Services Office also encompasses the Contracting Office.

**Proposal:** A response to a Request for Proposals (RFP) intended to be used as a basis to negotiate a contract award.

**Proprietary Purchase:** A good or service produced or marketed by a vendor having the exclusive right to manufacture or sell it. See Texas Government Code § 2155.067 and the Comptroller's Procurement Manual for more information.

**Public Works Contract:** A contract for constructing, altering, or repairing a public building or carrying out or completing any public work. A governmental entity, including a public University of higher education, is authorized by State of Texas law to make a Public Works Contract.

**Purchase Order:** A legal document issued to a contractor/vendor which formalizes the terms and conditions of any purchase of goods or services.

**Renewal:** The process where an existing contract is renewed for an additional time period in accordance with the terms and conditions of the original contract.

**Scope of Work/Statement of Work (or "SOW"):** A detailed, written description of the conceptual requirements contained within the specifications.

**Service(s):** 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.

**Specification(s):** Description of the requirements for goods or services including the Scope of Work, to be fulfilled by a contractor.

**State:** The State of Texas.

**Statute:** A law enacted by a legislature.

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

**System:** The Texas State University System and its Universities.

**TSUS Rules and Regulations:** Rules established by the TSUS Board of Regents that govern all TSUS Universities. <http://www.tsus.edu/about-tsus/policies.html>

**Vendor:** An individual or business or governmental entity that has a contract to provide goods or services to the State of Texas. Used interchangeably with the term "Contractor."

**Vendor Debarment:** The designation status of any vendor who is debarred from conducting business with the TSUS or its Universities by either the Comptroller or the federal government. Debarment protects the State of Texas from risks associated with awarding contracts to vendors who have exhibited an inability or unwillingness to fulfill contractual requirements or who have displayed improper conduct. Debarment may include a vendor's successors-in-interest. Debarment does not relieve the vendor from responsibility for fulfilling existing obligations

**Vendor Performance Form:** A form prepared by the Contract Administrator that reports satisfactory and unsatisfactory performance by a vendor.

## **SECTION II – ETHICAL STANDARDS AND POLICIES**

### **A. General**

It is important that the people of Texas have complete confidence in the integrity of public servants. This need is especially critical in the area of state-supported higher education. The responsibility for educating and training the future leaders of the state and nation carries with it the duty to adhere to the highest ethical standards and principles. Texas Education Code §51.9337(b) requires the Board of Regents to establish a code of ethics for University officers and employees, including provisions governing authority to execute contracts or exercise discretion in awarding contracts. The TSUS Code of Ethics is articulated in Chapter VIII, Paragraph 4 of the TSUS Rules and Regulations. For further information, refer to SHSU's Ethical Standards Policies and Procedures.

It is the policy of the State of Texas that a state officer or state employee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the officer's or employee's duties in the public interest per Texas Government Code 572.001.

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 potential contractors from influencing employees or officials in discharging their official duties. Furthermore, these guidelines and rules will help prevent the TSUS employees' or officials' independent judgment from being compromised.

For federal awards, SHSU must disclose in writing any potential conflict of interest to the federal awarding agency or pass-through entity in accordance with the awarding agency's policy. § 200.112 of 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

With these principles in mind and in accordance with state and federal law, the following policies and procedures are to be adhered to by all TSUS employees, officials, contractors, and potential contractors.

## **B. Conflicts – Rules and Policies**

The University has policies governing conflicts of interest, conflicts of commitment, and outside activities ensuring that the primary responsibility of officers and employees is to accomplish the duties and responsibilities assigned to that position. Texas Education Code § 51.9337(c)(2). Following are links to the TSUS Rules and Regulations and the University's operating policies and procedures related to conflict of interest/commitment policies and ethical standards:

Texas State University System

<https://www.tsus.edu/about-tsus/policies.html> (see Chapter VIII, Ethics Policy)

Sam Houston State University

[http://www.shsu.edu/intranet/policies/finop/procurement\\_business\\_services/documents/PUR-02+Ethics+April+2017.pdf](http://www.shsu.edu/intranet/policies/finop/procurement_business_services/documents/PUR-02+Ethics+April+2017.pdf)

## **C. Standards of Conduct of Officers and Employees**

As state officers or employees, each officer or employee is expected to comply with all federal, state, and local laws and is subject to disciplinary action for a violation of those laws. Texas Education Code §51.9337 (c)(1). A violation by an officer or employee may subject the individual to disciplinary action and any applicable civil or criminal penalty if the violation constitutes a violation of another statute or rule.

In accordance with Texas Government Code Chapter 572, part C, Standards of Conduct and Conflict of Interest Provisions, § 572.051, a state officer or employee shall not:

1. Accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;
2. Accept employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the officer's or employee's position;

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. Intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.

See TSUS Rules and Regulations, Chapter VIII, Paragraph 4.1 and 4.2, for additional guidelines.

**D. Disclosure of Potential Conflicts by University Officials and Employees; Prohibited Contracts**

1. University procurement of goods or services is subject to Texas Government Code, Chapter 2261 - State Contracting Standards and Oversight, and applies to related contracts and contract management activities.

University employees and officials involved in procurement or in contract management for the University must disclose to the University, as required by state law, TSUS Rules and Regulations or University operating policies and procedures or other applicable policies, any potential conflict of interest that is known by the employee or official with respect to any contract or purchase of goods or services from a contractor by the University. Texas Government Code § 2261.252 (a) – Disclosure of Potential Conflicts of Interest; Certain Contracts Prohibited.

2. The University shall evaluate any disclosed potential conflict of interest when contracting for goods or services. Under § 2261.252(b), if any of the following University employees or officials or certain family members has a financial interest in a private vendor, the University is unable to enter into a contract for the purchase of goods or services with the person:

- a. A member of the agency's governing body (i.e., the TSUS Board of Regents);
- b. The governing official, executive director (i.e., the Chancellor, University Presidents, General Counsel, Chief Procurement Officer, or Procurement Director of the University); or
- c. A family member related to an employee or official described by (1) or (2) within the second degree by affinity or consanguinity.

There is a financial interest under Texas Government Code § 2261.252 (c), if the employee or official:

- a. Owns or controls, directly or indirectly, an ownership interest of at least one percent in the person, including the right to share in profits, proceeds, or capital gains; or
- b. Could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.

Reference – *Disclosure of Potential Conflicts by University Officials or Employees:*

<https://comptroller.texas.gov/purchasing/publications/procurement-contract.php>  
*Comptroller Procurement and Contract Management Guide*

Reference - *Disclosure of Conflict of Interest Form for Purchasing Office or Contracting Office personnel:*

<https://comptroller.texas.gov/purchasing/publications/procurement-contract.php>

**E. Conflict of Interest: Disclosure, Representations and Warranties by Potential Contractors and Respondents; Employment of Current and Former University Employees**

1. To avoid conflicts of interest, University shall request all potential contractors and respondents to disclose, in their response to solicitations and during the term of any resulting contract, any actual or potential conflicts of interest in their proposed provision of goods or services or other performance under any contracts resulting from the solicitations.

In accordance with Texas Government Code 2252.908 and the TSUS Rules and Regulations, Chapter VIII, the University may not enter into a contract with a business entity that requires an action or vote by the Board or that has a value of at least \$1 million, unless the business entity submits a Disclosure of Interested Parties at the time the business entity submits the signed contract to the University. The Board will not approve any contract that is not accompanied by such disclosure statement and a representation by the University that such statement was timely submitted to the Texas Ethics Commission as required by law.

- a. This provision does not apply to a sponsored research contract, an interagency contract, or a contract related to health and human services if the value of the contract cannot be determined at the time the contract is executed and any qualified vendor is eligible for the contract.
- b. The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission and include a list of each interested party for the contract of which the contracting business entity is aware and the signature of the authorized agent of the contracting business entity acknowledging that the disclosure is made under oath and under penalty of perjury.

The University shall submit a copy of the disclosure to the Texas Ethics Commission not later than the 30th day following the date the University receives a Disclosure of Interested Parties. Further information and a link to the Disclosure of Interested Parties form can be found on the following website: <https://www.ethics.state.tx.us/filinginfo/1295/>.

Potential contractors and respondents shall submit a Disclosure of Interested Parties certificate on the form prescribed by the Texas Ethics Commission, and the University shall acknowledge receipt of the certificate, both of which shall be accomplished through the website available at: <https://www.ethics.state.tx.us/filinginfo/1295/>

The University shall not enter into a contract that requires TSUS Board approval prior to execution or has a value of at least \$1 million without the requisite disclosures by potential contractors or bidders. Texas Government Code § 2252.908. This requirement does not apply to the following contracts:

- a. where the governing body has properly delegated authority to execute the contract and the governing body does not participate in selecting the contractor (<https://www.ethics.state.tx.us/rules/commission/ch46.php>)
- b. a sponsored research contract of the University; an interagency contract of the University; or a contract related to health and human services if the value cannot be determined at time of



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.

#### **F. Contracts with Former or Retired Employees**

The following restrictions also apply to potential contractors and respondents:

1. Texas Government Code § 2252.901, CONTRACTS WITH FORMER OR RETIRED AGENCY EMPLOYEES. The University may not enter into an employment contract, a professional services contract, or consulting services contract with a former or retired employee before the first anniversary of the last date on which the individual was employed by the University if appropriated funds are used to make payments under the contract. Such contracts may be made with an employer of a former or retired employee within one year if the individual does not perform services on procurements or projects on which the individual worked while employed by the University.
2. Texas Government Code § 2254.033, RESTRICTION ON FORMER EMPLOYEES OF A STATE AGENCY. An individual who offers to provide consulting services to the University and who was employed by the University or another state agency any time during the prior two years shall disclose in the offer the nature or previous employment, the date employment terminated, and annual compensation at the time of termination.
3. Texas Government Code §572.069, CERTAIN EMPLOYMENT FOR FORMER STATE OFFICER OR EMPLOYEE RESTRICTED. A former state officer or employee of a state agency who during the period

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.

### **G. Subcontractors or Assignees**

Contractors are not allowed to assign their duties and obligations under a contract to others such as subcontractors or assignees except as expressly provided in the contract with University consent and subcontractors or assignees are subject to the same disclosure requirements and restrictions set forth in this section. Contractors remain responsible for the disclosure requirements and performance of the contract notwithstanding any such assignment or subcontract. This ensures that the evaluated and selected individual or entity will actually be responsible for performance and that proposed transactions may be reviewed for compliance with the Conflict of Interest and related party provisions. (Texas Comptroller's Contract Management Guide)

## **SECTION III POST-AWARD CONTRACT ADMINISTRATION**

### **A. Post-award Contract Administration Overview**

1. Post-award Planning
2. Monitoring Performance
3. Change Management
4. Payment Approval
5. Dispute Resolution
6. Termination
7. Contract Closeout

The primary tasks of Contract Administrator:

1. Read and understand the contract. Consult with Contract Manager or where appropriate, the Office of General Counsel when there are questions.
2. At regular intervals verify contractor performance for compliance with contract requirements.
3. Identify possible noncompliance with a contract by monitoring a contractor's performance.
4. Determine if corrective action is necessary and communicate with the Contract Manager.
5. Develop plan/checklist for Contract Closeout.

The SOW is the roadmap for contract administration. The goal is for the parties to satisfactorily perform their responsibilities. Effective contract administration minimizes or eliminates problems and potential claims and disputes.

The extent of contract administration will not be the same for all contracts. The level of contract administration necessary should be consistent with the complexity and level of risk of the contract, the contract term, and dollar value.

### **B. Contract Manager Responsibilities at the Procurement/Purchasing Office**

Contract award is not the final measure of success. The Contract Manager will guide the Contract Administrator until the completion of services or final receipt of goods.

A key factor in successful Contract Management post-award contract administration is communication between a Contract Administrator and a Contract Manager.

The primary post-award responsibilities of a Contract Manager may include, but are not limited to:

1. Guiding the Contract/Evaluation Review Team throughout the Procurement process and compliance of contract.
2. Consulting with Office of General Counsel to address any legal concerns or issues.
3. Receiving and responding to formal contract communications between the University and the contractor.
4. Managing, approving, and documenting any changes to the contract.
5. Documenting and assisting in resolving disputes with contractor in a timely manner.
6. Establishing control of correspondence, data, and reports.
7. Provide all contract documentation in the repository.
8. Providing notices and exercising remedies, as appropriate, when a contractor's performance is deficient in consultation with the Office of General Counsel, if applicable.
9. Providing oversight of the formal written documentation accepting the deliverables as appropriate.
10. Reviewing encumbrances to confirm compliance with the contract.
11. Performing random sampling of invoices to verify compliance with University operating policies and procedures and the contract terms.
12. Providing oversight of the Contract Close-out process to properly document the contract file.
13. Regularly review performance for contract administration process improvement.

### **C. Contract Administrator Responsibilities at Originating Department**

The Procurement and Business Services Office shall identify a single Contract Administrator at the originating department.

A Contract Administrator needs to have a proficient understanding of the contract provisions, the ability to communicate about contract obligations to all parties involved, and maintain control over the contract performance.

A good Contract Administrator monitors that contract requirements are satisfied, that goods or services are delivered in a timely manner, and that financial interests of SHSU are protected.

Contract Administrators must have sufficient knowledge of contracting principles as it relates to their responsibilities in managing the contract. It is the contractor's responsibility to perform and meet the requirements of the contract. To do so, contractors need technical direction and approval from a Contract Administrator, provided in a timely and effective manner. All guidance provided to a contractor must be within the scope of the contract. All variances shall be clearly defined in the specifications.

The primary post-award responsibilities of the Contract Administrator may include, but are not limited to :

1. Serving as the point of contact for disseminating instructions regarding the SOW to the contractor.
2. Receiving and responding to informal communications between SHSU and a contractor.
3. Establishing scope of authority, clear lines of communication and reporting, and specific individuals

who will interact directly with a contractor.

4. Managing SHSU assets used in contract performance.
5. Providing access to SHSU facilities, equipment, data, personnel, materials, and information.
6. Identifying, documenting, and resolving minor disputes in writing with a contractor in a timely manner.
7. Implementing and documenting a quality control and assurance process.
8. Maintaining appropriate documentation as required by the applicable retention guidelines.
9. Documenting significant events including deficiencies, deliverables, and milestones.
10. Monitoring the contractor's progress and performance to confirm goods or services conform to the contract requirements.
11. Inspecting and approving the final goods or services received and providing documentation of acceptance to the Contract Manager.
12. Monitoring budgets to verify sufficient funds are available for the duration of the contract.
13. Monitoring default terms and conditions in the contract.
14. Authorizing payments consistent with the contract documents and in accordance with University operating policies and procedures.
15. Performing the Contract Close-out responsibilities.

**Contract Administrators are *not* authorized to:**

1. Instruct a contractor to start work prior to a fully executed contract and receipt of any required bonds and insurance or other requirements.
2. Alter the scope or terms of the contract without a formal contract amendment processed through the Procurement and Business Services Office.
3. Approve changes to the HUB Subcontracting Plan or approve substitutions or additions of subcontractors without written approval from the Procurement and Business Services Office.
4. Extend the term of the contract without execution of formal contract amendment processed through the Procurement and Business Services Office.
5. Allow the contractor to incur any obligations outside of the scope of the contract.

**D. Contract/Evaluation Review Team Responsibilities**

The number of participants in the Contract/Evaluation Review Team will vary in number from one to many depending on the size, level of risk, and complexity of the contract. Early in the procurement process, the Procurement and Business Services Office shall identify personnel to participate on the Contract/Evaluation Review Team. The Contract/Evaluation Review Team responsibilities continue through the post-award Contract administration phase.

The primary post-award responsibilities of the Contract/Evaluation Review Team may include, but are not limited to:

1. Reviewing the sequence of activities, dependencies, required or desired outcomes, and acceptable performance levels.
2. Reviewing post-award timetable and start and end date for each performance. Include milestones with accompanying timeframes, and monitoring and reporting requirements.
3. Monitoring and documenting contractor activity on a specified frequency to identify problem areas.
4. Meeting with a contractor to review progress, discuss problems, and consider necessary changes.

5. Reviewing contract performance problems and providing input on viable solutions.

### **E. Post-Award Planning**

In order to properly plan, a Contract Administrator must understand all components of the solicitation and the contract.

Procedures for contract administration are described in the solicitation document. A Contract Administrator should use template checklists to monitor contract compliance, key component of which may include, but are not limited to:

1. Expected costs
2. Potential risks
3. Timelines for performance
4. Options for inspection and acceptance
5. Key dates of the contract

### **F. Post-Award Conference**

Not every contract requires a formal post award conference. The Contract/Evaluation Review Team shall decide if a post-award conference is necessary. Factors used to determine the need for a post-award conference include:

1. Type of contract;
2. Level of risk associated with the contract;
3. Value and complexity;
4. Length of contract, period of performance, or delivery requirements;
5. Procurement history of the goods or services required;
6. SHSU's prior experience with the contractor;
7. Any special or unusual contract requirements; and
8. Any special or unusual payment requirements.

For less complex, low risk, low-dollar value contracts, a post-award conference is not necessary. A Contract Manager shall provide the name of the Contract Administrator to the contractor.

A post-award conference is held soon after a contract is awarded. It is a meeting held with a contractor awarded a contract, and **prior** to beginning performance under a contract, to verify that a contractor fully understands the expectations, will perform accordingly, and can provide the foundation for an effective contract administration effort. Although both a contractor and University personnel should be fully aware of the contract requirements, the post-award conference assists those involved directly in the contract administration process to understand all requirements of contract performance. The post-award conference cannot be used to change the terms of the contract.

### **G. Monitoring Performance**

Monitoring the performance of a contractor is a key function of proper contract administration in order to assess whether the contractor is performing all duties in accordance with the contract and to allow the Contract/Evaluation Review Team to identify and address any developing issues.

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 Regents via the TSUS Risk Manager within the Office of Finance. The University's Executive Director for Procurement and Business Services shall immediately notify the TSUS Risk Manager of any serious issue or risk identified with respect to a contract monitored in accordance with Texas Government Code § 2261.253(c).

## **H. Reporting**

Reports are used by the contracting parties to monitor the progress of contract compliance. Reporting requirements must be clearly defined in the solicitation document providing for the frequency, content, format, and recipients of each report.

Below is a listing of common contract reports that may be utilized by the parties. The Contract/Evaluation Review Team will determine what reports are effective monitoring tools for each contract.

1. **Service Level Reports** are used to document the performance of a contractor. These reports may provide information on backorders, product returns, and fulfillment cycles.
2. **Progress or Milestone Reports** are a useful means of assessing the routine progress of a contractor. The report can be used as a gauge of determining milestone completion and can be used as an approval tool for progress payments.
3. **Subcontractor Reports** document the activity of subcontractors. Often, these reports are required by statute or other governmental regulation.
4. **Product Usage Reports** are useful reports for commodity contracts. These reports detail purchases of a product category and can be used to determine pricing advantages. An example would be a store brand versus name brand report.
5. **Ordering Activity Reports** provide information to the University on spend trends. An example would include a report on the number of orders less than \$50. This information can be used to negotiate improved shipping prices for the University.
6. **Historical Metrics** are used to measure contract success. Historical metrics are used to compare the progress of a contract over a longer period of time. Historical metrics may include total spend reports across multiple years of the contract.
7. **Asset Reports** may be required to document assets being purchased on behalf of the University by the contractor. This would assist the University in identifying any asset that would necessitate inventory tracking.
8. **Revenue Reports** are often required on Auxiliary contracts that provides revenue for the University.

The report should clearly detail the net sales received by the contractor, the formula used to calculate the revenue, and the revenue amount payable to the University.

9. **Statutory Reports** are required by statute and the requirements should be clearly defined in the SOW. This may include HUB Subcontracting reported information.
10. **Regulatory Reports** are required by a regulatory body and should be clearly defined in the SOW. This may include reports on hazardous materials utilized in the performance of the contract.
11. **Contract Close-Out Reports** provide value to both contracting parties as the reports document the completion of the SOW. Examples may include construction punch-out lists, final sales reports, audits, lessons learned, and Vendor Performance Forms.

## **I. Risk Management**

A preliminary risk assessment should be conducted by the Contract/Evaluation Review Team to make an initial determination on the level, type, and amount of resources required to successfully manage the risk associated with the contract. As the risk associated with a contract increases, the degree of Contact/Evaluation Review Team oversight should be increased.

## **J. Payment Approval**

Any costs incurred by a contractor are to be in accordance with the contract terms.

Payments must be reviewed by the Contract Administrator or his or her designee for compliance with the contract pricing terms. Payment review shall include, but is not limited to:

1. The contractor is billing only for goods or services received by SHSU;
2. The goods or services have been inspected and accepted;
3. The invoice is correct and complies with the pricing, terms and conditions of the contract; and
4. The total payments do not exceed the contract limits.

If a Contract Administrator disputes a payment, the Disbursements office will be notified and payment withheld until a Contract Administrator, with input from a Contract Manager, is satisfied with the contract performance. (See next section.)

Payments must be made in accordance with Texas Government Code Chapter 2251 Payment for Goods and Services providing for payment of invoices within 30 days unless the contract performance is in dispute. The invoice payment date is determined by the later of the date that a correct invoice is received, or the date goods are received or the performance of services was completed.

Advance payments are only permissible with local funds, if necessary and serves a public purpose.

1. Books and library materials for the University;
2. Cost savings recognized by the University;
3. Expedited delivery;
4. Lease costs;
5. Penalties;
6. Purchase of real property;
7. Specialized goods or services;
8. Subscriptions.

## **K. Withholding Payment**

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.

## **L. Contract Changes**

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.

## **M. Contract Change Types**

1. Material Contract Changes

Whether or not a change is considered a material change to the contract depends upon the solicitation process, and the contract. The contract and any amendments must be consistent with the specifications, the procurement cooperative program requirements, or be allowed by TSUS Rules and Regulations and SHSU operating policies and procedures.

If a change is needed to a contract that was competitively solicited, the change must be within the scope of the solicitation.



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 original specifications. Where there is a need for material changes, the Executive Director for Procurement and Business Services will evaluate the changes and determine if there is a need to resolicit to allow for fair competition.

## 2. Administrative Changes

These are changes that are within the scope of the contract and do not affect or alter the rights of the parties. These changes are typically executed via a bilateral amendment.

Examples of administrative changes include:

1. Changes in billing or contact information;
2. Corrections of typographical errors not affecting the substance of the contract;
3. Changes as permitted by the specific contract language; and
4. Changes in University personnel assigned to the contract.

## 3. Substantive Changes

These are changes to a contract that affect the rights of both parties. Such changes generally require bilateral amendments.

Examples of substantive changes include:

- 1 Change in the price of the contract;
- 2 Change in the delivery schedule;
- 3 Change in the quantity;
- 4 Change or nature of deliverables;
- 5 Change in SOW that is non-material;
- 6 Change of key personnel by the contractor; and
- 7 Change of any terms and conditions (administrative changes excluded).

## 4. Constructive Changes

If a contractor perceives that work beyond the scope of the contract was ordered by the SHSU, the contractor may claim that the contract was “constructively” changed, and the contractor may be entitled to additional compensation for the changes. A constructive change will require a bilateral amendment or Change Order.

Constructive changes may occur when University personnel:

- 1 Provide suggestions to a contractor;
- 2 Accelerate the delivery schedule;
- 3 Direct the work to be performed differently;
- 4 Change the sequencing of the work;
- 5 Delay accepting or rejecting deliverables;
- 6 Delay reviewing invoices and approving payment; and

- 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.

#### **N. Dispute Resolution**

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 contractor inquiries by taking the following initial steps including, but not limited to:

1. Identify the problem - many times what may appear to be a problem can be resolved by providing a contractor with information or clarification.
2. Report – a Contract Administrator shall report the issue to the Contract Manager even in cases where action may not be required from the Contract Manager.
3. Research facts – obtain information regarding the potential problem from all relevant sources including members of the Contract/Evaluation Review Team and the contractor. This resulting information will be maintained in the contract file.
4. Evaluation – review the facts in conjunction with the requirements and terms and conditions of the contract. A Contract Manager, in consultation with Office of General Counsel as required and the Contract/Evaluation Review Team, will then determine an appropriate course of action.

#### **O. Termination for Default Notifications**

Prior to terminating a Contract for default, a cure notice should be sent to the contractor if the parties so agreed in the contract. A cure notice letter allows a contractor to have a defined period of time to “cure” the deficiency or violation. The Contract Administrator shall consult with the Chief Procurement Officer who shall then consult with the Office of General Counsel in his or her discretion before sending cure notices.

If the contractor fails to cure the situation or provide a satisfactory explanation as requested and within the time allowed, the contract may be terminated by sending a notice of termination containing at least the following information:

1. The contract number or Purchase Order number;
2. The date of contract or Purchase Order;
3. The effective date of termination;
4. Reference to the clause under which the contract is being terminated;
5. A concise, accurate statement of the facts justifying the termination; and
6. A statement that the goods or services associated with a contract being terminated may be solicited and that the contractor may be held liable for additional costs (if permissible under the contract).

#### **P. Termination**

When a contract is terminated, the parties are relieved from further unperformed obligations in

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 is terminating all or part of the contract. The notice of termination shall give the effective date of termination. If the contract is being selectively terminated, the notice shall specify which part(s) of the contract are being terminated.

It is recommended that the University include a no-fault termination clause in the solicitation documents and the contract. There may be circumstances in which the University should not enter into a contract with a no-fault termination clause.

If the University includes a no-fault cancellation clause, it is important to include language that the University will not be liable for anticipated profits, unabsorbed overhead, or interest on borrowing.

## 2. Termination for Default

A contract may be terminated for default (or “with cause”) when SHSU concludes that a contractor has failed to perform, make progress, or has otherwise breached the contract. SHSU is not required to terminate a contract even though the circumstances permit such action. The Procurement and Business Services Office may determine that it is in the University’s best interest to pursue other alternatives. Examples of such alternatives include extending the delivery or completion date, allowing a contractor to continue performance, or working with a contractor’s surety to complete the outstanding work.

A contractor may also have the right to terminate a contract for default if SHSU fails to perform.

Termination for default should be used as last resort and not as punishment. The purpose of a termination for default is essentially to protect the interests of the University.

Factors to consider prior to making a termination for default decision include, but are not limited to:

1. Has the University done everything within reason to assist the contractor in curing any default?
2. The provisions of the contract and applicable regulations.
3. The specific contractual failure(s) and the explanation provided for the failures.
4. The urgency of the need for the contracted goods or services. The University may need to weigh the respective benefits or disadvantages of allowing a delinquent contractor to continue performance or re-soliciting a new contractor.
5. The availability of the goods or services from other sources and the time required to obtain them (compared to the additional time the current contractor needs to complete the work).

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 constitute an excusable delay if it is not considered "unusually severe weather". For example, a snow storm in Amarillo in February would not be considered unusual, while it would be considered unusual in Huntsville. On the other hand, a snow storm in Amarillo in June would be unusual.

If a contractor's failure to perform is due to the default of a subcontractor, in order to qualify as an excusable cause, the default must arise out of causes beyond the control and without the fault or negligence of both the contractor and the subcontractor. Even if this requirement is met, the cause will not be excusable if the goods or services to be provided by the subcontractor could have been obtained from other sources in time to meet the contract delivery schedule.

### **Q. Contract File**

Maintain documentation related to each contract is required under Texas Government Code § 441.1855, the University:

1. shall retain records of each contract entered into by the University and all related contract solicitation documents; and
2. may destroy the contract and supporting documentation only after the **seventh anniversary** of the date:
  - a. the contract is completed or expires; or
  - b. all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or supporting documentation are resolved.

This retention period for contracts and associated documents supersedes the University's retention schedule.

## **R. Documentation File**

The following documents shall be retained in the Procurement and Business Services Office:

1. A copy of the current contract and all amendments.
2. The solicitation document, the contractor's response, evaluation determination, and the notice of award document.
3. A list of SHSU furnished property or services, as part of the solicitation document.
4. A copy of the pre-award conference summary, if conducted.
5. A copy of correspondence with the Office of the General Counsel.
6. A copy of all notices to proceed, stop work orders, deficiency notices, or Change Orders.
7. The records and minutes of all meetings, both internal and external. Include sign-in sheets
8. and agendas.
8. Copies of any audit documentation.

The contract Administrator's office shall possess or have access to:

1. A copy of all specifications, drawings or manuals incorporated into the contract by reference;
2. A list of contractor submittal requirements;
3. A schedule of compliance review, internal correspondence, if applicable;
4. A copy of all general correspondence related to the contract issued from the Contract Administrator;
5. The originals of all contractor data or report submittals;
6. A copy of all routine reports required by the contract;
7. A copy of all letters of approval pertaining to such matters as materials, the contractor's quality control program, prospective employees, and work schedules;
8. The records and minutes of all meetings, both internal and external. Include sign-in sheets or agendas; and
9. Contract monitoring documentation.
10. BearKatBuy will maintain a copy of all contractor invoices, credit memos, information relative to discount provisions for prompt payment, letters pertaining to contract deductions or fee adjustments; a copy of all backup documentation for contractor payment or progress payment.