TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER EL PASO

Operating Policy and Procedure

HSCEP OP: 50.27, **Use of Private Consultants**

PURPOSE: The purpose of this Texas Tech University Health Sciences Center El Paso Operating Policy and Procedure (HSCEP OP) is to establish policies and procedures for use of private consultants to assure that TTUHSC El Paso is in compliance with state law and Board of Regents rules and regulations.

REVIEW: This HSCEP OP will be reviewed on June 1 of each odd-numbered year (ONY) by the Managing Director of Contracting or designee, with recommendations for revisions submitted to the Chief Operating Officer (CFO) or designee by June 15.

POLICY/PROCEDURE:

A. Consulting contracts paid from institutional funds should follow the procedures outlined in HSCEP OP 54.01 and 54.02. In addition to the procedures of HSCEP OP 54.01 and 54.02, Board of Regents approval is required for any consulting contract with an initial consideration of more than $25,000.00, and all modifications increasing that contract. Board of Regents approval is also required for any modification to a consulting contract where the initial consideration was $25,000.00 or less and the modification will cause the total consideration to exceed $25,000.00. For contracts that provide for the services of a consultant with an initial consideration of $25,000 or less, prior notice of the proposed contract must be provided to the Chair of the Board of Regents and the Chair of the Finance and Administration Committee of the Board, and a report of the contract shall be provided as an information agenda item at the next Board of Regents meeting. When submitting a consulting contract and routing sheet to the Contracting Office, a CONSULTING CONTRACT NOTICE TO BOR CHAIRS form (Attachment A) must also be submitted. The contract will not be completed until the Contracting Office receives Attachment A.

B. Consulting contracts paid from funds appropriated by the Legislature, derived from the exercise of the statutory duties of a state agency, or received from the federal government to the extent that federal laws or regulations do not conflict with this policy are to be processed under the procedures shown as follows:

1. **Definition of Consultant.**

   a. For purposes of this HSCEP OP, a private consultant means a person that provides or proposes to provide a consulting service. Consulting service means the service of studying or advising an existing or a proposed operation or project of TTUHSC El Paso under a contract that does not involve the traditional relationship of employer and employee. A Major Consulting Services Contract is a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed $25,000.00.

   b. This policy is not applicable to Actuaries, Investment Counselors, Private Legal Counsel (retaining private legal counsel requires prior authorization from the Attorney General) in accordance with the Texas Government Code, 2254.024, or professional services listed in the Texas Government Code, 2254.002(2) and defined as services provided in connection with the professional employment or practice of a person who is licensed or registered and acting within the scope of Accounting, Architecture, Landscape Architecture, Land Surveying, Medicine, Optometry, Professional Engineering, Real Estate Appraising or Professional Nursing. It is also not applicable to persons given faculty appointments, guest lecturers, guest speakers, guest performers or other persons

performing other than consulting services. Personnel contracts for the search of new faculty and staff personnel should be handled in accordance with Human Resources operating policies.

c. Search firms are not considered to be consultants and should be processed through Purchasing.

2. **Policy.**

Private consultants may be used only if there is a substantial need for the consulting services and the service cannot be adequately performed with TTUHSCEP personnel or by contracting with another state agency. When the use of a private consultant is authorized, the consultant shall be selected:

a. On the basis of demonstrated competence, knowledge, and qualifications, and on the reasonableness of the proposed fee for the services; and

b. When other considerations are equal, preference should be given to a private consultant whose principal place of business is within the state or who will manage the consulting engagement wholly from one of its offices within the state.

Private consultants will be employed using written contracts approved by the Contracting Office. No payments will be made for services obtained without a written contract.

3. **Request and Justification for Use of Consultants.**

a. Consulting contracts paid by institutional funds shall follow the procedures outlined in HSCEP OP 54.01 and 54.02 as an expense contract that requires encumbrance of funds as therein provided.

b. Consulting contracts paid by funds appropriated by the Legislature, derived from the exercise of the statutory duties of a state agency, or received from the federal government, to the extent that federal laws or regulations do not conflict with this policy shall follow the procedures outlined in HSCEP OP 54.01 and 54.02, if less than $25,000.00, and if over $25,000.000 shall be processed as follows:

(1) When it is determined that a substantial need exists for a consulting service which cannot be satisfied by use of TTUHSC personnel or by contracting with another state agency, the appropriate administrator will contact the Contracting Office for guidance. The request should have the approval of the appropriate Regional Dean/Dean. If the contract is a Major Consulting Services Contract, the CONSULTING CONTRACT NOTICE TO BOR CHAIRS form (Attachment A) must be prepared by the appropriate administrator and forwarded to the Contracting Office.

(2) If the Regional Dean/Dean approves the request, the approved form and the contract should be forwarded to the Contracting Office.

(3) The COO will forward Major Consulting Services Contracts to the President for approval. If the President approves the request, the Contracting Office will prepare an appropriate item for action by the Board of Regents at their next available meeting. After favorable action by the Board of Regents, the COO will notify the Contracting Office to proceed.

(4) Pursuant to *Regents' Rules*, all modifications to consultant contracts which cause the total consideration to exceed $25,000.00 or which increase the value of a

Major Consultant Services Contract must be approved by the Board of Regents.

4. **Procedures.**

Procedures to be followed:

(1) $25,000.00 or Less: Follow the contracting procedures in HSC OP 54.02.

(2) Major Consulting Services Contracts:

(a) Submission and Approval. The department must submit the four-part REQUISITION/PURCHASE ORDER form to the Contracting Office, along with fully approved Attachment A, at least ninety (90) days before the service is to begin, and at least thirty (30) days prior to the next Board of Regents meeting to allow for inclusion of the item in the Board of Regents' agenda.

(b) Notification. Before entering into a Major Consulting Services Contract, the Contracting Office shall notify the Legislative Budget Board and the Governor's Budget and Planning Office of TTUHSCEP's intent to contract with a private consultant and shall supply the Legislative Budget Board and the Governor's Budget and Planning Office with information demonstrating that TTUHSC El Paso intends to fully comply with Section 2 above.

(c) Finding of Fact. A finding of fact must be obtained from the Governor's Budget and Planning Office before the Contracting Office may proceed with a Major Consulting Services Contract. To obtain a finding of fact that a need exists for the services to be purchased and report the required information demonstrating compliance with Section 2 above, the Contracting Office will forward the information from Attachment A to the Governor's Office for approval or waiver in advance of awarding the consulting contract. The Governor's Office will annotate and return a copy of the report to the Contracting Office in each case when the required finding of fact or waiver is made.

(d) Solicitation of Proposals. The Contracting Office will submit the following information to the Secretary of State for publication in the Texas Register at least thirty (30) days before contracting with a private consultant:

1. An invitation for private consultants to provide offers of consulting services;

2. Name, address and telephone number of the individual who should be contacted by a private consultant who intends to make an offer;

3. Closing date for the receipt of offers; and

4. The procedure by which TTUHSC El Paso will award the contract.

(e) Notification after entering into a Major Consulting Services Contract. No later than the 10th day from the date that the Major Consulting Services Contract is executed, the Contracting Office shall file the following information with the Secretary of State for publication in the Texas Register:

1. A description of the activities that the private consultant will conduct;

2. The name and business address of the private consultant;

3. The total value and the beginning and ending dates of the contract; and

4. The due dates of documents, films, recordings or reports that the private consultant is required to present to TTUHSC El Paso.

(f) Notify the Legislative Budget Board of a contract for consulting services if the amount exceeds $14,000. The notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 10th day after the date the entity enters into the contract.

5. **Continuation of Previous Contracts.**

If the desired consulting service relates to a service previously performed by a private consultant, this must be disclosed in the invitation for offers filed with the Secretary of State under Section 4.b.(2)(d). If the intent is to award the contract for the consulting service to the private consultant who previously performed the service unless a better offer is submitted, this intention must also be disclosed in the invitation for offers.

6. **Renewal, Amendment or Extension of Contracts.**

When TTUHSC El Paso intends to renew, amend or extend a consulting services contract, the procedures to be followed will be determined by the value of the contract, based on contract amount with any individual or entity and type of funding.

Procedures for renewal, amendment, or extension of contracts paid from funds appropriated by the Legislature, derived from the exercise of the statutory duties of a state agency, or received from the federal government to the extent that federal laws or regulations do not conflict with this policy are as follows:

(1) If the original contract was a Major Consulting Services Contract, and if the renewal, amendment or extension is not a Major Consulting Services Contract, the department shall forward the CONSULTANTING CONTRACT NOTICE TO BOR CHAIRS form (Attachment A) to the appropriate Regional Dean/Dean for approval. The approved request, along with a completed REQUISITION/PURCHASE ORDER form, should be routed to the Contracting Office and to the Executive Vice President for Finance and Administration for Presidential and Board of Regents approval. After approval by the Board of Regents, TTUHSC El Paso shall file with the Secretary of State for publication in the Texas Register the information required by Section 4(2)(e), no later than the 10th day after the renewal, amendment or extension is executed.

(2) If the original contract was a Major Consulting Services Contract and the renewal, amendment or extension is a Major Consulting Services Contract, Sections 3, 4 and 5 must be followed.

(3) If the original contract was not a Major Consulting Services Contract and the total consideration of the original contract and the renewal, amendment or extension will have a reasonably foreseeable value to exceed $25,000, Sections 3, 4 and 5 must be followed.

7. **Final Reporting.**

In cases where the contract is paid from other than institutional funds, the administrator will provide the Contracting Office with copies of all documents, films, recordings and reports provided by the consultant. The Contracting Office will then file these copies with the Texas State Library, and will be prepared, upon request, to provide copies of this same data to the Governor's Budget and Planning Office and the Legislative Budget Board. In addition, the administrator will prepare a report to be submitted to the Contracting Office regarding actions which were taken in response to

the recommendations of each private consultant employed. The Contracting Office shall furnish this report to the COO who will provide the report to the Governor's Budget and Planning Office and the Legislative Budget Board as part of the biennial budgetary hearing process.

8. **Contract Documents.**

The administrator will prepare the contract for the consultant service. The Contracting Office will have the contract approved and signed by all necessary parties.

9. **Conflicts of Interest.**

This section applies to all consulting services contracts, including renewals, amendments and extensions of those contracts: Any officer or employee of TTUHSC El Paso who has a financial interest in an association, partnership, firm or corporation that submits an offer to provide consulting services to TTUHSC El Paso or who is related within the second degree by consanguinity or affinity to an individual having the financial interest shall report the financial interest to the President of TTU/TTUHSC El Paso not later than the 10th day after the day on which the association, partnership, firm, or corporation submits the offer. The second degree of consanguinity includes the parents, children, brothers and sisters, grandparents, uncles and aunts, first cousins, nephews and nieces and grandchildren of the employee. The second degree of affinity includes the parents, children, grandchildren, brothers and sisters, nephews, nieces, uncles, aunts and first cousins of the employee's spouse.

10. **Restrictions.**

TTUHSC El Paso may not enter into a consulting services contract with any individual who has been previously employed by TTUHSC El Paso within the past 12 months.

An individual who offers to perform a consulting service for TTUHSC El Paso and who has been employed by TTUHSC El Paso or by another state agency at any time during the two years preceding the making of the offer shall disclose in the offer the nature of the previous employment with TTUHSC El Paso or the other state agency, the date of termination of the employment and the annual rate of compensation for the employment at the time of termination. If TTUHSC El Paso accepts the offer from an individual described in the previous sentence, the Contracting Office shall include this information in the material provided to the Secretary of State for publication in accordance with Section 4.(2)(e).

A person's offer or proposal to provide consulting services to TTUHSC El Paso may not be accepted if:

a. the person received compensation from the agency to participate in the preparation of the specifications or request for proposals on which the offer is based; and

b. the person would receive compensation from the agency for providing consulting services to the agency.

11. **Void Contract.**

If TTUHSC El Paso or any employee contracts for consulting services or renews, amends or extends a consulting services contract or any private consultant contracts to perform a consulting service for the institution without complying with the provisions of this HSCEP OP, the contract, renewal, amendment or extension is void.

12. **Emergency Waivers - Major Consulting Contracts.**

a. If an unforeseen emergency causes a department to need the services of a private

consultant in a time frame that makes compliance with all or part of this policy infeasible, then this section applies. This section applies regardless of whether the needed services necessitate a new contract or the renewal, amendment, or extension of an existing contract which is paid from other than institutional funds.

b. The department, through the Contracting Office of TTUHSC El Paso, shall request from the Governor a limited waiver from the requirements of the statute or Govt. Code Section 2254. The Governor may grant the limited waiver only after TTUHSC El Paso has provided information concerning the nature of the emergency, the reason that the emergency was unforeseen, the identity of the private consultant with whom TTUHSC El Paso wishes to contract, the amount of the proposed contract, and the other information the Governor deems necessary.

c. For the purpose of this section, the term "unforeseen emergency" means a situation that suddenly and unexpectedly causes TTUHSC El Paso to need the services of a private consultant. 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 unforeseen only to the extent that the department was not negligent in foreseeing the occurrence of the emergency.

d. As soon as possible after the Governor grants a limited waiver, the department shall fulfill the requirements of this policy to the extent that those requirements are not made superfluous or ineffective by the Governor's limited waiver. The notice published in the Texas Register shall contain a detailed description of the emergency that necessitated the Governor's temporary waiver.

13. **Dividing Contracts.**

A consulting services contract or a renewal, amendment, or extension of a consulting services contract may not be divided into more than one contract, renewal, amendment, or extension in order to avoid the requirements of this policy.

14. **Mixed Contracts.**

If a contract involves both consulting services and other types of services, then this policy applies if the primary objective of the contract is the purchase of consulting services.

15. **References.**

a. Government Code, Section 2254
b. *Regents' Rules*, Section 07.12