



**Angelo State University**  
**Operating Policy and Procedure**

**OP 30.05: Use of Private Consultants**

**DATE:** May 15, 2014

**PURPOSE:** The purpose of this OP is to establish policies and procedures for use of private consultants to assure that Angelo State University (ASU) is in compliance with *Texas Government Code*, §§ 2254.021 - 2254.040, and the *Regents' Rules*.

**REVIEW:** This OP will be reviewed in April every five years, or as needed, by the contract administration office with recommendations for revision forwarded through the vice president for finance and administration to the president by May 15 of the same year.

**POLICY/PROCEDURE**

**1. Definitions**

- a. For purposes of this OP, a private consultant means an individual or an entity that performs or proposes to perform a consultant service. Consultant service means the practice of studying or advising an existing or a proposed operation or project of ASU under a contract that does not involve the traditional relationship of employer and employee. A major consulting services contract is a contract for which it is reasonably foreseeable that the value of the contract will exceed \$25,000.
- b. This policy is not applicable to the employment of the following practitioners of professional services listed under [Texas Government Code, § 2254.002\(2\) and § 2254.024](#): accountant, architect, landscape architect, land surveyor, physician (including surgeon), optometrist, professional engineer, real estate appraiser, registered nurse, private legal counsel, investment counselors, actuaries, or medical or dental service providers. It is also not applicable to persons given faculty appointments, guest lecturers, guest speakers, guest performers, or other persons performing other than consulting services. The term “consultant” includes a political subdivision, but does not include the federal government, a state agency, or a state governmental entity.
- c. If the governor, comptroller, and Texas Procurement and Support Services (TPAAS) consider that it is more advantageous to the state for the procurement of a particular consulting service to be subject to the procedures of [Texas Government Code, Chapter 2155](#), rather than to these procedures, they may make a memorandum of understanding to that effect and each adopt that memorandum of understanding by rule.

## **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 ASU personnel or by contracting with another state agency.

When the use of a private consultant is authorized, the consultant shall be selected on the basis of demonstrated competence, knowledge, and qualifications, and on the reasonableness of the proposed fee for the services. 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. Fees may not exceed any maximum provided by law.

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

- a. Consulting contracts regardless of funding source must follow the guidelines outlined in [OP 30.01](#) Contracting Policy and Procedures and complete the following forms:
  - (1) Independent Contractor Checklist (Attachment A)
  - (2) Notice to BOR Chairs for Consulting Contracts (Attachment B)
- b. All consulting contracts under \$25,000 require notifying the Board of Regents (BOR) prior to contract start date.
- c. All consulting contracts of \$25,000 or more must be presented during the next scheduled BOR meeting and receive BOR approval prior to contract start date.
- d. Consulting contracts of \$25,000 or more and paid by state appropriated funds will require prior approval from the governor's office, posting on the Texas Register at least thirty (30) days prior to contract start and a justification of need and summary of actions taken based on consultant recommendations. Contact the contract administration office for procedures.

## **4. Contract Notification**

The contract administration office with assistance from the purchasing office shall provide written notice to the Legislative Budget Board of contracts for consulting services if the amount of a contract, including an amendment, modification, renewal, or extension exceeds \$14,000. The notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 10<sup>th</sup> day after the date the entity enters into the contract.

## **5. Renewal, Amendment, or Extension of Contracts**

- a. If ASU intends to renew, amend, or extend a consulting services contract and the cumulative total of the contract is under \$25,000, the Independent Contractor Checklist and Notice to BOR Chairs for Consulting Contracts must be completed if not previously done so.
- b. If it is reasonably foreseeable that the renewal, amendment, or extension of a consulting contract will be greater than \$25,000 then the procedures outlined in 3 (c) and (d) will apply depending on funding source.

## **6. Conflicts of Interest**

Texas Government Code [§Sec. 2254.032. Conflict of Interest states](#) any employee of ASU who has a financial interest in an association, partnership, firm, or corporation that submits an offer to provide consulting services to ASU, or who is related to an individual having the financial interest shall report the financial interest to the contract administration office not later than the 10<sup>th</sup> day after the day on which the association, partnership, firm, or corporation submits the offer. Employees must also comply [with OP 02.09 Conflict of Interest and Commitment](#).

To avoid conflicts of interest state agencies should require all potential contractors to disclose, in their responses to solicitations, any actual or potential conflicts of interest in their proposed provision of services or other performance under any contracts resulting from the solicitations. Contractors must notify ASU if conflict of interest information changes during the contract period.

## **7. Restrictions**

ASU may not enter into a consulting services contract or professional services agreement with any individual who has been previously employed by ASU within the past 12 months.

An individual who offers to perform a consulting service for ASU and who has been employed by ASU or 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 ASU 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.

A person's offer or proposal to provide consulting services to ASU 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.

## **8. Void Contract**

If ASU 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 OP, the contract, renewal, amendment, or extension is void.

## **9. Emergency Waivers**

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, contact the contract administration office for instructions. Use of state appropriated funds for emergency consulting contracts will require an emergency waiver from the governor.

[Minor revisions: May 15, 2014]

## **10. 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.

## **11. 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.

## **12. References**

- a. *Texas Government Code*, Chapters 2155 and 2254
- b. Section 07.12.2(c), Regents' Rules

Attachment A: [Independent Contractor Checklist](#)

Attachment B: [Notice to BOR Chairs for Consulting Contracts](#)