

STEPHEN F. AUSTIN  
STATE UNIVERSITY

Office of the General Counsel

**POLICY SUMMARY FORM**

**Policy Name:** Professional and Consulting Services

**Policy Number:** 17.12

**Is this policy new, being reviewed/revised, or deleted?**    Review/Revise

**Date of last revision, if applicable:** 1/27/2015

**Unit(s) Responsible for Policy Implementation:** President

**Purpose of Policy (what does it do):** The policy exists to comply with Gov't code 2254 and Education code 51.9335 and provides direction for procurement processes related to professional and consultant services.

**Reason for the addition, revision, or deletion (check all that apply):**

- ☒ Scheduled Review      ☐ Change in law      ☐ Response to audit finding  
☐ Internal Review      ☐ Other, please explain:

*Please complete the appropriate section:*

**Specific rationale for new policy:**

**Specific rationale for each substantive revision:** Reviewed with no changes recommended.

**Specific rationale for deletion of policy:**

*Additional Comments:*

Reviewers:

Kay Johnson, Director of Procurement and Property Services/HUB Coordinator  
Danny Gallant, Vice President for Finance and Administration  
Damon Derrick, General Counsel

## Professional and Consulting Services

**Original Implementation:** October 26, 1999

**Last Revision:** ~~January 27, 2015~~ January 30, 2018

### DEFINITIONS

**Professional services** means those services within the scope of the practice, as defined by state law, of:

1. accounting
2. architecture
3. landscape architecture
4. land surveying
5. medicine
6. optometry
7. professional engineering
8. real estate appraising
9. professional nursing

or those services provided in connection with the professional employment or practice of a person who is licensed or registered as

1. a certified public accountant
2. an architect
3. a landscape architect
4. a land surveyor
5. a physician, including a surgeon
6. an optometrist
7. a professional engineer
8. a state certified or state licensed real estate appraiser
9. a registered nurse

**Consulting service** means the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee.

A consultant may be used only if there is a substantial need for the consulting services and only if the agency cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with a state governmental entity.

**Major consulting services contract** means a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$25,000. The \$25,000 threshold is not a one-time cost, but rather a cumulative amount for on-going consulting services.

**Consultant** means a person that provides or proposes to provide a consulting service. The term includes a political subdivision but does not include the federal government, a state agency, or a state governmental entity.

## **SELECTION OF A PROVIDER**

Professional or consulting services contracts may require Board of Regents approval. Reference Items Requiring Board of Regents Approval (1.4). Submission of a requisition is required, and other purchasing procedures may apply.

Subject to the provisions below, professional or consulting service solicitations greater than \$25,000 will be posted on the electronic state business daily unless procurement determines that no value is added by the posting.

### *Professional Services*

A **professional service provider** is not to be selected on the basis of competitive bid but rather 1) on the basis of demonstrated competence and qualifications to perform the services; and 2) a fair and reasonable price, as long as professional fees do not exceed any maximum provided by law. Architectural, engineering, or land surveying services must be procured in the following manner:

1. Select the most highly qualified provider based on demonstrated competence and qualifications;
2. Attempt to negotiate a contract with the selected provider at a fair and reasonable price;
3. If a satisfactory contract cannot be negotiated with the most highly qualified provider, formally end negotiations with that provider; select the next most highly qualified provider; and attempt to negotiate a contract at a fair and reasonable price. The selection process for architectural, engineering, or land surveying services shall continue in this manner until a contract is accepted by all parties.

If a solicitation will enhance the selection process for professional services, contact the procurement director to discuss options for making informal price comparisons or preparing a formal request for proposal or request for qualifications.

### *Consulting Services*

If **consulting services** are not purchased using processes allowed under Best Value Procurement (17.1), the following steps must be completed and documented.

An invitation for consultants to provide offers on major consulting services contracts must be submitted to the secretary of state for publication in the Texas Register for a minimum of 30 days prior to entering into the contract. The published invitation must include a finding and

explanation by the president that the consulting services are necessary. Contact the procurement director or general counsel's office for assistance in completing the Major Consulting Contract Request form.

Not later than the 20th day after the date in which a major consulting contract is entered into by the university, the university shall file with the secretary of state for publication in the Texas Register: a description of the activities that the consultant will conduct; the name and business address of the consultant; the total value and the beginning and ending dates of the contract; and the dates on which any document, films, recording or reports required of the consultant are due.

All renewals, amendments, and extensions of a major consultant contract shall follow any procedures for posting in the Texas Register as required by applicable law.

Upon submittal of an offer by a private consultant to provide consulting services to SFA, any officer or employee shall report to the president within 10 days of receipt of the offer: 1) any financial interest that the officer or employee has in the private consultant, or 2) any financial interest in the private consultant of anyone related to the officer or employee within the second degree by consanguinity or affinity as determined under Texas Government Code Chapter 573. Reference Texas Government Code Section 2254.032 and Ethics (2.6).

## **RESTRICTIONS ON HIRING FORMER OR RETIRED EMPLOYEES**

Contracting with a former employee or retiree for professional or consultant services is prohibited on state funds within 12 months of the employee's separation date from the university. The use of local funds is allowed within 12 months of the employee's separation date with prior approval of the director of procurement and property services, director of human resources, and general counsel.

If a past employee or retiree is hired as a consultant within 2 years of leaving SFA or any other state agency, the consultant must disclose in his/her offer the following information: a) nature of employment at the agency; b) the date employment was terminated; c) the annual rate of compensation at termination. This requirement does not apply to professional services.

Contracting for professional services with a company employing a former employee or retiree within 12 months of the employee's separation date from the university is allowed only if the former or retired employee does not work on a project that is similar to his/her duties while employed by SFA.

**Cross Reference:** Tex. Educ. Code § 51.9335; Tex. Gov't Code § 2252.901; Tex. Gov't Code Ch. 2254; Tex. Gov't Code Ch. 573; Nepotism (11.16); Ethics (2.6); Items Requiring Board of Regents Approval (1.4); Purchase Requisition (17.19)

**Responsible for Implementation:** Vice President for Finance and Administration

**Contact for Revision:** Director of Procurement and Property Services/HUB Coordinator

**Forms:** Major Consulting Contract Request Form

**Board Committee Assignment:** Finance and Audit