

Texas Tech University System

Regulation 07.03

Contracting

Approved: March 2, 2020

Next Scheduled Review: July 2021

1. Purpose

- a. The Texas Tech University System (the “System”) and its component institutions (the “Institutions”) contract for goods and services to advance their respective missions, duties, and obligations as a Texas public university system and Texas institutions of higher education. The System and its Institutions are committed to compliance with all State and local laws, regulations, and rules applicable to contracting. Regents’ Rule 02.03.2(b)(2) requires General Counsel review of all significant transactions. This Regulation sets out the requirements for the System and its Institutions relating to all contracts, including the significant transactions requiring General Counsel review.

2. General Information

- a. *Role of the System Office of General Counsel.* Attorneys in the [Office of General Counsel](#) (“OGC”) represent the System and its Institutions. Attorneys review, revise, and comment on contracts’ legal terms to ensure compliance with applicable laws, regulations, rules, and best practices, and assist contracting offices and departments in negotiating final agreements. OGC is not responsible for the business terms or operational aspects contained in contracts.
- b. *Role of the Contract Originating Department (e.g., college, unit, division, or office requesting the contract).* The contract originating department shall be fully responsible for the origination, management, and funding of its requested contracts as set forth in System Policies and Regulations and institutional operating policies and procedures. This includes reading, analyzing, as necessary each contract before it is submitted to the institution’s contracting office to ensure that it accurately reflects the parties’ responsibilities, contains all necessary terms and conditions, accurately and fully reflects the proposed academic or business arrangement, and that the department is able to comply with all contract requirements.
- c. *Board Approval.* The Regents’ Rules set forth certain contracts that must be pre-approved by the Board of Regents (“Board”). OGC review does not constitute Board approval. Contracts requiring Board approval must be timely submitted for inclusion in the agenda for the next Board meeting by the deadline set by the System [Office of the Board of Regents](#) or as otherwise permitted by the Regents’ Rules.
- d. *Signature Authority.* Contracts may only be signed by persons with signature authority, as specifically delegated in writing by the Chancellor or Institution President. Questions regarding signature authority should be directed to the Institution’s contracting office or Chief Financial Officer.

- e. *OGC Forms.* OGC promulgates contracting forms and templates for use by the System and Institutions.¹ To the extent possible, the current version of all OGC-approved forms should be used, without revision, except as to: (1) scope of the goods to be purchased or services to be provided, (2) business terms, and (3) vendor information. Any revision to any substantive legal term of an OGC approved form must be approved by OGC prior to execution of the contract.
- f. *Insurance Requirements.* Insurance requirements for vendors contracting with the System and its Institutions are set by the System Office of Risk Management, and can be found [here](#). Any changes to insurance requirements other than professional liability insurance requirements must be approved by the Institution's contracting office in consultation with the System [Office of Risk Management](#). Changes to insurance requirements other than professional liability insurance requirements in OGC-approved forms do not require OGC review if such changes are reviewed and approved by the Office of Risk Management. Any changes to professional liability insurance requirements must be approved by OGC.
- g. *OGC Website.* OGC-approved forms are available on the [OGC website](#). In addition, the OGC website contains contract provisions which may be incorporated by reference into form contracts.

3. General Counsel Review of Contracts

- a. *Contracts Requiring OGC Review.* The following contracts are deemed significant transactions and *must* be submitted to OGC for review prior to execution:
 - i. Any contract requiring approval by the Board of Regents, pursuant to the [Regents' Rules](#). Such contracts may include, *but are not limited to*, those for more than \$1,000,000 over the life of the contract, contracts with a term longer than 4 years (unless it may be terminated without cause within 120 days), and any agreement for the transfer or lease of real property.
 - ii. Any contract² with an annual contract value greater than \$500,000.
 - iii. Any contract³ with an annual contract value of \$250,000 through \$500,000 unless:
 - 1. On an OGC-approved contract form; or
 - 2. On a vendor-provided form, with the OGC-approved contract addendum attached.
 - iv. Any contract involving the sharing, transfer, or processing of sensitive data, including student, employee, or medical records (e.g., FERPA-protected data, HR records, protected health information), records of financial transactions (i.e., credit card numbers and bank account information).

¹ If an Institution regularly enters into agreements for which an OGC approved form would expedite processing or otherwise be beneficial to the Institution, please contact OGC for assistance in OGC developing a new approved form.

² OGC approval is not needed for: (1) Purchase Orders that do not include legal terms; or (2) Texas Comptroller negotiated vendor contracts.

³ OGC approval is not needed for: (1) Purchase Orders that do not include legal terms; or (2) Texas Comptroller negotiated vendor contracts.

- v. Any contract with businesses or entities in foreign countries.
 - vi. Any contracts for events, activities, or travel⁴ involving students and inherently risky or dangerous activities unless on an OGC-approved form (e.g., charter flights, high-adventure recreation).
 - vii. Any coaching contracts.
 - viii. Any contract for clinical or administrative health care services (even if on an OGC-approved form).
 - ix. Any contract for consulting services valued at \$25,000 or above.
 - x. Any settlement agreement.
 - xi. Any contract, regardless of the contract value or form use, which the Institution's administration, contracting office, IT department, or purchasing department or any individual school or program believes should reasonably require OGC review given the risks, nature, or uncertainty involved in the agreement.
 - xii. OGC may grant a written exception to the review requirements set forth above if, after consideration and discussion with the submitting Institution, OGC determines such exception is in the best interest of the Institution.
- b. *Calculation of Annual Contract Value.* For purposes of this Regulation, the "annual contract value" amounts set forth above shall be determined by calculating the total payments over the term of the contract and dividing such amount by the total number of contract years (e.g., a contract with total payments of \$600,000 over 3 contract years, has an annual contract value of \$200,000). Amendments, renewals, or extensions of any contract shall be added to the original term to determine the annual contract value. Should such amendment, renewal, or extension increase the annual contract value so as to require OGC review under Section 3(a), above, the contracting office shall submit the amendment, renewal, or extension to OGC regardless of whether it was originally submitted to OGC for review.
- c. *Procurement and Contracting Requirements.* Prior to submitting any contract to OGC for review, the proposed transaction must go through all applicable procurement and contracting requirements required by applicable law as well as System and Institutional policies and contracting offices. Review by OGC does not limit or waive the requirements of the contracting Institution's Operating Policies, including but not limited to review, revision, and/or approval by the Institution's contracting office.

4. Submission of Contracts to General Counsel for Review

- a. *Notification.* As soon as practicable, a contracting office or contract-handling department should notify OGC that it intends to submit a contract for review. In communicating with vendors and third parties, the contracting office and originating department should plan adequate time for OGC review and return.

⁴ OGC has approved standard forms for charter busses and flights.

- b. *Submission.* When submitting a contract for OGC review, the requesting Institution's contracting office should include the draft agreement in Microsoft Word format, including all exhibits, schedules, attachments, and order forms, and all other relevant documentation including but not limited to RFPs, RFQs, responses, and contract routing forms. For any renewals or amendments, the requesting contracting office should include a copy of the original contracts and all prior renewals and amendments. Submissions should clearly communicate the vendor/contractor name, contract value, and information regarding the goods and/or services to be provided under the contract. Any proposed changes to OGC-approved forms or contracts that have been previously reviewed by OGC should be redlined to reflect the proposed changes.
- c. *Review and Return.* Upon receipt of all necessary information, OGC will endeavor to return its review and comments to the Institution's contracting office as soon as five (5) to ten (10) business days after submission. Review times will vary depending on the complexity of the contract, current OGC workload, and priority as set by the submitting Institution.
- d. *Negotiation and Finalization.* OGC's initial return timeline does not account for time required to negotiate and finalize terms with a vendor or the vendor's counsel. In most cases, it is most expeditious if the Institution's contracting office negotiates academic and business terms with the other party. However, if a lawyer is directly included in the negotiations, then OGC should also be involved. Each Institution's contracting office shall handle execution and signature of all contracts once finalized.

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