

Use of Consultants

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Responsible University Office:

Contract Administration

Responsible University Administrator:

Director, Contract Administration

Consulting Services

A sometimes confusing aspect of dealing with a consultant contract is recognizing one. A contract with someone who calls himself or herself a consultant is not necessarily a “consultant contract” within the meaning of the Texas Government Code.

Texas Government Code, Chapter 2254, Subchapter B, defines “consulting service” as the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee.

Studying or advising is the core of a true consultant contract and should be construed broadly. To “study” a state agency typically would mean to consider some aspect of the agency in detail, such as its financial status or its method of performing an administrative function, and to present that information to the agency. To “advise” a state agency typically would mean to provide a recommendation or identify options with respect to some course of action. The service of studying or advising also would include certain direct activities, such as “to assist” or “to coordinate” unless those activities are performed with respect to an exempted service.

One way to recognize whether a would-be consultant is “studying or advising” as opposed to doing something else, is to look at the deliverable involved. Generally speaking, a true “consultant” delivers information or provides assistance that enables the state agency to take some course of action. On the other hand, if the information simply enables the would-be consultant to take some course of action on the agency’s behalf which is itself not a consulting service (such as developing software), then one is likely not dealing with a true “consultant contract” within the meaning of the code.

However, the State recognizes that sometimes true consultant contracts will necessarily involve a mixture of consulting (studying or advising) and other services. Such contracts are referred to as “mixed” contracts. According to Texas Government Code, Section 2254.038, “A mixed contract is still a true consultant contract when the primary objective is to study or advise”.

Before entering into a consulting contract, consult Procurement Services for guidance. As a general rule, however, the following limits apply:

A. For consulting services less than \$50,000, no bids are required. The Department will be required to submit a “Best Value” letter stating why the particular consultant was chosen.

B. For consulting services greater than \$50,000, formal bidding through either a Request for Qualification (RFQ) or Request for Proposal (RFP).

The transaction must be completed by Procurement Services to ensure legislative requirements are satisfied.