

Frequently Asked Questions (FAQs)

Business Affairs Memorandums:

- 9.23.15: Implementation of Procurement and Contracting Legislation and Working Group Recommendations on Group Purchasing Organizations and Sole Source Purchasing
- 12.16.15: Revisions to September 23, 2015 Memorandum related to Procurement
- 12.17.15: Effective January 1, 2016: HB 1295-Vendor Disclosure Requirements for Contracts Exceeding \$1 Million

The following questions and answers are intended to provide the U. T. System institutions a better understanding of recent legislative and policy changes as of January 2016.

1. *How is the contract value determined for approval and/or reporting purposes? What about a long-term perpetual license agreement that costs \$50,000 per year?*

Known or estimated spend over longest period of time specified in the contract equals the contract value. For example, if estimated spend is \$1 million per year and the contract has a base term of three years and has two one-year renewals possible, the total contract value is \$5 million.

In regards to the contract value, it does not matter if extensions or renewals are automatic or by operation of additional documentation. Also, the contract value should reflect long-term license agreements, when applicable, and that term should reflect a reasonable estimation of the useful life of the software.

2. *What is the definition of “appropriated” funds for reporting requirements to the Legislative Budget Board (LBB)?*

“Appropriated funds” means those funds in the state treasury that are appropriated to the institution by the legislature, either through the General Appropriations Act or a supplemental appropriation. The term includes (a) general revenue (including general revenue-dedicated) funds and the available university fund (AUF), and (b) funds that are appropriated to another state agency, such as the coordinating board, but then allocated to an institution for specific purposes. The term does not include institutional funds that are not deposited in the treasury.

The Office of Governmental Relations (OGR) advises that clinical revenues should not be considered “appropriated” for this purpose, and contracts funded solely from clinical revenues are not required to be reported to the LBB under Appropriations Bill Rider Article IX, Section 7.04 or 7.12.

Additionally, applicable only to U. T. System health institutions, UTRGV and UTEP: tobacco endowment proceeds also meet the definition of appropriated funds, as they are held in the treasury and appropriated.

3. *How do you report a purchase order (PO) or contract that involves multiple funding sources, including one funding source that is appropriated funds?*

POs/contracts should be reported to the LBB (subject to applicable thresholds) under Appropriations Bill Rider Article IX, Sections 7.04 and 7.12, only to the extent they involve expenditure of appropriated funds. If, however, a contract involves multiple funding sources, with only one of them being appropriated funds, the contract should be reported to the LBB, assuming the total contract value exceeds the \$50,000 reporting threshold.

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4. *Are U. T. System institutions exempt from reporting 'consulting services' per the new LBB requirements?*

Institutions should report consulting services contracts to the LBB, if the \$50,000 reporting threshold is exceeded, in the same fashion as any other contract for goods or services.

5. *Are request for proposals (RFPs) to be posted on institutional website until the resulting contract expires?*

Yes, Senate Bill (SB) 20 Section 2261.253 of the Government Code requires the full RFP itself to be posted until the contract expires.

6. *What is the process that we need to take in getting a group purchasing organization (GPO) certified to use that was not listed on the U. T. System GPO Procurement Guidelines provided with the new dollar limits? Would they just fall under other? Or do we need to go through the accreditation program and has that been established?*

Dr. Kelley will present the GPO accreditation program to the Board of Regents for approval in February 2016. If approved, U. T. System will manage the execution of the program details and report the results to the Board of Regents in August 2016. In the meantime, if a U. T. System institution desires to use a Texas state agency or a GPO not approved by Dr. Kelley in his December 16, 2015 memorandum, the chief procurement officer can document the entity to be used and the rationale and submit a request to Dr. Kelley.

7. *Dr. Kelley's December 16, 2015 directive indicates that, unless and until any different guidance emerges from the GPO accreditation program, U. T. institutions should use only one or more of five specified GPOs (Alliance, Premier, E&I, TXMAS and DIR), with any proposed exception to this rule to be discussed directly with Dr. Kelley. Does this mean we are prohibited from using a different GPO even when the contract value is less than \$15,000?*

No. Dr. Kelley's prohibition applies only to contracts with a value of \$15,000 or more. (Also, see Q&A No. 6 above, regarding the opportunity to review with Dr. Kelley any proposed use of a non-specified GPO when spend equals or exceeds \$15,000.)

8. *In regards to the GPO Task Force Report (Recommendation #3) which pertains to competing awarded suppliers if over \$1M; is this allowed with Texas Multiple Awards Schedules (TXMAS) contracts?*

It first should be noted that Dr. Kelley's September 23, 2015 directive eliminates the \$1M threshold referenced in Recommendation #3 to the GPO Task Force Report and requires comparison of GPO-procured multiple awards, *regardless of dollar amount*, unless the awards are made by the Alliance or Premier. (Per Sect. 5 of Dr. Kelley's December 16, 2015 directive, the spend thresholds specified there determine when comparisons of multiple awards made by Premier are required, and per Sect. 3.1(b)(3) of Dr. Kelley's September 23, 2015 directive, no comparison of multiple awards made by the Alliance is required, regardless of amount.)

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So, in regard to TXMAS, the question really should be whether TXMAS allows comparison of multiple awards, regardless of spend. TXMAS officials have indicated that customers (e.g., a U. T. System institution) are not allowed to negotiate contract terms established in their contracts. If a customer does negotiate a lower price, the contractor must provide that price to all customers through a contract change order. Please note, however, that Dr. Kelley's directive simply requires, at a minimum, a comparison of existing awards, to select the one that achieves best value.

9. *In regards to the GPO Task Force Report (Recommendation #6) which pertains to the institution's procurement director or contract manager certifying in writing the procurement method to the President on contracts that exceed \$5M; is this required now?*

Yes, Dr. Kelley's expectation is all recommendations have either been implemented or are actively being implemented. Additionally, SB 20 Section 2261.255 contains similar language and was included in the Office of General Counsel's Summary of Procurement and Contracting Legislation (see SB 20 item #8).

10. *Who will facilitate the process when a GPO-procured contract has been determined to require approval by the U. T. System Board of Regents?*

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11. *May institutions "piggyback" on contracts procured by other U. T. System institutions or other state agencies, or is this prohibited by Dr. Kelley's directives or the GPO accreditation program?*

In general, the practice of "piggybacking" (which means purchasing goods or services under another institution's or agency's existing, competitively procured contract, without having to conduct a further competitive procurement yourself) may continue and is not intended to be restricted by the directives or the GPO accreditation program. The Contract Management Handbook will incorporate legal guidance from U. T. System OGC on when piggybacking would be appropriate.

In order to enhance its ability to piggyback in appropriate circumstances, each U. T. System institution should adopt a standard practice of including a "group purchase authority" provision in every RFP it issues. Suggested wording for this provision is included in the RFP template posted by U. T. System OGC on the Purchasing Council website and is inserted here for easy reference:

Texas law authorizes institutions of higher education (defined by Section 61.003, Education Code) to use the group purchasing procurement method (ref. Sections 51.9335, 73.115, and 74.008, Education Code). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Proposer under this RFP. In particular, Proposer should note that University is part of The University of Texas System ("U. T. System"), which is comprised of fourteen institutions described at <http://www.utsystem.edu/institutions>. U. T. System institutions routinely evaluate whether a contract resulting from a procurement conducted by one of the institutions might be suitable for use by another, and if so, this could give rise to additional purchase volumes. As a result, in submitting its

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proposal in response to this RFP, Proposer should consider proposing pricing and other commercial terms that take into account such higher volumes and other expanded opportunities that could result from the eventual inclusion of other institutions in the purchase contemplated by this RFP.

It's important to distinguish between piggybacking on an existing contract that a state agency has procured for its own use, and using a contract that an agency (such as the Texas Department of Information Resources) procured while performing GPO functions. The use of contracts from an agency performing GPO functions does not constitute piggybacking and is, in fact, intended to be regulated by Dr. Kelley's directives and the GPO accreditation program.

12. *What is the process to implement the new Disclosure of Interested Parties (DIP) requirement contained in House Bill (HB) 1295? Will OGC be providing guidance on how to implement these new requirements? If so, when?*

On December 17, 2015, Dr. Kelley circulated, to CBOs, CPOs and others, written guidance on the process. A copy of this guidance is posted on the U. T. System Office of Business Affairs website under [Contract Administration](#).

13. *Should we put potential suppliers on notice during our procurements that they may be required to comply with HB 1295 if we award a contract to them?*

Yes, since this may be significant information for some potential proposers. U. T. System OGC has posted on the Purchasing Council website an updated RFP template that flags the HB 1295 requirement and calls for each proposer to confirm, when submitting its signed execution of offer, its willingness to make the required disclosures. The wording added to the template is inserted here for easy reference:

- 5.3.2 **[OPTIONAL (for use *only* when procuring a contract that may have a value exceeding \$1 million):** By signing the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**), Proposer agrees to comply with [Section 2252.908, Government Code](#) (“**Disclosure of Interested Parties Statute**”), and [1 Texas Administration Code Sections 46.1 through 46.5](#) (“**Disclosure of Interested Parties Regulations**”), as implemented by the Texas Ethics Commission (“**TEC**”), including, among other things, providing the TEC and University with the information required on the form promulgated by the TEC and set forth in **APPENDIX EIGHT**. **Proposers may learn more about these disclosure requirements, including the use of the TEC electronic filing system, by reviewing the information on the TEC website at https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html.**]

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14. *HB 1295 requires vendors under certain types of contracts to submit disclosures to the contracting U. T. System institution before the institution signs the contract. Does this apply to purchase orders, which typically aren't signed by the institution?*

Yes. In the case of any purchase order to which HB 1295 applies (in general, one with a value of at least \$1 million or requiring action by the UT System Board of Regents), the vendor must submit the disclosures before the PO is issued by the institution.

15. *If an institution routinely issues large purchase orders for goods or services from a particular supplier, can the institution satisfy HB 1295 (requiring the supplier to make certain pre-contract disclosures) by having the supplier furnish a "blanket" disclosure, rather than submitting a form for each PO?*

In general, HB 1295 requires a separate disclosure for each PO that exceeds the \$1 million threshold mentioned in HB 1295. If, on the other hand, a PO exceeding \$1 million in value is issued under a UT System master agreement (such as an Alliance-procured contract) that contemplates purchases exceeding \$1 million in the aggregate, and under which UT System already has secured the necessary HB 1295 disclosure from the supplier, no further HB 1295 disclosure is required when an institution issues a PO implementing the master agreement, regardless of the PO's dollar value.