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| **1** | **FEDERAL LAWS IMPACTING PROJECT DELIVERY** |  |  |  |  |
| 1.01 | [Americans with Disabilities Act of 1990](http://www.ada.gov/pubs/ada.htm)(Public Law 101-336) | See Risk Ref. No. 2.20 through 2.22 below |  |  |  |
| 1.02 | **Federal Water Pollution Control Act, as amended (“**[Clean Water Act](http://epw.senate.gov/water.pdf)**”),** 33 USC Section 1251 | See Risk Ref. No. 2.24 below |  |  |  |
| 1.03 | [Occupational Safety and Health Act of 1970 (OSH Act)](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=OSHACT&p_id=2743) [29 USC 654](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=OSHACT&p_id=3359), Public Law 91-596, Section 5(a). With regard to construction project delivery, employer is responsible for ”…furnishing a place of employment which [is] free from recognized hazards that are causing or are likely to cause death or serious physical harm…” | Risk – An employer does not comply with the law and an employee is harmed.  Exposure - Potential litigation, project delays, unfavorable media exposure. | H | H | Include Uniform General Conditions (UGC) and standard Project Safety Specification in all construction contracts (including RFQ and RFP) which delineates project safety requirements.  Conduct periodic construction job site safety visits |
| 1.04 | **Federally Funded Projects** [OMB - Circular A-110](http://georgewbush-whitehouse.archives.gov/omb/circulars/a110/a110.html)Certain administrative, accounting, solicitation, and procurement procedures may be required on projects with any federal funding in order to identify particular items funded by certain grants. | Risk – Not complying with specified procedures.  Exposure - Partial project funding could be jeopardized, delayed, or not received. | M | L | Confirm anticipated or documented project funding requirements with the UT System Office of Finance during the Pre-Project Planning phase, including pre-, post-, and after-award requirements. |
| **2** | **STATE LAWS IMPACTING PROJECT DELIVERY** |  |  |  |  |
| 2.01 | **Texas Higher Education Coordinating Board** [TEC 61.058](http://www.statutes.legis.state.tx.us/SOTWDocs/ED/htm/ED.61.htm#61.058), [TAC RULE §17.21](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=19&pt=1&ch=17&rl=21)(a) This section does not apply to buildings and facilities that are to be used exclusively for auxiliary enterprises and will not require appropriations from the legislature for operation, maintenance, or repair.  (b) The board may review all construction, repair, or rehabilitation of buildings and facilities at institutions of higher education to determine whether the construction, rehabilitation, or repair meets the standards adopted by board rule for cost, efficiency, space need, and space use, but the construction, rehabilitation, or repair is not contingent on board review. Standards must be adopted by the board using the negotiated rulemaking procedures under Chapter 2008, Government Code. If the construction, rehabilitation, or repair does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, the governing boards of the applicable institutions, and the Legislative Budget Board. This subsection does not impair the board’s authority to collect data relating to the construction, repair, or rehabilitation of buildings and facilities occurring each year at institutions of higher education. | Risk - Project might proceed prior to THECB submissions which could impact future projects.  Exposure – Negative impact to future relations between institution, UT System, and THECB. | H | M | Submit a signed Board of Regents Certification form to THECB before the start of the project.  Submit a THECB Project Application once completed project costs are known, but no later than 90 days after the project has been added to the Facilities Inventory. |
| 2.02 | **Energy Conservation Design Standards for Entities Otherwise Excluded from Chapter 2166, BUILDING CONSTRUCTION AND ACQUISITION** [TGC 2166.402](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2166.htm#2166.402).  The state energy conservation office shall establish and publish mandatory energy conservation design standards for each new state building or major renovation project, including a new building or major renovation project of a state-supported institution of higher education. The office shall define "major renovation project" for purposes of this section and shall review and update the standards biennially.  *(refer to* [Texas Government Code 447.004](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.447.htm#447.004) *for energy conservation design standards)*  This state law refers to [TGC 447.004](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.447.htm#447.004) which requires that design compliance forms be submitted to State Energy Conservation Office (SECO) demonstrating compliance with their design standards.  Construction of a new building or a major renovation project may not begin before the design architect or engineer for the construction or renovation has 1) certified to the institution of higher learning that the construction or renovation complies with the standards established under [Section 447](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.447.htm), and 2) provided to the state energy conservation office a copy of that certification. | Risk – Design and construction specifications and documents may not comply with standards for energy use and/or may not be submitted to SECO.  Exposure - Project could be found in non-compliance.  **NOTE:  *For new construction and major renovation projects****: A major project proactive project is defined in TAC title 34, Chapter 19, Rule 19.33 to be when “the implementation cost is $2million or more based on the initial cost estimate.* | L | M | Coordinate design document compliance with SECO requirements.  Submit final A/E signed and sealed compliance document to SECO after 100% CD and prior to construction. |
| 2.03 | **Water Conservation Design Standards for Entities Otherwise Excluded from Chapter 2166** [TGC 2166.402](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2166.htm#2166.402http://tlo2.tlc.state.tx.us/statutes/docs/GV/content/pdf/gv.010.00.002166.00.pdf)This state law refers to [TGC 447.004](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.447.htm#447.004) which requires on-site reclaimed system technologies, including rainwater harvesting, condensate collection, or cooling tower blow down, or combination of those system technologies, for non-potable indoor use and landscape watering be incorporated into the design and construction of new buildings with a roof measuring 10,000 square feet, and any new building for which the incorporation of such systems is feasible.  These procedural standards do not apply if the institution of higher education constructing the building 1) determines that compliance with the standards is impractical, and 2) notifies State Energy Conservation Office (SECO) of the determination and provides to the office documentation supporting the determination. | Risk – Documents may not comply with standards for water conservation.  Exposure - Project could be found in non-compliance. | L | M | Include on-site reclaimed system technologies in the project design.  Notify SECO of any impracticality determinations and provides to SECO the documentation and engineering analysis supporting the determination  ***NOTE: For new buildings with a roof measuring at least 10,000 square feet and other new buildings for which the incorporation of such system is feasible:*** |
| 2.04 | **Alternative Energy and Energy-Efficient Architectural and Engineering Design in New Building Construction (**[TGC 2166.403](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2166.htm#2166.403)**)** (c-1) For a project constructed by and for a state institution of higher education, the institution shall, during the planning phase of the proposed construction for the project, verify the economic feasibility of incorporating into the building's design and proposed energy system alternative energy devices for space heating and cooling functions, water heating functions, electrical load functions, and interior lighting functions. The institution shall determine the economic feasibility of each function listed in this subsection by comparing the estimated cost of providing energy for the function, based on the use of conventional design practices and energy systems, with the estimated cost of providing energy for the function, based on the use of alternative energy devices, during the economic life of the building.  (c-2) If the use of alternative energy devices for a specific function is determined to be economically feasible under Subsection (c-1), the governing body shall include the use of alternative energy devices for that function in the construction plans for the project. | Risk – Documents may not comply with alternative energy standards.  Exposure - Project could be found in non-compliance. | L | M | Provide analysis and recommendation regarding incorporating alternative energy devices into the building’s design and proposed energy system.  ***NOTE: For new building construction*** |
| 2.05 | **Xeriscape on New Construction** [TGC 2166.404](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2166.htm#2166.404) Requires compliance with the guidelines adopted by the State of Texas Facilities Commission for the required use of xeriscape on state property associated with the construction of a new state building, structure, or facility, that begins construction on or after January 1, 1994, including projects otherwise exempt under Section 2166.003. | Risk – Documents may not comply with xeriscape guidelines.  Exposure - Project could be found in non-compliance. | L | M | Ensure design compliance with xeriscape guidelines. |
| 2.06 | **Professional Services Procurement Act Selection of Provider, Fees (**[TGC 2254.003](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2254.htm#2254.003)**), Contract for Professional Services of Architect, Engineer, or Land Surveyor** **(**[TGC 2254.004](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2254.htm#2254.004)**) (qualifications based selection, versus competitive bid), and Void Contract (**[TGC 2254.005](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2254.htm#2254.005)**)**  Per [TGC 2254.003](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2254.htm#2254.003), a governmental entity may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award:  (1) on the basis of demonstrated competence and qualifications to perform the services; and  (2) for a fair and reasonable price.  The professional fees under the contract may not exceed any maximum provided by law.  Per [TGC 2254.004](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2254.htm#2254.004), in procuring architectural, engineering, or land surveying services, a governmental entity shall:  (1) first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and  (2) then attempt to negotiate with that provider a contract at a fair and reasonable price.  If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the entity shall:  (1) formally end negotiations with that provider;  (2) select the next most highly qualified provider; and  (3) attempt to negotiate a contract with that provider at a fair and reasonable price.  The entity shall continue the process described above to select and negotiate with providers until a contract is entered into.  Per [TGC 2254.005](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2254.htm#2254.005), a contract entered into or an arrangement made in violation of this subchapter is void as against public policy. | Risk – Owner selects and awards professional services on the basis of competitive bids.  A/E award is subject to protest and may delay project schedule.  Professional services selection and award is not 1) based on the basis of demonstrated competence and qualifications to perform the service, 2) for a fair and reasonable price, and 3) at or below the maximum professional fees provided by law.  Exposure - A contract entered into or an arrangement made in violation of this law is void as against public policy. | M | M | Establish selection committee for “qualifications-based, best value” A/E procurement process, including recommendation of appointment and approval of contract. |
| 2.07 | **Contract Notification** ([TGC 2166.2551](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2166.htm#2166.2551) and [TGC 2254.006](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2254.htm#2254.006) **and** [TGC 2254.0301](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2254.htm#2254.0301)**)** [The UT System institution] is responsible for providing written notice to the Legislative Budget Board of a contract for a construction project, professional services, or consulting services… if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds $14,000. This notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 10th day after the agency enters into the contract. | Risk – Institution does not notify Legislative Budget Board of contract, amendment, modification, renewal, or extension for a construction project, professional services, or consulting services exceeding $14,000.  Exposure - Institution is not in compliance with requirements of Legislative Budget Board. | L | M | Provide written notice to the Legislative Budget Board of all contracts for a construction project, professional services, or consulting services exceeding $14,000. |
| 2.08 | **Use of Independent Testing Services DB, CM-R, and CSP:** [TEC 51.780(i)](http://www.statutes.legis.state.tx.us/SOTWDocs/ED/htm/ED.51.htm#51.780)**,** [TEC 51.782(d)](http://www.statutes.legis.state.tx.us/SOTWDocs/ED/htm/ED.51.htm#51.782)**,** [TEC 51.783(c)](http://www.statutes.legis.state.tx.us/SOTWDocs/ED/htm/ED.51.htm#51.783)  The institution shall provide or contract for, independently of the design-build firm, construction manager-at-risk, or contractor\*, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the institution. The institution shall select those services for which it contracts in accordance with [TGC 2254.004](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2254.htm#2254.004).  \* In addition, for CSP project delivery, the institution shall identify services in the request for proposals. | Risk – A compromise in the Owner's Quality Assurance process.  Testing is not independent.  Exposure – Owner doesn't get what it paid for, or may incur additional project cost and/or delays due to work not complying with project drawings and specifications. | M | H | Procure independent testing services as required by the project and construction documents.  Identify independent testing services in the request for proposals for projects delivered via the CSP project delivery process. |
| 2.09 | **Proprietary Justification** [TGC 51.9335(b)](http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.51.htm#51.9335)  In determining what is best value to an institution of higher education, the institution shall consider:…  …(9) the use of material in construction or repair to real property that is not proprietary to a single vendor unless the institution provides written justification in the request for bids for use of the unique material specified. | Risk – Proprietary materials are specified without proper justification from the institution.  Exposure – Subcontract is awarded with proprietary materials that were not properly justified and results in potential lost time and/or money due to contesting of award or rebidding... | M | L | Instruct design professional to specify materials that are non-proprietary. Exceptions should be documented by written justification for use of the unique material specified. The Exclusive Acquisition Justification can be approved at any level designated by the institution that is senior to the primary user.  Justifications are included in the request for bid |
| 2.10 | **Design Build Contracts for Facilities** [TEC 51.780](http://www.statutes.legis.state.tx.us/SOTWDocs/ED/htm/ED.51.htm#51.780)  (a)  In this section:  (1) "Design-build contract" means a single contract with a design-build firm for the design and construction of a facility.  (2) "Design-build firm" means a partnership, corporation, or other legal entity or team that includes an engineer or architect and builder qualified to engage in building construction in Texas.  (3) "Design criteria package" means a set of documents that provides sufficient information to permit a design-build firm to prepare a response to an institution's request for qualifications and any additional information requested, including criteria for selection. The design criteria package must specify criteria the institution considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, or any other requirement, as applicable.  (b)  An institution may use the design-build method for the construction, rehabilitation, alteration, or repair of a facility. In using that method and in entering into a contract for the services of a design-build firm, the contracting institution and the design-build firm shall follow the procedures provided by Subsections (c)-(k).  (c)  The board may designate an engineer or architect independent of the design-build firm to act as its representative for the duration of the work on the facility. If the board's engineer or architect is not a full-time employee of the institution, any engineer or architect designated shall be selected on the basis of demonstrated competence and qualifications in accordance with [Section 2254.004, Government Code](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2254.htm#2254.004).  (d)  The institution shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project. The institution shall also prepare the design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires engineering or architectural services that constitute the practice of engineering within the meaning of [Chapter 1001, Occupations Code](http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.1001.htm), or the practice of architecture within the meaning of [Chapter 1051, Occupations Code](http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.1051.htm), those services shall be provided in accordance with the applicable law.  (e)  The board or its representative shall publish the request for qualifications in a manner prescribed by the board.  (f)  The board or its representative shall evaluate statements of qualifications and select a design-build firm in two phases:  (1)  In phase one, the board or its representative shall prepare a request for qualifications and evaluate each offeror's experience, technical competence, and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Each offeror must certify to the board that each engineer or architect that is a member of its team was selected based on demonstrated competence and qualifications in the manner provided by [Section 2254.004, Government Code](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2254.htm#2254.004). The board or its representative shall qualify a maximum of five offerors to submit additional information and, if the board or its representative chooses, to interview for final selection.  (2)  In phase two, the board or its representative shall evaluate the information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview. The board or its representative may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, costing methodology, or other factors as appropriate. The board or its representative may not require offerors to submit detailed engineering or architectural designs as part of the proposal. The board or its representative shall rank each proposal submitted on the basis of the criteria specified in the request for qualifications. The board or its representative shall select the design-build firm that submits the proposal offering the best value for the institution on the basis of the published selection criteria and on its ranking evaluations. The board or its representative shall first attempt to negotiate with the selected offeror a contract. If the board or its representative is unable to negotiate a satisfactory contract with the selected offeror, the institution shall, formally and in writing, end all negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.  (g)  Following selection of a design-build firm under Subsection (f), that firm's engineers or architects shall complete the design, submitting all design elements for review and determination of scope compliance by the institution's engineer or architect before or concurrently with construction.  (h)  An engineer shall have responsibility for compliance with the engineering design requirements and all other applicable requirements of [Chapter 1001, Occupations Code](http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.1001.htm). An architect shall have responsibility for compliance with the requirements of [Chapter 1051, Occupations Code](http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.1051.htm).  (i)  The institution shall provide or contract for, independently of the design-build firm, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the institution. The institution shall select those services for which it contracts in accordance with [Section 2254.004, Government Code](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2254.htm#2254.004).  (j)  The design-build firm shall supply a signed and sealed set of construction documents for the project to the institution at the conclusion of construction.  (k)  A payment or performance bond is not required for, and may not provide coverage for, the portion of a design-build contract under this section that includes design services only. If a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the institution shall each be in an amount equal to the project budget, as specified in the design criteria package. The design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the institution to ensure that the design-build firm will furnish the required performance and payment bonds when a guaranteed maximum price is established. | Risk – Required design-build procedures are not followed.  Exposure – Contract award results may be challenged. Contract approval process and project may be delayed, or incur additional costs. Contracts may be void. | H | M | Use standard Request for Qualifications, Request for Proposals, and agreements  Establish selection committee for the design-build procurement process, including recommendation of award and approval of contract.  (Note: At each step, receive, publicly open, and read aloud the names of the offerors.)  ***[Also see Risk Mitigation & Monitoring Plan items 2.08, 2.13, and 2.14 for additional information.]*** |
| 2.11 | **Contracts for Facilities: Construction Manager-at-Risk** [TEC 51.782](http://www.statutes.legis.state.tx.us/SOTWDocs/ED/htm/ED.51.htm#51.782)  (a)  An institution may use the construction manager-at-risk method for the construction, rehabilitation, alteration, or repair of a facility. In using that method and in entering into a contract for the services of a construction manager-at-risk, a board shall follow the procedures prescribed by this section.  (b)  A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the institution regarding construction during and after the design of the facility.  (c)  Before or concurrently with selecting a construction manager-at-risk, the board shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with [Chapter 1001](http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.1001.htm) or [1051, Occupations Code](http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.1051.htm), as applicable. If the engineer or architect is not a full-time employee of the institution, the board shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by [Section 2254.004, Government Code](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2254.htm#2254.004). The institution's engineer, architect, or construction manager-agent for a project may not serve, alone or in combination with another, as the construction manager-at-risk unless the engineer or architect is hired to serve as the construction manager-at-risk under a separate or concurrent procurement conducted in accordance with this subchapter. This subsection does not prohibit the institution's engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable licensing laws.  (d)  The board shall provide or contract for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the institution. The board shall select those services for which it contracts in accordance with [Section 2254.004, Government Code.](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2254.htm#2254.004)  (e)  The board shall select the construction manager-at-risk in either a one-step or two-step process. The board shall prepare a request for proposals, in the case of a one-step process, or a request for qualifications, in the case of a two-step process, that includes general information on the project site, project scope, schedule, selection criteria, estimated budget, and the time and place for receipt of proposals or qualifications, as applicable, a statement as to whether the selection process is a one-step or two-step process, and other information that may assist the board in its selection of a construction manager-at-risk. The board shall state the selection criteria in the request for proposals or qualifications, as applicable. The selection criteria may include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk. If a one-step process is used, the board may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions. If a two-step process is used, the board may not request fees or prices in step one. In step two, the board may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and its price for fulfilling the general conditions.  (f)  The board shall publish the request for qualifications in a manner prescribed by the board.  (g)  At each step, the board shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, the board shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened. Within 45 days after the date of opening the proposals, the board or its representative shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.  (h)  The board or its representative shall select the offeror that submits the proposal that offers the best value for the institution based on the published selection criteria and on its ranking evaluation. The board or its representative shall first attempt to negotiate with the selected offeror a contract. If the board or its representative is unable to negotiate a satisfactory contract with the selected offeror, the board or its representative shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.  (i)  A construction manager-at-risk shall publicly advertise, in the manner prescribed by the institution, and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than general conditions work. A construction manager-at-risk may seek to perform major elements of the work itself if the construction manager-at-risk submits its bid or proposal for that work in the same manner as all other trade contractors or subcontractors and if the board determines that the construction manager-at-risk's bid or proposal provides the best value for the institution. If no satisfactory bid or proposal for a major element of the work is received in the time allowed, the board may negotiate directly with the construction manager-at-risk for performance of that work. The board may negotiate directly with the manager-at-risk for the performance of minor elements of the work that are not included in major work packages.  (j)  The construction manager-at-risk and the board or its representative shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, engineer, architect, or institution. All bids or proposals shall be made public after the award of the contract or within seven days after the date of final selection of bids and proposals, whichever is later.  (k)  If the construction manager-at-risk reviews, evaluates, and recommends to the board a bid or proposal from a trade contractor or subcontractor but the board requires another bid or proposal to be accepted, the institution shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk may incur because of the board's requirement that another bid or proposal be accepted.  (l)  If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this section, the construction manager-at-risk may, without advertising, itself fulfill the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.  (m)  If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the institution must each be in an amount equal to the project budget, as set forth in the request for qualifications. The construction manager shall deliver the bonds not later than the 10th day after the date the construction manager executes the contract unless the construction manager furnishes a bid bond or other financial security acceptable to the institution to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established. | Risk – Required construction manager-at-risk procedures are not followed.  Exposure – Contract award results may be challenged. Contract approval process and project may be delayed, or incur additional costs. Contracts may be void. | H | M | Use standard Request for Qualifications, Request for Proposals, and agreements  Establish committee for the construction manager-at-risk procurement process, including recommendation of award and approval of contracts.  (Note: At each step, receive, publicly open, and read aloud the names of the offerors.)  ***[Also see Risk Mitigation & Monitoring Plan items 2.08, 2.13, 2.14, and 2.26 for additional information.]*** |
| 2.12 | **Selecting Contractor for Construction Services Through Competitive Sealed Proposals** [TEC 51.783](http://www.statutes.legis.state.tx.us/SOTWDocs/ED/htm/ED.51.htm#51.783)  (a)  In selecting a contractor for construction, rehabilitation, alteration, or repair services for a facility through competitive sealed proposals, a board shall follow the procedures prescribed by this section.  (b)  The board shall select or designate an engineer or architect to prepare construction documents for the project. The selected or designated engineer or architect has full responsibility for complying with [Chapter 1001](http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.1001.htm) or [1051, Occupations Code](http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.1051.htm), as applicable. If the engineer or architect is not a full-time employee of the institution, the board shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by [Section 2254.004, Government Code](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2254.htm#2254.004).  (c)  The board shall provide or contract for, independently of the contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the institution. The board shall select those services for which it contracts in accordance with [Section 2254.004, Government Code](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2254.htm#2254.004), and shall identify them in the request for proposals.  (d)  The board shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria, estimated budget, project scope, schedule, and other information that contractors may require to respond to the request. The board shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.  (e)  The board shall publish notice of the request for proposals in a manner prescribed by the board.  (f)  The board shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Within 45 days after the date of opening the proposals the board shall evaluate and rank each proposal submitted in relation to the published selection criteria.  (g)  The board shall select the offeror that offers the best value for the institution based on the published selection criteria and on its ranking evaluation. The board shall first attempt to negotiate with the selected offeror a contract. The board and its engineer or architect may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the board is unable to reach a contract with the selected offeror, the board shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.  (h)  In determining best value for the institution, the board is not restricted to considering price alone but may consider any other factor stated in the selection criteria. | Risk – Required competitive sealed proposal procedures are not followed.  Exposure – Contract award results may be challenged. Contract approval process and project may be delayed, or incur additional costs. Contracts may be void. | H | M | Use standard Request for Proposals.  Establish selection committee for the competitive sealed proposal procurement process, including recommendation of award and approval of contract.  (Note: At each step, receive, publicly open, and read aloud the names of the offerors.)  ***[Also see Risk Mitigation & Monitoring Plan items 2.08, 2.13, and 2.14 for additional information.]*** |
| 2.13 | **Negotiation of Contract with "Best Value" Proposer DB, CM-R, and CSP:** [TEC 51.780](http://www.statutes.legis.state.tx.us/SOTWDocs/ED/htm/ED.51.htm#51.780), [TEC 51.782](http://www.statutes.legis.state.tx.us/SOTWDocs/ED/htm/ED.51.htm#51.782)**, and** [TEC 51.783](http://www.statutes.legis.state.tx.us/SOTWDocs/ED/htm/ED.51.htm#51.783)The board or its representative shall select the offeror that submits the proposal that offers the best value for the institution based on the published selection criteria and on its ranking evaluation. The board or its representative shall first attempt to negotiate with the selected offeror a contract. If the board or its representative is unable to negotiate a satisfactory contract with the selected offeror, the board or its representative shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end. | Risk – UT System may be perceived as "bid shopping."  Voided contract.  Exposure – May cause protest and/or delay the process and affect future contractor proposals. | M | M | Negotiate with “best value” contractor. If negotiations fail, terminate negotiation in writing and start negotiations with next offeror. Continue process until negotiations are successful.  ***[Also see Risk Mitigation & Monitoring Plan items 2.10, 2.11, and 2.12 for additional information.]*** |
| 2.14 | **Performance and Payment Bonds Required (**[TGC 2253.021](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2253.htm#2253.021)**) and Performance and Payment Bonds Insured Loss (**[TGC 2253.022](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2253.htm#2253.022)**)** A governmental entity that makes a public work contract with a prime contractor shall require the contractor, before beginning the work, to execute to the governmental entity:  (1) a performance bond if the contract is in excess of $100,000; and  (2) a payment bond if the contract is in excess of $25,000, and the governmental entity is not a municipality or a joint board created under Subchapter D, Chapter 22, Transportation Code; or  The performance bond is:  (1) solely for the protection of the state or governmental entity awarding the public work contract;  (2) shall be in the amount of the contract, and  (3) conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents.  The payment bond is:  (1) solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material; and  (2) in the amount of the contract.  The bonds required to be furnished must be furnished before the contractor begins work. | Risk – Bonds may not be provided with execution of contract or contractor is unable to obtain bonding.  Exposure -If the payment bond required is not furnished, the governmental entity is subject to the same liability that a surety would have if the surety had issued the payment bond and the governmental entity had required the bond to be provided. To recover in a suit under this subsection, the only notice required of a payment bond beneficiary is a notice given to the governmental entity, as if the governmental entity were the surety, in accordance with [Subchapter C](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2253.htm#2253.041). | H | M | Coordinate the contractor’s submission of bonds and other contract exhibits with the authorized procurement officer.  Draft bonds for form and content (in accordance with TGC  2253) and validity of bonding capacity (via EVCBA checklist) prior to execution of construction contract.  Confirm with U.S. Treasury that bonding company is eligible to conduct business in the State of Texas.  *(For CM-R and DB, the contractor shall submit "security bonds" at contract execution. The “security bond” is held until P&P Bonds are executed before start of construction.)*  ***[Also see Risk Mitigation & Monitoring Plan items 2.10, 2.11, and 2.12 for additional information.]*** |
| 2.15 | **Contracting with Persons Who Have Certain Debts or Delinquencies** [TGC 2252.903](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2252.htm#2252.903)Each state agency shall determine whether a payment law prohibits the comptroller from issuing a warrant or initiating an electronic funds transfer to a person before the agency enters into a written contract with that person. The agency shall make this determination not earlier than the seventh day before and not later than the date of entering into the contract. The determination must be made in accordance with the comptroller's requirements. | Risk – A vendor could be ineligible to sign a contract.  Exposure – Termination of contracting process and/or delaying project and/or services. | M | M | Confirm with the State Comptroller that vendor is eligible to conduct business in the State of Texas. |
| 2.16 | **Required Coverage For Certain Building or Construction Contractors** [TLC 406.096](http://www.statutes.legis.state.tx.us/SOTWDocs/LA/htm/LA.406.htm#406.096)A governmental entity that enters into a building or construction contract shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for each employee of the contractor employed on the public project. | Risk - The vendors may not provide the required insurance, or may let it lapse during contract term.  Exposure – Workers may not receive care for injuries caused at job site. UT System could be a party to a claim. | M | H | Coordinate submission of insurance requirements, policy, and status from contractor with the authorized procurement officer.  Confirm requirements and policy and ensure that effective dates do not lapse.  *Note: If project is included in the ROCIP, all workers compensation insurance is provided by UT System.* |
| 2.17 | **Uniform General Conditions (UGC) in State Construction Contracts** [TGC 2166.302](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2166.htm#2166.302)Requires Texas Facilities Commission (TFC, also “commission”) to adopt uniform general conditions to be incorporated into all building construction contracts of $100,000 or more made by the state. | Risk – Construction contracts may not include UGC.  Exposure – Owner's contractual control over construction administration process may be reduced or eliminated. | M | M | Include standard University of Texas System UGC in all construction RFQ and RFP documents and upon selection of a contractor, forward to the authorized procurement officer to begin contract approval process.  Confirm that the standard UGC is included in all construction agreements prior to approval. |
| 2.18 | **Prevailing Wage Rates** [TGC 2258 Sec. 2258.022 Determination of Prevailing Wage Rates](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2258.htm)(a) For a contract for a public work awarded by a political subdivision of the state, the public body shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work by:  (1) conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the political subdivision of the state in which the public work is to be performed; or  (2) using the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments.  (b) This subsection applies only to a public work located in a county bordering the United Mexican States or in a county adjacent to a county bordering the United Mexican States. For a contract for a public work awarded by the state, the public body shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work as follows. The public body shall conduct a survey of the wages received by classes of workers employed on projects of a character similar to the contract work both statewide and in the political subdivision of the state in which the public work is to be performed. The public body shall also consider the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments, but only if the survey used to determine that rate was conducted within a three-year period preceding the date the public body calls for bids for the public work. The public body shall determine the general prevailing rate of per diem wages in the locality based on the higher of:  (1) the rate determined from the survey conducted in the political subdivision;  (2) the arithmetic mean between the rate determined from the survey conducted in the political subdivision and the rate determined from the statewide survey; and  (3) if applicable, the arithmetic mean between the rate determined from the survey conducted in the political subdivision and the rate determined by the United States Department of Labor.  (c) The public body shall determine the general prevailing rate of per diem wages as a sum certain, expressed in dollars and cents.  (d) A public body shall specify in the call for bids for the contract and in the contract itself the wage rates determined under this section.  (e) The public body's determination of the general prevailing rate of per diem wages is final. | Risk – Failure to include a wage rate schedule and penalty in the contract resulting in potential failure of the contractor to pay the minimum wage required.  Exposure –  Per [TGC 2258.058](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2258.htm#2258.058),  (a) An officer, agent, or representative of the state or of a political subdivision of the state commits an offense if the person willfully violates or does not comply with a provision of this chapter.  (b) A contractor or subcontractor of a public work under this chapter, or an agent or representative of the contractor or subcontractor, commits an offense if the person violates Section 2258.024 [RECORDS].  (c) An offense under this section is punishable by:  (1) a fine not to exceed $500;  (2) confinement in jail for a term not to exceed six months; or  (3) both a fine and confinement. | L | M | Include standard UGC and Prevailing Wage Rates for the county in which the project is located in all construction RFQ and RFP documents. Upon selection of a contractor, forward to the authorized procurement officer to begin contract approval process.  Provide standard questionnaire form in preconstruction conference for completion by contractor and subcontractor employees to document wage rate compliance forms are submitted by contractor with each pay application.  Investigate worker claims of underpayment as necessary and provides written notice of noncompliance to contractor when appropriate and manage until resolved, including assessment and collection of penalties. |
| 2.19 | **Historically Underutilized Businesses (HUB)** [TGC 2161](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2161.htm#2161.251)[Sec. 2161.251. APPLICABILITY](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2161.htm#2161.251)  (a) This subchapter applies to all contracts entered into by a state agency with an expected value of $100,000 or more, including:  (1) contracts for the acquisition of a good or service; and  (2) contracts for or related to the construction of a public building, road, or other public work.  (b) This subchapter applies to the contract without regard to:  (1) whether the contract is otherwise subject to this subtitle; or  (2) the source of funds for the contract, except that to the extent federal funds are used to pay for the contract, this subchapter does not apply if federal law prohibits the application of this subchapter in relation to the expenditure of federal funds.  [Sec. 2161.252. AGENCY DETERMINATION REGARDING SUBCONTRACTING OPPORTUNITIES; BUSINESS SUBCONTRACTING PLAN](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2161.htm#2161.252)  (a) Each state agency that considers entering into a contract with an expected value of $100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest for the contract, determine whether there will be subcontracting opportunities under the contract. If the state agency determines that there is that probability, the agency shall require that each bid, proposal, offer, or other applicable expression of interest for the contract include a historically underutilized business subcontracting plan.  (b) When a state agency requires a historically underutilized business subcontracting plan under Subsection (a), a bid, proposal, offer, or other applicable expression of interest for the contract must contain a plan to be considered responsive.  [Sec. 2161.253. GOOD FAITH COMPLIANCE WITH BUSINESS SUBCONTRACTING PLAN](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2161.htm#2161.253) (a) When a state agency requires a historically underutilized business subcontracting plan under [Section 2161.252](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2161.htm#2161.252), the awarded contract shall contain, as a provision of the contract that must be fulfilled, the plan that the contractor submitted in its bid, proposal, offer, or other applicable expression of interest for the contract. The contractor shall make good faith efforts to implement the plan. A contractor's participation in a mentor-protégé program under [Section 2161.065](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2161.htm#2161.065) and submission of a protégé as a subcontractor in the contractor's historically underutilized business subcontracting plan constitutes a good faith effort under this section for the particular area of the subcontracting plan involving the protégé.  (b) To the extent that subcontracts are not contracted for as originally submitted in the historically underutilized business subcontracting plan, the contractor shall report to the state agency all the circumstances that explain that fact and describe the good faith efforts made to find and subcontract with another historically underutilized business.  (c) The state agency shall audit the contractor's compliance with the historically underutilized business subcontracting plan. In determining whether the contractor made the required good faith effort, the agency may not consider the success or failure of the contractor to subcontract with historically underutilized businesses in any specific quantity. The agency's determination is restricted to considering factors indicating good faith.  (d) If a determination is made that the contractor failed to implement the plan in good faith, the agency, in addition to any other remedies, may bar the contractor from further contracting opportunities with the agency.  (e) The commission shall adopt rules to administer this subchapter. | Risk - Institution does not predetermine subcontract opportunities or monitor good faith efforts on projects greater than $100,000.  Qualified HUB service providers or vendors are not contacted for a project and objects to selection process.  Contractor proposals without the required HUB Subcontracting Plan or good faith effort cannot be considered.  Exposure - Contract approval process and project may be delayed, or incur additional costs. | M | H | Issue RFQ with HUB Exhibit H and verify that HUB Coordinator receives HUB Subcontracting Plan and Good Faith Effort as part of all initial responses.  Note: The Good Faith Effort must be posted for a minimum of 7 working days.  Verify that the HUB Subcontracting Plan or Good Faith Effort meets Exhibit H requirements prior to opening of qualifications or proposals.  Ensure that the HUB final payment breakdown is included with the Final Payment Application. |
| 2.20 | **Elimination of Architectural Barriers (“Texas Architectural Barriers Act”) (**[TGC 469](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.469.htm)**) and Administrative Rules of the Texas Department of Licensing and Regulation (**[16 Texas Administrative Code, Chapter 68](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=16&pt=4&ch=68&rl=Y)**)**  *[*[*Administrative Rules of the Texas Department of Licensing and Regulation*](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=16&pt=4&ch=68&rl=Y) *(16 Texas Administrative Code, Chapter 68) are promulgated under the authority of* [*Texas Government Code, Chapter 469, Elimination of Architectural Barriers*](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.469.htm)*, and* [*Texas Occupation Code, Chapter 51*](http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.51.htm)*.]*  sets standards for accessibility to: public buildings and facilities; privately owned buildings and facilities leased or occupied by state agencies; places of public accommodation; and commercial facilities by individuals with disabilities. The standards are to be applied during the design, construction, and alteration of such buildings and facilities.  The standards closely follow the Americans with Disabilities Act Accessibility Guidelines (ADAAG), and are intended to facilitate equivalency certification of the state program for the elimination of architectural barriers by the United States Department of Justice. However, state agencies must also comply with the regulations issued by the U.S. Department of Justice under the American with Disabilities Act (ADA).  The TAS standards shall be considered the minimum requirements for complying with the intent of Texas Government Code, Chapter 469 and 16 Texas Administrative Code, Chapter 68 | Risk - Design and/or construction fails to meet standards.  Injury and/or denial of access.  Exposure - If design and/or construction are in error, may result in additional cost or delays in schedule. If non-compliance is identified by outside party, the institution and UT System are subject to lawsuit. | H | M | Instruct the design professional to design the facility in compliance with Texas Accessibility Standards (TAS).  Monitor and inspect construction for compliance with Texas Accessibility Standards. Advise construction contractor of non-compliance. Ensure that non-compliant items are corrected and brought into compliance.  ***[Also see Risk Mitigation & Monitoring Plan items 2.21 and 2.22 for additional information.]*** |
| 2.21 | **Review and Approval Required for Certain Plans and Specifications and Modified Plans and Specifications** [TGC 469.101](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.469.htm#469.101)**,** [TGC 469.102](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.469.htm#469.102)**, and** [TGC 469.103](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.469.htm#469.103)  Per [TGC 469.101, SUBMISSION FOR REVIEW AND APPROVAL REQUIRED](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.469.htm#469.101),all plans and specifications for the construction of or for the substantial renovation or modification of a building or facility must be submitted to the department for review and approval if:  (1) the building or facility is subject to this chapter; and  (2) the estimated construction cost is at least $50,000.  Per [TGC 469.102, PROCEDURE FOR SUBMITTING PLANS AND SPECIFICATIONS](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.469.htm#469.102)), Refer to TGC 469.102 for specific submittal verbage.  Per [TGC 469.103, MODIFICATION OF APPROVED PLANS AND SPECIFICATIONS](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.469.htm#469.103), approved plans and specifications to which any substantial modification is made shall be resubmitted to the department for review and approval. | Risk - Design is not submitted to regulatory agency within timeframe required by law.  Exposure - Design professional is subject to disciplinary action or criminal penalty from the regulatory entity. | H | M | Ensure that the design professional submits construction documents and required forms to Texas Department of Licensing & Regulation (TDLR), Registered Accessibility Specialist (RAS), or contract provider not later than the 20th day after the plans and specifications are issued.  Conduct plan review for compliance with Texas Accessibility Standards (TAS)  Coordinate resolution of any issues resulting from the plan review. Ensure that approved plans and specifications to which any substantial modification is made are resubmitted for review and approval.  ***[Also see Risk Mitigation & Monitoring Plan items 2.20 and 2.22 for additional information.]*** |
| 2.22 | **Inspection of Building or Facility** [TGC 469.105](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.469.htm#469.105)  The owner of a building or facility is responsible for having the building or facility inspected for compliance not later than the first anniversary of the date the construction or substantial renovation or modification of the building or facility is completed.  \* TDLR provides a Notice of Substantial Compliance to the Owner, at the owner’s request through submission of a Notice of Substantial Compliance Request Form, after a newly constructed building or facility has had a satisfactory inspection or verification of corrective modifications has been made. ([16 TAC 68.60](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=16&pt=4&ch=68&rl=60)) | Risk - Owner does not submit a TDLR “Request for Inspection” form within 30 days of completion of construction and/or have the building or facility inspected by the regulatory agency within the required timeframe required by law.  Exposure -None | H | M | Inspect construction for compliance with Texas Accessibility Standards.  Ensure A/E submits “Request for Inspection” form to TDLR or RAS no later than 30 calendar days after the completion of construction.  Ensure notice of substantial compliance from TDLR.  ***[Also see Risk Mitigation & Monitoring Plan items 2.20 and 2.21 for additional information.]*** |
| 2.23 | **NFPA 1 and NFPA 101 (Life Safety Code)** [TGC 417](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.417.htm)The state fire marshal (SFM) is appointed by the commissioner [of Texas Department of Insurance] to administer and enforce applicable provisions of the Insurance Code and other law relating to the state fire marshal. Per [TGC 417.008(e)](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.417.htm#417.008), the fire marshal may adopt by rule any appropriate standard developed by a nationally recognized standards-making association under which the state fire marshal may enforce this section. [28 TAC 34](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=1&ch=34) administers the law set forth in [TGC 417.008](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.417.htm#417.008). Specifically, [28 TAC 34.303](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=28&pt=1&ch=34&rl=303) adopts by reference NFPA Life Safety Code 101 and NFPA 1. | Risks: Facilities may not be in compliance with NFPA 1 and NFPA 101.  Exposure: Injury or death to public, loss of facility use if SFM determines such to be unsafe.  UT System could be subject to lawsuit if public safety is jeopardized by non-compliance with code. | H | M | Issue guidelines to the design professional which identifies the applicable addition of NFPA 1and NFPA 101.  Ensure that the design professional adheres to NFPA codes which may include hiring a consultant technical service provider to assist in the process.  Provide design review and comments from EH&S and campus Facilities Management.  Ensure that all valid NFPA code comments are incorporated into the design documents. |
| 2.24 | **Storm Water Management on Construction Sites** [TWC, Sect. 26.040](http://www.statutes.legis.state.tx.us/SOTWDocs/WA/htm/WA.26.htm#26.040)**; (enforced by TCEQ)** UT System as Owner of the Contract, is obligated to take actions to avoid adversely affecting water quality during project construction under its jurisdiction, and is required to obtain and comply with TPDES permitting requirements issued by Texas Commission for Environmental Quality (TCEQ). | Risk – Project could fail to comply with TPDES requirements or fail to mitigate non-compliant storm water runoff.  Exposure - Monetary fines and criminal charges to UT System and construction firms ($25K per violation per day and potential criminal penalty up to $1M and 5 yrs in prison for executives). | H | H | Coordinate SWPPP preparation by a Registered Civil Engineer and review prior to inclusion at 50% CD Documents.  Prior to Notice to Proceed (NTP), review executed Contractor SWPPP documents and confirms their compliance. Prepare Owner SWPPP documents.  Once fully executed, forward both Owner and Contractor Notice of Intent (NOI) to the TCEQ as required.  Require Contractor to implement the SWPPP at the site prior to beginning construction activities. |
| Confirm that SWPPP is implemented and, perform weekly SWPPP inspections.  When site is re-stabilized near the end of construction, forward a Notice of Termination (NOT) to the TCEQ as required, or close out the CSN |
| 2.25 | **Payment for Goods and Services (Prompt Payment Act)** [TGC 2251](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2251.htm)Payments due contractors, consultants, and vendors shall be overdue on the 31st day after the later of:  1) the date the governmental entity receives the goods under the contract,  2) the date the performance of the service under the contract is completed, or  3) the date the governmental entity receives an invoice for the goods or service.  *NOTE: TGC 2251.030 includes provisions for prompt or early payment discount.*  A governmental entity shall notify a vendor of an error in an invoice submitted for payment by the vendor not later than the 21st day after the date the entity receives the invoice. | Risk – Vendor is not paid promptly.  UT System does not notify the vendor of a disputed payment by the 21st day after the date the invoice is received  Exposure - A payment begins to accrue interest on the date the payment becomes overdue and charges the project.  Vendors may suspend performance if not paid within the time limits allotted. | M | H | Receive payment request and make payment within allotted timeframe for design, construction, and Technical Service Provider invoices.  ***NOTE: The parties listed must collectively complete the above process within a total 30 days of receipt.*** |
| 2.26 | **CM-R Delivery; Procurement of Subcontractors** [TEC 51.782(i) through (l)](http://www.statutes.legis.state.tx.us/SOTWDocs/ED/htm/ED.51.htm#51.782)(i)  A construction manager-at-risk shall publicly advertise, in the manner prescribed by the institution, and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than general conditions work. A construction manager-at-risk may seek to perform major elements of the work itself if the construction manager-at-risk submits its bid or proposal for that work in the same manner as all other trade contractors or subcontractors and if the board [governing body of the institution] determines that the construction manager-at-risk's bid or proposal provides the best value for the institution. If no satisfactory bid or proposal for a major element of the work is received in the time allowed, the board may negotiate directly with the construction manager-at-risk for performance of that work. The board [governing body of the institution] may negotiate directly with the manager-at-risk for the performance of minor elements of the work that are not included in major work packages.  (j)  The construction manager-at-risk and the board or its representative shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, engineer, architect, or institution. All bids or proposals shall be made public after the award of the contract or within seven days after the date of final selection of bids and proposals, whichever is later.  (k)  If the construction manager-at-risk reviews, evaluates, and recommends to the board [governing body of the institution] a bid or proposal from a trade contractor or subcontractor but the board requires another bid or proposal to be accepted, the institution shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk may incur because of the board's requirement that another bid or proposal be accepted.  (l)  If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this section, the construction manager-at-risk may, without advertising, itself fulfill the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. | Risk – CM-R may receive inappropriate subcontract bids or may negotiate without competition.  Exposure – Institution may not receive "best value" for work, potential impact to credibility with BOR, Legislature, and local subcontracting community. | M | H | Ensure the CM-R adheres to contract document requirements.  ***[Also see Risk Mitigation & Monitoring Plan item 2.11 for additional information.]*** |
| 2.27 | **Asbestos Management in Facilities and Public Buildings** [25 TAC 295.34](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=25&pt=1&ch=295&rl=34)Building owners are required to inform all persons in writing, or document oral communication between the owner (or their authorized representative) and those who perform any type of maintenance, custodial, renovation, or demolition work, of the presence and location of asbestos-containing building materials (ACBM) prior to the start of any asbestos-related activity.  The law also outlines requirements for 1) informing those who perform any type of maintenance, custodial, renovation, or demolition work of the presence and location of asbestos-containing building materials (ACBM) prior to the start of any asbestos-related activity in accordance with 40 CFR Part 61, Subpart M, 2) inspection and abatement of friable ACM or ACM which may become friable prior to performing any demolition or renovation activity in a facility or commercial building in accordance with 40 CFR Part 61, Subpart M, 3) surveying and asbestos abatement for all ACBM that could foreseeably be disturbed in the area to be renovated during the demolition and/or renovation of a public building in accordance with 40 CFR Part 61, Subpart M.  The law also requires a municipality that requires a person to obtain a permit before renovating or demolishing a public or commercial building may not issue the permit unless the applicant provides 1) evidence acceptable to the municipality that an asbestos survey of all parts of the building affected by the planned renovation or demolition has been completed by a person licensed to perform a survey, or 2) a certification from a licensed engineer or architect, stating that a) the engineer or architect has reviewed the material safety data sheets for the materials used in the original construction, the subsequent renovations or alterations of all parts of the building affected by the planned renovation or demolition, and any asbestos surveys of the building previously conducted, and b) in the engineer's or architect's professional opinion, all parts of the building affected by the planned renovation or demolition do not contain asbestos.  A person may not install building materials or replacement parts in a public building unless 1) the person obtains a required MSDS showing that the materials or replacement parts contain 1.0% or less of asbestos, or 2) the materials or replacement parts, according to the MSDS, contain more than 1.0% asbestos but there is no alternative material or part as demonstrated by the building owner or contractor. A MSDS shall be obtained for the following building materials or replacement parts including but not limited to: acoustical plaster, decorative plaster/stucco, textured paint/coating, spray applied insulation, blown-in insulation, fireproofing insulation, joint compound, spackling compounds, taping compounds (thermal), HVAC duct insulation, boiler insulation, breaching insulation, pipe insulation, thermal paper products, cement pipes, cement wallboard/siding, asphalt/vinyl floor tile, vinyl sheet flooring/vinyl wall coverings, floor backing, construction mastic, ceiling tiles/lay-in ceiling panels, packing materials, high temperature gaskets, laboratory hoods/table tops, fire blankets/curtains, elevator equipment panels, elevator brake shoes, ductwork flexible fabric connections, cooling towers, heating and electrical ducts, electrical panel partitions, electrical cloth/electrical wiring insulation, chalkboards, roofing shingles/tiles, roofing felt, base flashing, fire doors, caulking/putties, adhesives/mastics, and wallboard. | Risk – An employee, worker, or the public may be exposed to asbestos-containing materials.  Exposure - Potential lawsuits and/or negative effects to health, safety, welfare of employees and/or public. | H | M | Identify the need for asbestos survey during programming and early design phases.  Conduct any required abatement process.  Confirm submission of the notification form to the Texas Department of State Health Services before the demolition of a building or facility, even when no asbestos is present.  Require the Contractor to furnish an asbestos certification stating that no ACBM above allowed threshold was used in the construction. The certification shall be furnished by a person licensed in asbestos related activities, or by a licensed architect. The Contractor also provides material safety data sheets (MSDS) of all products used in the construction, certifying no asbestos. |
| 2.28 | **Required Nepotism Disclosure** [TGC 2262.004](http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.2262.htm#2262.004)Before a state agency may award a major contract [value of at least $4 million] for the purchase of goods or services to a business entity, each of the state agency's purchasing personnel\* working on the contract must disclose in writing to the administrative head of the state agency any relationship the purchasing personnel is aware about that the employee has with an employee, a partner, a major stockholder, a paid consultant with a contract with the business entity the value of which exceeds $25,000, or other owner of the business entity that is within a degree described by Section 573.002.  *\* Note: “Purchasing personnel" means an employee of a state agency who makes decisions on behalf of the state agency or recommendations regarding 1) contract terms or conditions on a major contract, 2) who is to be awarded a major contract, 3) preparation of a solicitation for a major contract, or 4) evaluation of a bid or proposal.* | Risk – Conflict of interest might exist between firm and UT System employee involved in awarding the contract.  Exposure - No penalties included in the legislation, but a potential of claim from non-successful firms as well as negative publicity for the agency. | M | M | Obtain disclosure forms from committee members for all respondents, regardless of position or title, including the EVCBA and the institution President if direct appointment. |
| 2.29 | **Antiquities Code of Texas** [Texas Natural Resource Code (TNRC) Title 9, Chapter 191](http://www.statutes.legis.state.tx.us/Docs/NR/pdf/NR.191.pdf)  [Sec. 191.0525.  NOTICE REQUIRED.](http://www.statutes.legis.state.tx.us/Docs/NR/htm/NR.191.htm#191.0525)(a)  Before breaking ground at a project location on state or local public land, the person primarily responsible for the project or the person's agent shall notify the committee. The committee shall promptly determine whether:  (1)  a historically significant archeological site is likely to be present at the project location;  (2)  additional action, if any, is needed to protect the site; and  (3)  an archeological survey is necessary.   (b)This section does not apply to any state agency or political subdivision that has entered into a memorandum of understanding for coordination with the committee. Refer to THC/UTS MOU dated August 1, 2015 for campus area exempt from the THC notification requirements.  (c) If, during the course of a project or class of projects that have complied with the notification requirements of this section, a person encounters an archeological site, the person shall abate activity on the project at the project location and shall promptly notify the committee. Within two business days of notification under this subsection, the committee shall determine whether:  (A)  a historically significant archeological site is likely to be present in the project area;  (B)  additional action, if any, is needed to protect the site; and  (C)  an archeological investigation is necessary. | Risk – Regulatory agency is not notified within timeframe required by law.  Exposure – Criminal penalty, project delays, unfavorable media exposure.  [Sec. 191.171.  CRIMINAL PENALTY.](http://www.statutes.legis.state.tx.us/Docs/NR/htm/NR.191.htm#191.171)(a)  A person violating any of the provisions of this chapter is guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than $50 and not more than $1,000, by confinement in jail for not more than 30 days, or by both.  (b)  Each day of continued violation of any provision of this chapter constitutes a separate offense for which the offender may be punished. | M | M | For projects with a cumulative area larger than five acres not covered by the Memorandum of Understanding (MOU) between Texas Historical Commission (THC) and the University of Texas System (UTS) dated August 1, 2015, or for projects inside a designated historic district or recorded archeological site:  Notify the THC within required timelines and in accordance with the statute.  Ensure that the project does not break ground until any required archaeological surveys are completed.  Ensure that the Texas Historical Commission is promptly notified if, during the course of construction, an archeological site is encountered. |
|  | **Antiquities Code of Texas** [Texas Natural Resource Code (TNRC) Title 9, Chapter 191](http://www.statutes.legis.state.tx.us/Docs/NR/pdf/NR.191.pdf)  [Sec. 191.098 NOTIFICATION OF ALTERATION OR DEMOLITION OF POSSIBLE LANDMARK.](http://www.statutes.legis.state.tx.us/Docs/NR/htm/NR.191.htm#191.098)(a)  A state agency may not alter, renovate, or demolish a building possessed by the state that was constructed at least 50 years before the alteration, renovation, or demolition and that has not been designated a landmark by the committee, without notifying the committee of the proposed alteration, renovation, or demolition not later than the 60th day before the day on which the agency begins the alteration, renovation, or demolition. | Risk – Regulatory agency is not notified within timeframe required by law.  Exposure – Criminal penalty, project delays, unfavorable media exposure.  [Sec. 191.171.  CRIMINAL PENALTY.](http://www.statutes.legis.state.tx.us/Docs/NR/htm/NR.191.htm#191.171)(a)  A person violating any of the provisions of this chapter is guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than $50 and not more than $1,000, by confinement in jail for not more than 30 days, or by both.  (b)  Each day of continued violation of any provision of this chapter constitutes a separate offense for which the offender may be punished. | M | M | For alteration, renovation, or demolition of a building possessed by the state that was constructed at least 50 years before the alteration, renovation, or demolition and that has not been designated a landmark by the committee:  Notify the Texas Historical Commission within required timelines and in accordance with the statute.  Ensure that the project does not commence 1) until a permit is received from the agency, or 2) unless a substantive response from the agency is not received within 60 days from the notice. |
| 2.30 | **Disclosure of Interested Parties**  [TGC 2252.908](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2252.htm#2252.908)  This law applies only to a contract of a governmental entity of state agency that:   1. Requires an action or vote by the governing body of the entity or agency before the contract may be signed; or 2. Has a value of at least $1 million.   A governmental entity or state agency may not enter into a contract with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.  The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethic Commission that includes:   1. A list of each interested party for the contract of which the contracting business entity id aware; and 2. The signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.   Not later that the 30th day after the date the governmental entity or state agency receives a disclosure of interested parties required under the section, the governmental entity or state agency shall submit a copy of the disclosure to the Texas Ethics Commission.  The Texas Ethic Commission shall adopt rules necessary to implement this section, prescribe the disclosure of interested parties form, and post a copy on the commission’s Internet website. | Risk - Conflict of interest might exist between firm and UT System.  Exposure – Criminal penalty, project delays, unfavorable media exposure. | M | M | Ensure that the business entity adheres to contract documents requirements.  Obtains copies from the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury |
| 2.31 | **Consolidated Insurance Program (ROCIP)**  TIC Sec. [151.003](http://www.statutes.legis.state.tx.us/GetStatute.aspx?Code=IN&Value=151.003&Date=1/2/2016). INFORMATION REQUIRED TO BE PROVIDED BY PRINCIPAL BEFORE ENTERING CONSTRUCTION CONTRACT. If a construction contract requires a person to enroll in a consolidated insurance program, not later than the 10th day before the date a principal enters into the contract with the person, the principal shall provide the following information about the consolidated insurance program to the person:  (1) contact information, including phone number and e-mail address, for:  (A) the program administrator;  (B) the principal's risk manager; and  (C) the insurer's contact person for filing a  claim for each type of insurance coverage  provided in the program;  (2) the criteria for eligibility of enrollment into the  program;  (3) a description of the project site covered by the  program coverages;  (4) a summary of insurance coverages to be  provided to the contractor under the program,  including:  (A) the policy form number and issuing  organization if the policy is a standardized  insurance policy or, if the policy is not  standardized, a sample policy form;  (B) per occurrence and aggregate limits of  insurance coverages and any sublimits that  may apply;  (C) term of coverages for each limit and  sublimit, if any; and  (D) any material endorsements to the policy  described under Paragraph (A);  (5) a summary of insurance coverages to be provided by the contractor;  (6) instructions on how to include or exclude costs of insurance provided by the program in the person's proposal for work on the construction project;  (7) a description of the audit or claims procedures related to the program that may result in additional cost to a contractor, including the method of calculation for any assessment charged to a contractor related to the principal's payment of a policy deductible and any other specific cost amounts; and  (8) a description of a contractor's duties related to reporting:  (A) payroll and retention of documentation;  And  (B) claims and participation in safety  inspections and incident reporting.  Sec. 151.004. INFORMATION REQUIRED TO BE PROVIDED BY CONTRACTOR BEFORE ENTERING CONSTRUCTION CONTRACT. If a construction contract requires a person to enroll in a consolidated insurance program, not later than the 10th day before the date a contractor enters into the contract with the person, the contractor must provide to the person, in an accurate form, the information listed in Section [151.003](http://www.statutes.legis.state.tx.us/GetStatute.aspx?Code=IN&Value=151.003&Date=1/2/2016) that the contractor received under that section.  Sec. 151.005. RELIANCE ON INFORMATION PROVIDED. The information required under Section [151.003](http://www.statutes.legis.state.tx.us/GetStatute.aspx?Code=IN&Value=151.003&Date=1/2/2016) must be accurate, and a person who receives the information under Section [151.003](http://www.statutes.legis.state.tx.us/GetStatute.aspx?Code=IN&Value=151.003&Date=1/2/2016) or [151.004](http://www.statutes.legis.state.tx.us/GetStatute.aspx?Code=IN&Value=151.004&Date=1/2/2016) may justifiably rely on the information to decide whether to enter into the construction contract.  Sec. 151.006. FAILURE TO FURNISH.  (a) A person may not be required to enter into a construction contract that requires enrollment in a consolidated insurance program unless the person is provided the information in compliance with Section [151.003](http://www.statutes.legis.state.tx.us/GetStatute.aspx?Code=IN&Value=151.003&Date=1/2/2016) or [151.004](http://www.statutes.legis.state.tx.us/GetStatute.aspx?Code=IN&Value=151.004&Date=1/2/2016), as applicable. If the information required under Section [151.003](http://www.statutes.legis.state.tx.us/GetStatute.aspx?Code=IN&Value=151.003&Date=1/2/2016) is not provided to a person within the 10-day period under Section [151.003](http://www.statutes.legis.state.tx.us/GetStatute.aspx?Code=IN&Value=151.003&Date=1/2/2016) or [151.004](http://www.statutes.legis.state.tx.us/GetStatute.aspx?Code=IN&Value=151.004&Date=1/2/2016), as applicable, the person may elect not to enroll in the consolidated insurance program.  (b) If a person elects not to enroll in the consolidated insurance program under Subsection (a), a principal or contractor may provide the person with the information required under Section [151.003](http://www.statutes.legis.state.tx.us/GetStatute.aspx?Code=IN&Value=151.003&Date=1/2/2016) after the 10-day period under Section [151.003](http://www.statutes.legis.state.tx.us/GetStatute.aspx?Code=IN&Value=151.003&Date=1/2/2016) or [151.004](http://www.statutes.legis.state.tx.us/GetStatute.aspx?Code=IN&Value=151.004&Date=1/2/2016), as applicable. The person must elect whether to enroll in the consolidated insurance program not later than the 10th day after the date that the information is provided under this subsection.  (c) If a person elects not to enroll in the consolidated insurance program under Subsection (a) or (b) and enters into a construction contract for the construction project, the person must obtain insurance coverage for the person's work on the project that substantially complies with the coverage terms and liability limits imposed for other persons who work on the construction project but who are not insured under the consolidated insurance program.  (d) The principal or contractor, as applicable, shall compensate a person with whom the principal or contractor contracts and who obtains insurance coverage under Subsection (c) for the actual cost of that insurance coverage.    Sec. 151.007. REQUEST FOR INSURANCE POLICY; DEADLINE TO PROVIDE.  (a) A contractor may request in writing from the principal, or from the party with which the contractor has a direct contractual relationship, a complete copy of the insurance policy that provides coverage for the contractor under the consolidated insurance program.  (b) The copy described by Subsection (a) must be provided to the requesting contractor not later than the later of:  (1) the 30th day after the date the request was  sent; or  (2) the 60th day after the date the contractor's  work covered by the consolidated insurance program begins on the construction project.  Sec. 151.008. FAILURE TO PROVIDE INSURANCE POLICY. It is a material breach of a contractor's construction contract if a complete copy of the insurance policy requested by the contractor under Section [151.007](http://www.statutes.legis.state.tx.us/GetStatute.aspx?Code=IN&Value=151.007&Date=1/2/2016) is not provided before the later of:  (1) the 75th day after the date the request  was sent; or  (2) the 90th day after the date the contractor's  work covered by the consolidated  insurance program begins on the  construction project.  Sec. 151.009. ELECTRONIC DELIVERY. (a) On a person's express request, a principal or contractor shall provide information under this subchapter in hard copy written form.  (b) If a person does not expressly request information be provided in hard copy written form, the principal or contractor may comply with the requirements of this chapter by:  (1) transmitting the information by facsimile  or e-mail; or  (2) allowing access to the information on the  principal's, or the principal's agent's,  Internet website. | Risk – CM would not be enrolled in ROCIP program. | M | M | Used OCP’s standard Request for Qualification and Request for Proposal.  Used the most current CM-R / D-B / CSP Agreement forms, Section 01 31 00 Project Administration, and Section 00 73 16 Project Insurance Requirements, which include the required information re: The Owner’s Consolidated Insurance Program.  Ensured that the CM-R / D-B includes Section 00 73 16 Project Insurance Requirements in the GMP Proposal Package Strategy and in each Subcontractor Agreement.  Ensured that all bid/proposals contain the following language on the signature page, “By signing this document, I acknowledge that this project will use an Owner Controlled Insurance Program (OCIP) and I will participate in the program.” (reference Section 01 31 00 Administrative Requirements, Section 1.4.1)  If requested by contractor, ensured that ORM provided an electronic or print copy of the complete insurance policy no later than 30 days after the request was received. |
| **3** | **BOARD OF REGENTS’ RULES & REGULATIONS** |  |  |  |  |
| 3.01 | **Capital Improvement Program** [BOR *R&R*80301](http://www.utsystem.edu/board-of-regents/rules/80301-capital-improvement-program)Sec. 1. Annual Status Report. The University of Texas System Administration will maintain a Capital Improvement Program (CIP) on an ongoing basis. Although the CIP is a dynamic document subject to change throughout the year, a report detailing the current status of the CIP will be formally presented to the Board of Regents annually.  Sec. 3 Modifications to the CIP. The CIP is subject to modification at any Board of Regents’ meeting. Candidate projects will routinely be added to the CIP, and project information such as funding sources, project cost, and delivery dates will routinely be revised. For Major Projects seeking Board action, the institutional president may submit a request for inclusion on the Board of Regents’ agenda. Requests to add to or modify the CIP will be reviewed in accordance with the processes administered by the Office of Facilities Planning and Construction adopted in the CIP.  Sec. 4 Preliminary Cost Expenditures for Major Projects. Approval by the appropriate Executive Vice Chancellor and the Chancellor will allow a Major Project to proceed to the Definition Phase. The Definition Phase provides authority for the U. T. System Administration and the institutional administration to expend institutional funds up to 5% of the anticipated total project cost to select the project architect and other consultants, confirm basis of design, develop the formal Facility Program document, and develop schematic project plans. These funds will be provided by the institution initially but will be reimbursed to the institution from applicable project funds upon design development approval or upon submission of a project application to Texas Higher Education Coordinating Board (if applicable), whichever is later.  Sec. 5 Addition of a Major Project. Following the Definition Phase, addition of a project to the CIP provides authority for the U.T. System Administration and the institutional administration to expend institutional funds up to 10% of the anticipated total project cost to proceed to Design Development Approval. These funds will be provided by the institution initially but will be reimbursed to the institution from applicable project funds upon design development approval or upon submission of a project application to Texas Higher Education Coordinating Board (if applicable), whichever is later. | Risk - Projects could proceed without BOR approval.  Exposure – Institutions may expend funds that they are not reimbursed for. | H | M | Submit projects to the Office of Finance for inclusion in the CIP per Board of Regents *Rules and Regulations* and Capital Expenditure Policy. |
| 3.02 | **Authorization to Expend Funds Appropriated in the CIP** [BOR *R&R*80402](http://www.utsystem.edu/board-of-regents/rules/80402-major-construction-and-repair-and-rehabilitation-projects)Sec. 4.1 - The Chancellor will approve the Design Development Plans for all major repair and rehabilitation projects that are not architecturally or historically significant and authorize expenditure of appropriated funds. The executive officers and institutional presidents shall be responsible for identifying special interest projects to the Facilities Planning and Construction Committee.  4.2 The Board of Regents will approve the Design Development Plans for all Major Projects other than repair and rehabilitation projects that are not architecturally or historically significant and authorize expenditure of appropriated funds. The executive officers and institutional presidents shall be responsible for identifying special interest projects to the Facilities Planning and Construction Committee.  Sec. 5 Approval for Excess Costs. Project costs that exceed 10% of the Total Project Cost approved by the Board of Regents or $500,000, whichever is greater, must be approved by the Board. | Risk - Projects could proceed without BOR approval.  Exposure – Institutions may expend funds that they are not reimbursed for. | H | M | New Construction - Coordinate with the design professional to present the project to BOR for Design Development approval. Project funding is approved by the BOR via agenda item.  Repair & Rehabilitation - Coordinates with the design professional to request approval from the Chancellor. Project funding is approved by the Chancellor via letter.  New and Repair & Rehabilitation: Architecturally or Historically Significant projects - Coordinate with the design professional to present the project to BOR for final approval. Project funding is approved by the BOR via agenda item.  Special Interest Projects - Coordinate with executive officers and institutional president to identify to the Facilities Planning and Construction Committee. The Architect Selection Advisory Committee may include any two members of the Board of Regents named by the Chairman of the Board.  Excess Costs - Request additional authorization by Chancellor - up to 10% or $500,000, whichever is more. Amounts greater require BOR approval. Project funding is approved via letter from Chancellor or BOR agenda item. |
| 3.03 | **Constitutional and Legislative Restrictions on Capital Improvements** [BOR R&R Series 80901](http://www.utsystem.edu/board-of-regents/rules/80901-constitutional-and-legislative-restrictions-capital-improvements) Sec. 1 Approval by Coordinating Board. Sections 17 and 18 of Article VII of the Texas Constitution (regarding the Permanent University Fund and the Higher Education Fund, as referenced at Texas Education Code Section 62.026) require approval by the Legislature, or an agency designated by the Legislature, prior to the construction of physical improvements financed by bonds authorized under those Sections at institutions of the U. T. System other than The University of Texas at Austin.  1.1 Unless otherwise authorized by law, new construction and major repair and rehabilitation projects with an Education and General (E&G) project cost of $10 million or more must be submitted to the Texas Higher Education Coordinating Board. The format for submission will be as prescribed by the Coordinating Board. Submission will be prepared by the institution, in consultation with and assisted by System Administration’s Office of Facilities Planning and Construction, if necessary, and forwarded to System Administration for review, approval, and handling of submission. It is anticipated that necessary documents will be submitted to the Coordinating Board when the project scope and estimated cost are sufficiently defined to meet the Coordinating Board's requirements for approval. Normally, submission will be made after the institutional president, the Chancellor, or the Board of Regents has approved the Design Development Plans and the related cost estimate.  Sec. 2 Delegation by Board of Regents. The Texas Higher Education Coordinating Board requires a signed Board of Regents Certification form under Coordinating Board Rule 17.21. The authority to execute this certification for the Board of Regents is delegated to the Executive Vice Chancellor for Business Affairs or the Associate Vice Chancellor for Facilities Planning and  Construction. | Risk - Project might proceed prior to THECB approval which could impact project funding.  Exposure – Negative impact to future relations between institution and THECB. | H | M | **See Risk 2.01** |

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| **KEY** |  |
| **A/E** – Architect/Engineer  **AHJ** – Authority Having Jurisdiction  **BOR** – UT System Board of Regents  **B/PPS** – Bid/Proposal Package Strategy  **Chancellor** – UT System Chancellor  **CM-R** – Construction Manager-at-Risk  **CSP** – Competitive Sealed Proposal  **DB** - Design-Build  **EH&S** – Environmental Health & Safety (Institution)  **EVCBA** – UT System Executive Vice Chancellor of Business Affairs  **HUB** – UT System Historically Underutilized Business office  **LBB** – Legislative Budget Board  **LSC** – Life Safety Code  **NFPA** – National Fire Protection Association  **OMB** – Office of Management & Budget  **PL –** Public Law  **RAS** – Registered Accessibility Specialist (Texas)  **RFP** – Request for Proposal | **RFQ** – Request for Qualifications  **ROCIP** - Rolling Owner-Controlled Insurance Program  **SECO** – State Energy Conservation Office  **SFM** – State Fire Marshal  **SME** –Subject Matter Expert  **TAC –** Texas Administrative Code  **TAS** – Texas Accessibility Standards  **TCEQ** – Texas Commission for Environmental Quality  **TDLR** – Texas Department of Licensing & Regulation  **TEC** – Texas Education Code  **TGC** – Texas Government Code  **THECB** - Texas Higher Education Coordinating Board  **TLC** – Texas Labor Code  **TWC** – Texas Water Code  **THECB** – Texas Higher Education Coordinating Board  **UGC** - Uniform General Conditions  **USC –** United States Code |