

03.900 Delegation of Authority for Contracts and Agreements

03.901 Purpose and Scope. The effective administration of contracts is essential to the operation of the System and the Institutions. This Regents Rule establishes authority for the System, the System Administration, and the Institutions to approve and execute contracts.

03.902 Authority of the Board. Pursuant to Texas Education Code § 105.108, the Board has authority to contract on behalf of the System, the System Administration, and the Institutions, and may delegate to an employee of the System Administration or an Institution the authority to negotiate, execute, and approve contracts. No person has the authority to bind the System, the System Administration, or an Institution contractually except in accordance with this Regents Rule. A contract that is not approved in accordance with this Regents Rule is void.

03.903 Definition. For the purpose of this Regents Rule, the term “contract” shall mean any written agreement that creates a binding obligation, financial or otherwise, for the System, the System Administration, or an Institution. Contracts include but are not limited to affiliation agreements, cooperative agreements, easements, grants, intellectual property agreements, interagency contracts, internship agreements, leases, letter agreements, letters of intent, licenses, loans, memoranda of understanding, nondisclosure agreements, professional services agreements, purchase orders, and amendments to any of these types of agreements.

03.904 Board Approval. Board approval is required for the following types of contracts:

1. Contracts that have a cost or monetary value to the System, the System Administration, or an Institution of \$1,000,000 or more in cash or other consideration. The total value of a contract shall include the aggregation of all contract extensions and renewals. Regardless of value, approval by the Board is not required for contracts exempted from the approval process under Section 03.905, 03.906, 03.907, or 03.908 of this Regents Rule.
2. Employment contracts having a total salary consideration of \$1,000,000 or more. Regardless of value, approval by the Board is not required for contracts exempted from the approval process

under Section 03.908 of this Regents Rule. For employment contracts with administrators that require Board approval under this section that are to be paid in whole or part from appropriated funds, Board approval shall be contingent on a determination by the Board that the contract is in the best interest of the System, System Administration or an Institution and the contract shall be required to meet all other requirements of Texas Education Code §51.948.

3. Agreements with affiliated entities required by Regents Rule 09.500.
4. Contracts that involve athletic conference membership.

03.905 Exceptions to Board Approval. The following types of contracts shall not require approval by the Board, regardless of the contract amount:

1. Contracts relating to construction projects previously approved by the Board of Regents in a Capital Improvement Plan.
2. Contracts for utility services (water, gas, electric, telecommunications, internet or television services) or energy resources and related services, if any, when such contracts have been approved in advance by the Chancellor or the Chancellor's delegee.
3. Contracts or grant proposals for sponsored research, including institutional support grants.
4. Contracts licensing or transferring rights in intellectual property, technology or products protectable by patents, copyright, or constituting a trade secret of unpatented technological know-how.
5. Contracts for the lease or purchase of replacement equipment or licensing of replacement software or services associated with the installation of the equipment or implementation of the software.
6. Contracts for the purchase of routinely purchased supplies.
7. Contracts for purchases made under a group purchasing program procured through a state contract, state catalog or other procurement methodology authorized by statute.
8. Contracts for the lease or purchase of new equipment or licensing of new software identified specifically in the System Administration or Institutional budget approved by the Board.

9. Contracts for the purchase or license of library books and library materials.
10. Contracts for athletic competitions.
11. Contracts for or related to legal services.
12. Contracts related to bequests or gifts.
13. Contracts with financial institutions to effectuate letters of credit authorized by these Regents Rules and applicable regulations of the System.
14. For contracts that have been approved by the Board, any amendment, extension, or renewal of a contract with a cost or monetary value that does not exceed 25% of the cost or monetary value of the original contract approved by the Board, unless a maximum cap is expressly adopted by the Board for that contract.

03.906 Contracts Related to Real Property. All contracts for (a) the purchase or sale of real property; (b) the lease, license or use of real property; (c) the granting or acceptance of easements or rights-of-way; and (d) any other acquisition or disposition of real property or real property interests is governed by Chapter 11 of these Rules.

03.907 Contracts Related to Major Construction Projects. All contracts related to major construction projects are governed by Chapter 11 of these Rules.

03.908 Emergency Contracts. Unless otherwise prohibited by law, in the event of an urgent situation that cannot or should not for good business reason be delayed until the next regularly scheduled Board meeting as determined by the Board Chairman in consultation with the Chancellor, the Chancellor may approve and execute a contract that would otherwise require Board approval in accordance with this Regents Rule. As soon thereafter as is reasonably practicable, the Chancellor shall provide to the members of the Board written notice of the approval and execution of the contract.

03.909 Delegation of Authority.

1. Delegations to the Chancellor.
  - a. The Board delegates to the Chancellor the authority to execute all contracts for the System, the System Administration, and Institutions that are approved by the Board in accordance with Regents Rule 03.904, unless otherwise specified by the Board.

- b. For employment contracts not requiring Board approval pursuant to Regents Rule 03.904.2, the Board delegates to the Chancellor the authority to sign an employment contract with an administrator for the System Administration or an Institution that is to be paid in whole or part from appropriated funds or that otherwise comes under Texas Education Code §51.948. These contracts must comply with the requirements of Texas Education Code §51.948 and for any contract paid from appropriated funds shall require a determination that the contract is in the best interest of the System or System Administration. Authority to make such a determination is delegated to the Chancellor.
- c. Subject to the requirements and limitations of this Rule, the Board delegates to the Chancellor the authority to approve and execute contracts for the System, the System Administration and the Institutions without regard to the cost or monetary value of the contract.

2. Delegations to the Presidents.

- a. Subject to the requirements and limitations of this Rule, the Board delegates to the Presidents the authority to approve and execute contracts for their respective Institutions that have a cost or monetary value to the Institutions of \$1,000,000 or less.
- b. For employment contracts not requiring Board approval pursuant to Regents Rule 03.904.2, an employment contract with an administrator that is to be paid in whole or part from appropriated funds or that otherwise is pursuant to Texas Education Code §51.948 must be signed by the Chancellor in accordance with Regents Rule 03.909.1(b).

3. Delegations to the Vice Chancellor and General Counsel. The Board delegates to the Vice Chancellor and General Counsel authority to approve and execute contracts with the concurrence of the Chancellor or the Chairman for or related to providing legal services for the Board, the System, the System Administration, and/or the Institutions, after obtaining approvals required by state law.

4. Delegations to the Chief Internal Auditor. The Board delegates to the Chief Internal Auditor authority to approve and execute contracts having a cost or monetary value of less than \$1,000,000

with the concurrence of the Chancellor or the Chairman of the Audit Committee, when such contracts are for or related to providing audit services for the Board, the System, the System Administration, and/or the Institutions after obtaining approvals required by state law.

5. Further Delegation. The authority delegated to the Chancellor and the Presidents under Regents Rules 03.909(1) and (2) may be further delegated. Delegations must be in writing, clearly state the extent of the authority delegated, and state if and to what extent the authority may be further delegated. A delegation must be retained by the delegee, and a copy must be provided to the Office of General Counsel.
6. Revocation of Delegation. Delegations of authority may be revoked at any time. Revocations must be in writing, and a copy must be provided to the Office of General Counsel. Notice of revocation must be provided to the delegee.

03.910 Legal Review. All contracts must be approved as to form by the Office of General Counsel before execution, unless exempt under this Regents Rule. In his or her sole discretion, the Vice Chancellor and General Counsel may exempt from individualized legal review:

1. Contracts prepared on forms developed by the Office of General Counsel and approved in writing by the Office of General Counsel for use without individualized legal review that have a total value of less than \$1,000,000;
2. Contracts prepared on forms not developed by the Office of General Counsel, but that are approved in writing by the Office of General Counsel for use without individualized legal review that have a total value of less than \$1,000,000; and
3. Other contracts as stated in the Criteria for Exemption issued in writing by the Office of General Counsel.

03.911 Contract Management Handbook. The Vice Chancellor for Finance and the Office of General Counsel shall develop a contract management handbook that provides for consistent contracting policies and practices and contract review procedures, including the following:

1. identification of contracts that require enhanced performance monitoring and notification to the Board of any identified serious issue or risk regarding a monitored contract;

2. purchasing accountability and risk analysis procedures assessing the risk of fraud, waste or abuse in the contactor selection process, contract provisions and payment and reimbursement rates and methods for the different types of goods and services for which the member contracts;
3. a comprehensive guideline for preparing and advertising a solicitation, including identifying key pieces in the statement of work;
4. guidance on the evaluation of solicitation responses and awarding and drafting the contract. This includes sample terms and clauses for the contract;
5. contract administration and oversight; and
6. a requirement that all contracts shall, at a minimum:
  - a. be in writing;
  - b. comply with applicable federal and state law and regulations, these Regents Rules, and applicable System, System Administration, or Institution regulations, policies and procedures and the System contract management handbook;
  - c. be properly executed by a person with appropriate authority;
  - d. adequately protect resources;
  - e. comply with state purchasing requirements;
  - f. support and be in accordance with the mission of the System, the System Administration, or Institution; and
  - g. if with a foreign source with an aggregate value of \$250,000 or more be reported to the U.S. Department of Education in accordance with 20 U.S.C. §1011f on or before January 31<sup>st</sup> and July 31<sup>st</sup> of each year for all such contracts entered into in the preceding six months.

03.912 Training. Officers and employees authorized to execute contracts or who exercise discretion in awarding contracts shall participate in training on ethics, selection of appropriate procurement methods, and information resources purchasing technologies.

03.913 Reporting. The System and Institutions shall comply with all applicable reporting requirements established by statute, Legislative Budget Board rules, and other state authorities.

03.914 Prior Contracts. Contracts approved and signed in accordance with policies in effect prior to the effective date of Regents Rule 03.900 shall remain in full force and effect, but modifications or extensions to such contracts must be approved and signed in accordance with Regents Rule 03.900.

Adopted: November 15, 2007

Effective: November 15, 2007

Revised: February 13, 2009; February 16, 2012, August 28, 2015, February 26, 2016, February 23, 2018