

Consulting Services

Notice of Intent: Major Consulting Services. Prior to entering into a major consulting services contract, a state agency is required to notify the *Legislative Budget Board and Governor's Office of Budget, Planning, and Policy* of its intent to contract with a consultant. The agency shall give information to the Legislative Budget Board and the governor's Budget and Planning Office to demonstrate the agency has complied or will comply with Texas Government Code, Sections 2254.027 and obtain a "finding of fact" from the governor's Budget and Planning Office that the consulting services are necessary. Solicitations for consulting services contracts of \$1 million or more must be submitted to the Contract Advisory Team (CAT) for review. (Ref. Texas Government Code, Section 2254)

Texas Government Code, Chapter 2254, Subchapter B, establishes six (6) oversight requirements for state agencies using private consultants. Because different state entities oversee these requirements, the distinctions between them may not be obvious. The statutory guideline for each requirement is:

| Requirement | Statutory Reference Government Code, Chapter 2254, Subchapter B | Contact Agency |
|---------------------------------|---|---|
| Notification | Section 2254.028 | Governor's Office of Budget Planning and Policy Legislative Budget Board. |
| 30-Day RFP Publication | Section 2254.029 | Secretary of State. |
| Finding of Fact | Section 2254.028 | Governor's Office of Budget, Planning and Policy. |
| 20-Day Selection Publication | Section 2254.030 | Secretary of State. |
| Archives | Section 2254.036 | Texas State Library. |
| Payment | Sections 2254.034, 2254.039 | Comptroller of Public Accounts. |

Source: Governor's Office of Budget, Planning and Policy

Consulting Services are services that involve studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Major Consulting Services Contracts (\$15,000 or greater) require a "finding of fact" from the Governor's Office of Budget, Planning and Policy and publication in the *Texas Register* prior to contract execution. Consulting services have defined procedures for advertisement and award. These procedures are established by the Governor's Office and are located on the Governor's Office Website at (<http://www.governor.state.tx.us/divisions/bpp/guidelines>). Agencies should be familiar with these rules before considering the use of consulting services. A contract entered into in violation of

Sections 2254.029 through 2254.031 is void. A contract entered into with a private consultant who did not comply with Section 2254.033 is void.

A state agency may contract with a consultant only if: (1) there is a substantial need for the consulting services^{xvii}; and (2) the agency cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with a state governmental entity.^{xviii}

(Ref. Texas Government Code, Section 2254.026)

The governor may grant a state agency a limited waiver from the requirements of the consulting statute because of an unforeseen emergency. (Ref. Texas Government Code, Section 2254.026) An “unforeseen emergency” means a situation that suddenly and unexpectedly causes the agency to need the services of a consultant and there is insufficient time to comply with the statute’s requirements, e.g., the issuance of a court order, new legislation, or a natural disaster.^{xix} The Comptroller of Public Accounts has adopted rules that impact contracting for consulting services.^{xx}

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=5&rl=54](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=5&rl=54).

Other agencies may also have rules or requirements that impact a specific agency’s contracts for consulting services. See also the Comptroller’s Purchase Policies Guide:

<http://www.window.state.tx.us/fm/pubs/purchase/>

i See also Texas Government Code §2254.022(b), which states subchapter B does not discourage state agencies from using consultants if the agencies reasonably foresee the use of consultants will produce a more efficient and less costly operation or project.

ii Texas Government Code §2254.026; See also General Appropriates Act, 77th Leg., S. B. 1, art. IX, §6.48(2001) (before expending appropriated funds for contracting for a consultant or other private assistance in conducting a legislatively mandated study that includes statistical or demographic data analysis, the state agency must determine if the resources of the Texas Legislative Council are available to perform this work).

iii Texas Government Code §2254.025. Note: A waiver will not be granted if the agency was negligent in foreseeing the occurrence of the emergency. See §2254.025(e).

iv Texas Government Code §2254.024©; See also 34 TAC §5.54 (The Office of the Comptroller of Public Accounts has rules regarding consultants, but the dollar thresholds reflect lower amounts as prescribed in previous versions of the statute).