

Texas A&M University Compliance with Sarbanes-Oxley

Presentation to:
Council of Senior Academic Business
Administrators
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SOX Initiatives

- Documenting & assessing internal controls
- Understanding regulatory requirements & developing an effective compliance infrastructure
- Enhancing the internal audit function to support mgmt assessment of internal effectiveness
- Designing & implementing internal controls
- Enhancing financial closing and internal & external reporting processes
- Establish effective antifraud programs & controls
- Improving data mgmt and security

Hierarchy of A&M Policies

Contract Administration

- Texas A&M System Policy 25.07
- Texas A&M Sys. Regulation 25.07.01
- Texas A&M Univ. Rule 25.07.01.M1
- Texas A&M Univ. Rule 25.07.01.M2
- Standard Administrative Procedures
 - Ex. 21.99.05.M1.01 Rentals of Machines and Equipment

Internal Controls

- TAMUS Policy, Regulations, & University Rules have been in place over 10 years
- Avoid complacency
- Assess internal controls
- Implement necessary internal processes to ensure compliance

System Policy 25.07

- “The effective administration of contracts which in any way obligate performance by the System is an essential operational function. Contracts are agreements which create an obligation to do or not to do a particular thing. All contracts entered into by a component of the System, unless specifically excluded by this or another policy adopted by the Board of Regents, are subject to this policy, including all original contracts, amendments, alterations, modifications, corrections, changes and extensions.”

System Reg. 25.07.01

- "Contract Adm. Procedures & Delegation"
- Supplements System Policy 25.07
- The policy requires that component contract administration procedures be updated annually and that the revised procedures and delegations be reported to the Chancellor and the BOR.
- CEOs are hereby delegated the authority to approve contracts not in excess of \$200,000 that are not otherwise reserved for approval by the BOR

University Rule

25.07.99.M1

- “The following rules are promulgated pursuant to the TAMU System Contract Administration Policy and constitute the provisions that govern administration of TAMU contracting authority.
- These rules and limits of delegation of authority shall establish the process for University personnel to approve, sign, and execute contracts committing Texas A&M University to the performance of any act.”

President's Directive – Univ. Rule 25.07.99.M1

- “The Department of Contract Administration is responsible for creating and maintaining a well-defined administrative control environment that assures management exercises its fiduciary responsibilities when executing contracts on behalf of Texas A&M University”

University Rule

25.07.99.M1 (cont.)

- President's Delegation of Authority to Vice President's
- President's Delegation of Authority to Senior Administrators and Department Heads
- Administrative officers delegated authority to approve and sign contracts must insure that such documents have received prior review as to form and legal sufficiency by the Office of General Counsel. Requests for contract review by the Office of General Counsel shall be routed through and administered by the University Contracts Officer.

University Rule

25.07.99.M2

- “President’s Delegation of Authority”
 - Type of Contract
 - Typical Routing for Departmental Review of Documents
 - Authorization to Execute Contracts \$100,000 or Less
 - Authorization to Execute Contracts More Than \$100,000 to \$200,000

What Is A Contract ?

- Webster's:

"1. a binding agreement between two or more persons or parties; or 2. a business arrangement for the supply of certain goods or services."

- University Rule 25.07.99.M1:

"A binding agreement with another party that involves any stated or implied consideration. Contracts are construed to include, but not be limited to, the following: purchase orders, agreements, cooperative agreements, memorandums of understanding, interagency contracts, grants, loans, easements, licenses, leases, permits and restrictions on acceptances of gifts and bequests."

Contracts

- A contract may contain:
 - 1) Negotiated or special terms, conditions and/or obligations clarified and accepted by execution of written agreement.
 - 2) Payment conditional on acceptable performance or delivery with stated recourse.
 - 3) Other party fails to perform or performance unacceptable and specific, adequate remedy needs to be delineated.
 - 4) Special items of interest or protection: confidentiality, ownership of intellectual property, warranties from other party, etc.

How Do I Get A Contract Approved by the University?

Contract Routing

- Complete Contract Transmittal Form
(located at <http://finance.tamu.edu/contracts>)
- Route Contract for Approval in Accordance with Delegation of Authority Matrix
(University Rule 25.07.99.M2)
- Obtain Appropriate Departmental & College Approvals
- Send Contract to Department of Contract Administration for Review and Approval
 - Include all exhibits, appendices, attachments, etc. referenced in the body of the contract (a complete document)

Contract Review Process at the Department of Contract Admin.

- Contract Terms and Conditions are Reviewed for Legal Sufficiency
- Risk Assessment Performed to Identify Potential Business, Financial or Political Risk
- Recommendation Given to Senior Administration

Common Contract Clauses

■ Governing Law / Venue:

TAMU has no authority to agree to any other state law except Texas. Place of performance and place for legal actions may or may not be the same. TAMU has no authority to accept any state but Texas for purposes of filing suit. Texas Ed. Code 85.18

■ Arbitration / Limitation of Remedies:

TAMU does not have the authority to limit the type, scope or result obtainable from judicial actions by the State of Texas. Provisions that waive rights or expand legal exposure are prohibited. TAMU must follow dispute resolution procedure directed by Texas Government Code 2260.

■ Indemnification / Hold Harmless / Liability:

TAMU only has the ability to indemnify to the extent allowed by the Texas Tort Claims Act. Any attempt to expand liability or increase the scope of liability is invalid and unenforceable. Parties contracting with TAMUS must be made aware of such inability. Appropriate notice: "To the extent allowed by the Constitution and Laws of the State of Texas, Texas A&M University acknowledges the following Indemnification."

Common Contract Clauses

■ Confidentiality:

Texas open records law controls disclosure of information in the hands of TAMU. If TAMU receives an open records request, the other party will be notified and given the opportunity to submit a summary which identifies in writing what material it believes is excepted from disclosure. TAMU, by law, has ten days to respond to such open records requests or the material will be deemed by law as public information. Texas Govt. Code 552.

■ Control of Legal Defense / Litigation:

Litigation is handled by the Texas Attorney General's Office. If contracting party wants to control and pay for litigation, it is subject to Attorney General's approval.

Contract Monitoring

- Review Performance at Appropriate Intervals
- Satisfactory Performance
- Ensure Compliance with Contract Terms
- Ensure Payments are Made or Received on a Timely Basis
- Key: Lesson the Risk to Your Department and the University

References on the Internet

- <http://finance.tamu.edu/contracts>
Includes Access to University Rules, Staff Listing, Delegation of Authority Matrix. (Contract Listing, Sample Contracts and Helpful Hints)
- <http://sago.tamu.edu/legal>
Includes Contract Review Checklist and other helpful information