

Texas Department Of Agriculture



Purchasing & Contract Management Guide



TEXAS DEPARTMENT OF AGRICULTURE

Purchasing and Contract Management Guide

Purpose

To assist Texas Department of Agriculture (TDA) employees, vendors, and taxpayers in understanding the standards and expectations for contracting with the agency.

Additional internal procedures may be developed to support policies and their purpose.

Authorization

The Comptroller of Public Accounts (CPA) Statewide Procurement Division (SPD) Division has the statutory authority to purchase on behalf of and to regulate state agency purchasing. SPD purchases:

- Products that cost more than \$25,000 and are not already on state contract, and
- Services valued at more than \$100,000 that are not already on state contract.

SPD delegates to state agencies certain types of purchases. Delegation authority is dependent upon the level of training and certification of the purchasing staff.

SPD has delegated to state agencies the authority to purchase the following, if not on state contract:

- Products that cost \$25,000 or less (including any delivery charges);
- Services valued at \$100,000 and under;
- Emergency purchases, no dollar limit;
- Direct publication purchases (books purchased directly from the publisher, software purchased directly from the manufacturer, etc.) if no other source offers the publication;
- Fuel, oil, and grease purchases;
- Distributor purchases (repair parts purchased from a dealer or distributor);
- Professional and consulting services;
- Proprietary purchases;
- Perishable food items;
- Research purchases;
- Internal repair purchases; and
- Automated information systems/telecommunications commodities and services purchases. (*see [Department of Information Services requirements](#)*)

All agency purchases are made under the supervision of the Department of Agriculture's Purchasing Program. All purchases \$5,000.00 or greater must be purchased by a certified purchaser. The Purchasing Program functions as the contact between SPD, the vendor, and other TDA staff.

Employees who purchase without authorization or without following state purchasing and contracting requirements may be held responsible for contractor payment.



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Responsibility

The Chief Financial Officer or designee is responsible for the implementation and oversight of the requirements set forth in this policy.

Policy

State funds must be spent under the highest of ethical processes providing necessary goods and services that are effectively used in meeting TDA's mission. This means purchases are timely, provide the best value, are compliant with state and federal law and regulation, and are monitored to assure delivery according to contract provisions. Procedures and practices should be implemented in a way that carries out the intent of this policy.

TDA follows the [State Procurement Manual](#) and the [State Contract Management Guide](#), developed and maintained by the Comptroller of Public Accounts.

Additional Resources:

[Texas Administrative Code Title 24, Part 1, Chapter 20](#)

[Gov't Code Chapter 2155–Purchasing General Rules and Procedure](#)

[Gov't Code Chapter 2156–Purchasing Methods](#)

[Gov't Code Chapter 2157–Miscellaneous Provisions for Purchase of Certain Goods and Services](#)

[Gov't Code Chapter 2158–State Council on Competitive Government \(CCG\)](#)

[Gov't Code Chapter 2161–Historically Underutilized Businesses](#)

[Gov't Code Chapter 2175–Surplus and Salvage Property](#)

Procedures

Policies are supplemented and supported by procurement operating procedures which give employees additional guidance on implementing the policies.

Ethical Standards for Procurement and Contracting

All employee and officers participating in any way in the purchasing, contract management, or payment process will adhere to TDAs ethical standards, conducting themselves in a manner that is above reproach. This requires avoiding decisions and actions that are improper, or that give the appearance of impropriety.

Persons participating in TDA's procurement and contracting processes are expected to report any suspected fraud, collusion, or impropriety from the inception of solicitation through the end of the contract term.

A conflict of interest statement is required of all employees involved in the procurement process, oversight of procurement compliance, or management of a contract.

Additional Resources:

[State Procurement Guide Ethics Section](#)



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Prohibited Contracting Relationships

The agency cannot contract with a vendor if any of the following persons have a financial interest in the vendor's business:

- Commissioner
- Deputy Commissioner
- General Counsel
- Procurement Director
- A family member related to a person listed above within the second degree of blood or marital relationship.

Financial interest means a state agency employee or official who:

- owns or controls, directly or indirectly, at least 1% in the business, including the right to share in profits, proceeds, capital gains, or
- could reasonably foresee that a contract could result in a personal financial benefit.

State officers and employees who participated in a procurement or contract negotiation are prevented from accepting employment with the vendor for two years after his or her service or employment with the agency has terminated.

Additional Resources:

[State Procurement Guide Ethics Section](#)

Key Contracting Persons Acknowledgement

For all solicitations over \$25,000, a list of all employees and officers involved in specification development, solicitation, evaluation, negotiation, contract drafting, advice, approval or other activities related to the award or contract management will be prepared and included in the solicitation process. Proposing vendors must identify any business or personal relationships with the key contracting persons listed.

All TDA employees working on the contract must disclose any relationship with an employee, partner, major stockholder, paid consultant with the prospective vendor or business entity.

The TDA Ethics Officer will assist employees with any questions about the ethics of a decision or action.

Purchasing & Contracting Management Roles And Responsibilities

TDA Purchasing Staff:

- Establish internal purchasing and contract management procedures consistent with state statutes, CPA rules, and TDA policies.
- Perform all departmental purchases, or delegate where authorized and appropriate.
- Assist TDA employees with the planning, organization, coordination, specification preparation, and solicitation of purchases.
- Oversee and assist TDA employees with contract management responsibilities.



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Purchasing & Contracting Management Roles And Responsibilities (continued)

TDA Employees:

- Project and plan purchases in advance of need to allow time for requests to be processed and products to be delivered.
- Ensure that products and services are requisitioned according to these policies and related procedures, and are within available budget.
- Confirm receipt of goods and services according to contract.
- Timely report vendor non-compliance with contract to Purchasing and program Contract Managers.

Program Area Purchasing Liaisons:

- Understand and apply agency policies and procedures to program area requisitions.
- Serve as contact point for purchasing staff to provide information, resolve issues, make corrections, and perform other related tasks.
- See that communication and approvals are made timely or delaying issues resolved.
- Monitor renewal and end dates of contract and timely notify Purchasing if renewal or new solicitation is needed.

Contract Managers:

- Oversee contract development and delivery to assure TDA receives the value for which it contracted.
- Manage the contract vendor relationship.

Contract Review and Approval

Authority to bind the agency to a contract or agreement, whether a Memorandum of Understanding, Interagency Contract, Grant Agreement, purchasing contract, or other binding promise, is limited to the Commissioner and those employees receiving delegated authority. State law establishes minimum authority for state contracting. TDA's internal approval process may include reviews by multiple levels of program and management.

In determining the dollar value of purchasing contracts for required approvals, include all options for renewal of the agreement in the total cost. Grant awards to a single recipient are aggregated for purposes of determining required approvals.

For purposes of meeting minimum state requirements, the following positions must review and approve procurements.

All purchases:

- With the exception of purchases paid for on State Credit Card (P-Card), budget staff reviews purchases for available budget to assure appropriation requirements are met.
- The position with authority to contract, which is either determined by law or delegated by a position with legal authority, approves the purchase.

State Credit Cards: Exception-based purchases paid with a state credit card must be reviewed for available budget by the card-holder's managing supervisor.



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Contract Review and Approval (continued)

Vendors Solicited and Selected on Best Value: For purchases that are not evaluated and selected on price alone, the Contract Manager or Purchasing Director must approve the evaluation and selection as meeting the state requirements.

In addition to the above–

All purchases over \$5,000 but less than \$25,000 require approval by:

- Certified Purchaser (minimum Certified Texas Purchaser)

Contracts \$25,000 and above require approval by:

- Certified Purchaser (minimum Certified Texas Purchasing Manager)

Contracts \$100,000 and above require additional approval by:

- Director of HUB/MWBE

Contracts \$1 million and above must be signed by:

- Commissioner or Deputy Commissioner

Grant awards require the following approvals:

- All grants–Budget
- Position with authority to contract.
- Commissioner or Deputy Commissioner if \$1 million or above

Purchase categories with additional TDA approval requirements:

- All Computer Related Purchases–Director of Information Systems or designated manager
- Notary Commissions–General Counsel or Designee Approval
- Professional Memberships–Ethics Officer or General Counsel designee
- Proprietary/Emergency Purchase Justification–Deputy Commissioner or Designee
- Vehicle Repair and Maintenance–Fleet Manager or agency administration designee
- Facilities–TDA Facilities Manager or agency administration designee

State Credit Cards (payment card)

The state credit card is a method of payment, not a type of purchase. Credit card purchases must meet state purchasing requirements including use of state contract when available, documentation required by the type of purchase, use of statutorily preferred vendors, etc.

Reimbursement of Personal Funds

Employees cannot avoid required purchasing or budget approval processes by using a personal method of payment and seeking reimbursement. On occasion, however, an employee may need to make a non-travel related purchase using personal funds. In order to receive reimbursement, the purchase must be pre-approved in writing

- By the program administrator, who is also responsible for assuring available budget,
- By a certified purchaser, to assure purchasing requirements are met, and
- The reimbursement request may not exceed \$5,000.



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Historically Underutilized Businesses (HUB); Minority and Women Business Enterprises (MWBE) Good Faith Contracting Effort

Small businesses are the seeds from which competition and a strong economy develop. The Texas Department of Agriculture's procurement and contracting process provides fair opportunity for small businesses traditionally under-represented in the state contracting process.

TDA strives to go beyond the state minimum required good faith effort in providing services to minority, women, and service disabled veteran businesses that qualify for the HUB, MBE, WBE, or SBE certification.

State requirements include:

- encouragement to use HUB businesses for purchases under \$5,000
- solicitation for proposals from two HUB vendors in informal solicitations
- use of a HUB plan for formal solicitations of \$100,000 or greater.

TDA takes the additional good faith effort to obtain HUB Subcontracting Plans for solicitations valued over \$80,000.

TDA expends both state and federal funds. To be eligible for these services, HUB certification is required for state funded procurements, and the MWBE certifications for federally funded procurements. Dual certification, where eligible, may increase contracting opportunities.

TDA promotes the HUB Program through participation in and hosting of HUB Forums in accordance with [Texas Government Code §2161.066](#) and [§2161.126](#) and [Texas Administrative Code, Title 34, §20.26](#) and [§20.27](#). In accordance with [Texas Administrative Code, Title 34, §20.27](#), each agency with a biennial appropriation exceeding \$10 million shall participate in the forums by sending senior managers and procurement personnel to attend relevant presentations. HUB vendors are provided the opportunity to give technical and business presentations that demonstrate their capability to do business with TDA.

Additional Resources:

[State Contract Guide HUB Requirements](#)

Determining the Lowest & Best Bid or Proposal

LOWEST PRICE – If TDA will make the vendor selection based on lowest price, no additional evaluation criteria is required in solicitation of the purchase.

The vendor selected will be based on:

- the vendor's price to provide the good or service;
- whether the goods or services meet agency specifications.

LOWEST & BEST –

If TDA will make the determination based on a combination of lowest cost and best value, additional evaluation criteria is required in solicitation of the purchase in order to be considered in selecting the vendor. The best value criteria are identified in statute.

The CPA's contract manual defines best value as the selection of a contractor based on a determination of which proposal offers the best trade-off between price and performance, and where quality is an integral performance factor.



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Determining the Lowest & Best Bid or Proposal (continued)

The Comptroller of Public Accounts (CPA) vendor reporting system will be used to assist in determining past performance in informal and formal solicitations.

Additional Resources:

[State Contract Management Guide Chapter 3](#)

[Gov't Code §2155.074](#)

[CPA Vendor Performance Tracking System](#)

[State Debarred Vendor List](#)

Best Value Determination

Pursuant to Government Code §2155.074 the purchase price and whether the goods or services meet specifications are the most important considerations in this category of purchase.

However, in determining the best value for the state, other relevant factors may be considered, such as:

- installation costs;
- life cycle costs;
- quality and reliability of the goods and services;
- delivery terms;
- indicators of probable vendor performance under the contract such as
 - past vendor performance,
 - the vendor's financial resources and ability to perform,
 - the vendor's experience or demonstrated capability and responsibility, and
 - the vendor's ability to provide reliable maintenance agreements and support;
- cost of any employee training associated with a purchase;
- effect of a purchase on agency productivity;
- vendor's anticipated economic impact to the state or a subdivision of the state, including potential tax revenue and employment; and
- other factors relevant to determining the best value for the state in the context of a particular purchase.

Pursuant to Government Code §2156.007, in determining the bidder offering the best value, the agency will consider:

- the quality and availability of the goods or contractual services and their adaptability to the use required;
- the scope of conditions attached to the bid;
- the bidder's ability, capacity, and skill to perform the contract or provide the service required;
- the bidder's ability to perform the contract or provide the service promptly, or in the time required, without delay or interference;
- the bidder's character, responsibility, integrity, and experience or demonstrated capability;
- the quality of performance of previous contracts or services;
- the bidder's previous and existing compliance with laws relating to the contract or service;



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Best Value Determination (continued)

- the bidder's previous or existing noncompliance with specification requirements relating to the time of submission of specified information, including samples, models, drawings, or certificates;
- the sufficiency of the bidder's financial resources and ability to perform the contract or provide the service; and
- the bidder's ability to provide future maintenance, repair parts, and service for the use of the contract's subject.

Texas Government Code, 2157.003: Determining Best Value for purchases of Automated Information Systems (AIS) provides the following factors for consideration:

- purchase price;
- compatibility to facilitate the exchange or existing data;
- capacity for expanding and upgrading to more advanced levels of technology;
- quantitative reliability factors;
- level of training required to bring persons using the system to a started level of proficiency
- compliance with applicable department standards.

Additional Resources:

[State Contract Management Guide Best Value Requirements](#)
[CPA Vendor Performance Tracking System](#)
[State Debarred Vendor List](#)

Purchasing Steps

TDA Purchasing is committed to obtaining needed goods and/or services in a timely manner in accordance with state policies and agency guidelines.

1. **Identify the Item(s) Needed.** Purchases will be initiated by requisition from the program area. Incomplete or incorrect requisitions will be returned to the requestor for correction.

A completed and approved Purchase Order (PO) must be issued by Purchasing Program staff prior to the vendor providing any goods or services. If after award any changes need to be made to the procurement, a change order must be approved and issued before changes to the procurement can be made.

2. **Determine Type of Purchase.** Determine if the purchase is one of the following Special Purchase types which require additional steps for compliance.
 - [Direct Publication](#)
 - [Distributor \(repair parts\)](#)
 - [Emergency Purchase](#)
 - [Food Purchase \(non-consumption purposes\)](#)
 - [Fuel](#)
 - Memberships
 - Registrations
 - [Professional Services \(includes Consultants\)](#)
 - [Proprietary Purchase](#)
 - [Printing & Copying](#)
 - [Technology](#)



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Purchasing Steps (continued)

3. **Determine the Best Method for Purchasing.** All purchases should consider the HUB goals and good faith effort for state funds purchases and MWBE/DBE requirements for federal funds purchases. Prior to making a purchase on the open market, two procurement methods must be considered:
 - **Statutory Preferences** (set-asides). Determine if the item is available through one of the statutorily preferred vendors –Texas Industries for the Blind & Handicapped (TIBH), Texas Correctional Industries (TCI) and Council of Competitive Government (CCG).
 - **Term Contract** (state contract). Determine if the goods or services are already on state contract. If available, additional competition is not necessary.
 - **Texas Multiple Award Schedule (TXMAS)**. Determine if goods or services are available through TXMAS. If available, additional competition is not necessary. Professional services may not be purchased through TXMAS.

If not a set-aside or on state contract, the amount of the purchase, including the delivery costs, triggers specific requirements.

- **Spot Purchases** (\$5,000 and under). Check to see if the item/service is on state contract. If not on state contract and under \$5,000, only one proposal is required as long as the purchase is the best value to the state. Use of the Historically Underutilized Businesses, (HUB's) is recommended.
- **Informal Competition** (\$5,000.01-\$25,000). If the purchase is over \$5,000, but less than \$25,000 and is not on a state contract, it is considered an open market informal purchase which requires use of the state Centralized Master's Bidders List (CMBL) in obtaining a minimum of three proposals. Two of the three vendors contacted for proposal must be from a CPA certified HUB business.
- **Formal Competition** (\$25,000.01 and above). TDA will solicit bids from all vendors on the CMBL and HUB directory who provide the good or service needed. Vendors not on the CMBL may be added to the list of those solicited by making written request that includes complete vendor information such as vendor company name, mailing address, contact name, phone/fax number and federal tax ID number. Formal solicitation requires posting on the Electronic State Business Daily (ESBD) website for a minimum of 14 days if the full solicitation is posted, and 21 days if only notice of the solicitation is posted.

Technology purchases have different thresholds:

- **Commodities under \$50,000** – agency can award from DIR contract.
- **Commodities between \$50,000 and \$150,000** – agency must submit a request for pricing from at least three vendors on the DIR vendor list.
- **Commodities over \$150,000 but not more than \$1 Million** – agency must submit a request for pricing from at least six vendors on the DIR list, or all vendors if the DIR list does not have six vendors.
- **Technology services over \$50,000** – may require a statement of work approved by DIR.



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Purchasing Steps (continued)

4. **Develop Detailed Specifications.** Specifications should be detailed enough to ensure agency needs are met, without requiring specifications that unnecessarily limit competition for the purchase, or steer the purchase to a preferred vendor.

For formal solicitations, a statement of work and risk analysis will be performed. Contract terms will be developed to mitigate the risks identified, formalize the scope of the agreement, and provide measurable deliverables.

5. **Develop and Apply Evaluation Criteria.** To assure best value, evaluation criteria for determining which proposal provides the best value to the state will be documented and uniformly applied to submitted vendor proposals. Other state award criteria, such as Texas vendors, blighted neighborhoods, and energy efficiency preferences will be included in the criteria. The reasons for selection will be documented.
6. **Include Required Contract Terms & Conditions.** The state of Texas has standard terms and conditions that must be included in every contract. On occasion, a vendor or prospective vendor submits terms and conditions as part of a proposal or invoice. TDA employees do not have authority to accept vendor terms and conditions in lieu of TDA's. The agency terms and conditions are developed to be compliant with state law. Compliance with state law cannot be negotiated or contracted away.
7. **Verify Vendor Eligibility.** Purchasing staff will check the federal System for Award Management (SAM), which includes the federal Excluded Parties List System, state Franchise Tax, Comptroller's Vendor Debarred List, the Comptroller's Performance Tracking System or any successor systems to ensure the vendor is not suspended, debarred, or is otherwise ineligible from doing business with the state or federal government.
8. **Contract Approvals.** An authorized signature or approval is a representation by the approving employee that the contract is consistent with the law, agency policies and procedures, and is in the best interest of the state. The contract manager or procurement director shall document and approve each contract required to use the best value standard.
9. **High Value/High Risk Contracting.** High value/high risk contracts require heightened monitoring pursuant to statute and TDA contract management procedures. These include posting information to the Legislative Budget Board (LBB), the CPA, and on the agency website.

\$1 MILLION – Contract awards over \$1 million made without competition require 10 business days' notice to the Legislative Budget Board (LBB) before payment can be made. The notice must include certification that the solicitation and selection process complied with state law and agency policy. (General Appropriations Act, Art. VII Sec. 12).

Contract Management for contracts over \$1 Million must include a reporting plan that includes: compliance with financial provisions and delivery schedules; corrective action plans and status of any active plans; liquidated damages assessed or collected; and, verification of the accuracy of the reported data. Contracts over \$1 Million must be signed by the Commissioner or Deputy Commissioner.



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Purchasing Steps (continued)

\$5 MILLION – If the contract award is over \$5 million, the Contract Manager or Purchasing Director must verify compliance with law and agency policy, and report solicitation and contracting issues to the Commissioner or Deputy Commissioner.

\$10 MILLION – If the contract amount is over \$10 million the solicitation must be pre-approved by the Comptroller's Contract Advisory Team (CAT). The CAT may make recommendations, which must be accepted unless a written explanation is provided for recommendations that are not applicable. Legal Services will review all explanations of non-applicability prior to submission to CAT.

10. **Invoicing and Confirmation of Receipt.** When goods or services are received, employees must confirm that all contracted deliverables were met and that performance was acceptable before payment can issue.

All contractors that are awarded a contract with the HSP requirement must also submit a Progress Assessment Report (PAR) with every invoice in compliance with their HSP regardless of whether or not subcontractors are used. Failure to submit the required PAR form will delay payment processing as payment will not be made without an approved PAR form.

Additional Resources–State Procurement Manual:

- [2.5 Set-aside Purchases](#)
- [2.5.1 Texas Industries for Blind & Handicapped \(TIBH\)](#)
- [2.5.2 Texas Correctional Industries \(TCI\)](#)
- [2.6 Term Contracts](#)
- [2.7 Open Market Purchases](#)
- [2.8 Scheduled Managed Contracts](#)
- [2.8.1 Texas Multiple Award Schedule Contracts \(TXMAS\)](#)

Vendor Protests

The procedures for protesting the solicitation process or award is located in the Texas Administrative Code, Title IV, Part I, Ch. 1, Subchapter Q.

Additional Resources–TX Administrative Code:

[TDA Protest Procedures](#)

Contract Planning

For contracts with an anticipated value over \$25,000, a contract plan will be developed. The plan will identify step assignments and estimated time needed for each step in both the purchasing and monitoring phases.

The plan will be cooperatively developed between the initiating program area and Purchasing, with the program area taking the lead on its preparation.

- Invitation to Legal Services to participate in plan development.
- Identification of roles and responsibilities in
- Development of the business case, statement of work, and deliverables
- Development of a sample contract for inclusion in the solicitation
- Agreement on procedure for approving deliverables and requesting payment
- Procedure for regularly evaluating and reporting vendor performance
- Contract close out



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Contract Planning (continued)

Additional Resources:

[State Contract Management Guide–Planning](#)

Formal Contract Management Plan – High Value, Complex, or High-Risk Procurements

A formal contract management plan will be developed during the procurement planning stage for high value, complex, or high risk procurements with a reporting component that includes: compliance with financial provisions and delivery schedules; corrective action plans and status of any active plans; liquidated damages assessed or collected; and, verification of the accuracy of the reported data. The plan will be cooperatively developed between the initiating program area and Purchasing, with the program area taking the lead on its preparation.

The contract plan will include a process for review and determination of what worked and what needs improvement on future contracting.

For contracts requiring extended monitoring, initiation will include a post-award meeting with the vendor to discuss expectations under the plan, including required progress reports prior to payment.

Contracts for information systems applications valued at \$1 million and meeting the length and scope requirements or must follow the Department of Information Resources (DIR) Major Project Delivery Framework process.

For contracts over \$5 million, the commissioner and deputy commissioner must receive reports on solicitation and contracting issues.

Additional Resources–DIR:

[Project Delivery Framework Resources](#)

Risk Mitigation

A risk analysis will be developed by the initiating program area with help from Purchasing. Areas vulnerable to loss, abuse, or breach will be identified. The analysis will be used to determine appropriate contract terms and monitoring steps to reduce the risk.

Mitigation steps include regular reporting, performance bonds, penalties for breach, liquidated damages, enhanced communication requirements, and similar actions.

Post Award Contract Management

The contracting process does not end with the execution of the agreement, but continues until all deliverables are received in acceptable condition and the contract terminates. TDA employees are responsible for ensuring the contract terms and conditions are performed by the vendor as expected and, for reporting vendor performance to the Purchasing Program.

Contract Monitoring Responsibility

A Certified Texas Contract Manager (CTCM) in the purchasing program will assist the program areas with monitoring the contract. The level of program area monitoring is determined by the value and risk associated with the contract.

Persons with responsibility for contract management in agency program areas may also be required to have contract management certification.

Additional Resources:

[State Contract Management Guide-performance monitoring](#)



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Contracts Requiring Additional Oversight

Contracts requiring additional oversight are: (Tex. Gov't Code §2261.253(c))

- software contracts over \$50,000
- contract amendments that increase the value of the original contract by 25% or more
- contract amendments valued at \$500,000 or more
- new contracts valued at \$1 million or greater, including renewal options
- staff augmentation contracts (temporary employees) to ensure the FTE/Headcount policies are followed.

Additional Resources:

[Tex. Gov't Code §2261.253\(c\)](#)

Amendments and Change Orders

Amendments and change orders are a necessary process to address unforeseen issues that arise during the course of procurement. Contract changes are minimized by thoughtful planning, well-drafted deliverables, and attention to detail such as proper billing and accounting. Changes, amendments, extensions and other variations from the original contract must be documented and approved by Legal Services and Purchasing.

Change orders, other than technical corrections, should include a discussion of "Lessons Learned" for mitigation of the risk of a similar change order in future contracts.

The agency purchasing system (CAMPS) requires a change order in order to correct a technical coding error. In these circumstances, Purchasing can approve the change order without additional approval.

Issue Resolution in Executed Contracts

The program area monitor assigned in the Contract Management Plan will keep a log of all issues arising during the contract, and the resolution of those issues. Issues that cannot be resolved at the program/purchasing level will be escalated to Legal Services.

Additional Resources:

[State Procurement Manual-Vendor Performance](#)

Contract Compliance Reporting

The agency shall develop and implement contract reporting requirements that provide information on:

- Compliance with financial provisions and delivery schedules under the contract;
- Corrective action plans required under the contract and the status of any active correction plans;
- Any liquidated damages assessed or collected under the contract; and
- Verify the accuracy of any information reported by a contractor
- The delivery time of goods and services.



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Contract Compliance Reporting (continued)

Vendor performance reporting requirements should be included in the solicitation process, as reporting is required by the Comptroller of Public Accounts (CPA).

The program area is responsible for documenting both good and poor vendor performance. Purchasing staff will work with the program area on documentation and issue resolution. Purchasing staff is responsible for reporting performance to the CPA, based on reports provided by TDA program areas responsible for the contract.

Performance reporting shall include whether or not the best value expectation was met for those procurements required to use the best value standard.

Additional Resources:

[State Procurement Manual -Vendor Performance](#)

Payment Prohibitions

Payment is prohibited without the required notice under the General Appropriations Act Article IX Sec. 7.12 for procurements over \$10 million, or procurements over \$1 million awarded under emergency conditions or made without competition as required by state law.

Payment is contingent upon confirmation that the goods or services have been delivered in accordance with the contract, and accepted by an authorized employee of the agency. Prepayment or advances are prohibited except in limited circumstances, and cannot be negotiated without assistance and oversight from Legal Services.

Additional Resources:

[State Procurement Manual -Payments](#)

[State Procurement Manual -Prepayment](#)

Document Management

All employees participating in the contracting process will make sure correspondence and other documentation related to the procurement is provided to purchasing staff for inclusion in the file. The program area is responsible for maintaining the contract management file. The procurement file and the contract management file should be retained as a single file if stored off-site as an inactive file.

Procurement Contract Closeout

At the end of the purchasing contract term, including all exercised renewal options, the contract will be closed and all required documentation collected to create a comprehensive contract file. The file will be maintained according to records retention requirements, which is the end of contract and all extensions plus seven years.



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Appendix A

Summary of Minimum Requirements for Purchases Delegated to State Agencies

Total Amount of Purchase	Commodity Purchases	Purchases of Services	Direct Publication Purchases	Perishable Goods Purchases	Distributor Purchases	Emergency Purchases
\$0.00 to \$5,000.00	Competitive Process Not Required	Competitive Process Not Required	Competitive Process Not Required	Competitive Process Not Required	Competitive Process Not Required	Competitive Process Not Required
\$5,000.01 to \$25,000.00	Open Market Informal Solicitation	Open Market Informal Solicitation	Direct Publication Declaration with Purchasing Documentation	Open Market Informal Solicitation	Open Market Informal Solicitation if Multiple Dealers Available	Open Market Informal Solicitation
\$25,000.01 to \$100,000.00	Non-Delegated	Open Market Formal Solicitation	Direct Publication Declaration with Purchasing Documentation	Open Market Informal Solicitation	Open Market Informal Solicitation if Multiple Dealers Available	Open Market Informal Solicitation When Possible
Over \$100,000.00	Non-Delegated	May or May Not be Delegated. Determination made by CPA.	Direct Publication Declaration with Purchasing Documentation	Open Market Informal Solicitation	Open Market Informal Solicitation if Multiple Dealers Available	Open Market Informal Solicitation When Possible

Source: Comptroller of Public Accounts Purchasing Guidelines

*Summary of Minimum Requirements for Automated Information Systems Staff Augmentation
(temporary employment of IT personnel)*

Not to Exceed Amount of Project	Vendors to be solicited	Best Value Evaluation
\$50,000 or less	TIBH	Not Applicable
\$50,000 or less if not available through TIBH	1 DIR	Not Applicable
\$50,000.01 but not more than \$150,000	3 DIR and TIBH	Best Value Criteria Evaluation
More than \$150,000 but not more than \$1 Million	6 DIR and TIBH	Best Value Criteria Evaluation



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Appendix B

Approximate Procurement Processing Timelines (Business Days)

Purchase Category Codes (PCCs) are codes used to document the purchase method, commodity type and dollar category of purchase and are entered into USAS.

PCC	Description	Dollar Thresholds	Requirements	<u>ESTIMATED</u>
				Work Days for Routine Processing
A	Automated Term Contracts	Any dollar amount	TDA Procurement Team processes through SPD Smartbuy Portal	7-10
C	Non-Automated Term Contracts	Any dollar amount	TDA Procurement Team processes through SPD Smartbuy Portal	7-10
D	IT Commodities/Services not Available on DIR Contracts	\$0.01-\$24,999.99	TDA Procurement Team solicits	15-20
		\$25,000.00 and above	Advertisement on ESBD (14 to 21 days or longer depending on project)	60-180
E	Delegated commodities/services	\$0.01 - \$5,000.00	Solicitation and selection documented by Program using CMBL vendors	5-10
F	Delegated commodities	\$5,000.01 — 25,000.00	Informal solicitation performed by Purchasing, evaluation and selection summaries performed by Program	15-20
G	Open Market	\$25,000.00 and above	CPA solicitations: a. Process to CPA = 7 b. CPA receives responses = 60-180 c. TDA reviews responses = 10 d. Process paperwork after award = 3	80-120
I	DIR Contracts	Any dollar amount	TDA Procurement Team solicits High dollar value requires additional solicitation and evaluation.	15-30
K	Publications directly form Publisher	\$0.01 -\$24,999.99	TDA Procurement Team solicits	19
		\$25,000.00 and above	Advertisement on ESBD (14 to 21 days or longer depending on project)	40-60
Q	Services	\$0.01 -\$25,000.00	TDA Procurement Team solicits	15-20
S	Services	\$25,000.01-\$100,000.00	TDA Procurement Team solicits	120-190
		\$100,000.01 and above	TDA Procurement Team processes through SPD/if SPD delegates back to TDA, it will be internally	120-200
T	Emergency	Any dollar amount	TDA Procurement Team solicits	Priority
X	TXMAS	\$0.01 - \$25,000.00	TDA Procurement Team solicits	15-20
9	Document Type 9 (Exemptions)	Any dollar amount	TDA Procurement Team solicits	60-120



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Appendix C

State Purchasing Words and Phrases Defined

Approved Products List (APL)

A list of products that have been approved prior to the bidding process that meet a defined specification. Referred to as a qualified products list.

Award

The act of accepting a bid, thereby forms a contract between TDA and a bidder.

Automated Term Contract

A contract by which orders can be processed by the Comptroller computer system when TDA provides the required coded information on the Contract Purchase Requisition. Eliminates the need for the agency to describe items on the requisition.

Bid

An offer to contract with the State submitted in response to a bid invitation issued by TDA, Comptroller or an issuing entity.

Bid Tabulation

The recording of bids and bidding data for purposes of bid evaluation and record keeping.

Bidder

An individual or entity that submits a bid. The term includes anyone acting on behalf of the individual or other entity that submits a bid, such as agents, employees, and representatives.

Biennium (State of Texas)

A period of 24 consecutive months, beginning on September 1 of each odd numbered year. Example: September 1, 2009 through August 31, 2011.

Blanket Order

A purchase order with a vendor for a specified time period, specific commodity, and an estimated quantity to be delivered as requested. Use of minimum call out quantities is advised for this type of order.

Brand Name

A trade name or product name that identifies a product as having been made by a particular manufacturer.

Cash Discounts

A discount offered for paying cash at time of purchase.

CAMPS

TDA's agency-wide Contracts, Awards Management and Procurement System.

Centralized Master Bidders List (CMBL)

A list maintained by the Comptroller containing the names and addresses of prospective bidders. See website to utilize the CMBL: <http://www.window.state.tx.us/procurement/cmb/cmbhub.html>

Class and Item

The classification system found in the Comptroller Commodity Book that identifies items and services. See website: http://www.window.state.tx.us/procurement//com_book/ to find Class and Item Codes.



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Commodity Book

Published by the Comptroller, which contains class and item numbers. See website http://www.window.state.tx.us/procurement//com_book/ for listing.

Competitive Bidding

The process of inviting and obtaining bids from competing sources in response to advertised competitive specifications, by which an award is made to the lowest and best bidder meeting the specifications. The process contemplates giving potential bidders a reasonable opportunity to bid, and requires that all bidders be placed on the same plane of equality. Each bidder must bid on the same advertised specifications, terms, and conditions in all the items and parts of a contract. The purpose of competitive bidding is to stimulate competition, prevent favoritism, and secure the best goods and services at the lowest practicable price, for the benefit of the state.

Competitive bidding cannot occur where contract specifications, terms, or conditions prevent or unduly restrict competition, favor a particular vendor, or increase the cost of goods or services without providing a corresponding benefit to the state.

Competitive Specifications

A specification stated in such a manner that two or more bidders can meet the specifications on the same plane of equality.

Confirmation Order

A purchase order issued to a vendor, listing the commodities and terms of an order placed verbally, or otherwise, in advance of the issuance of the purchase order.

Delegated Purchase

A purchase made by an agency under the authority of the Comptroller and subject to Comptroller rules and procedures.

Direct Publication

Purchases of publications directly from the publisher. This includes; books, software, and software maintenance tied to the original purchase.

Emergency Purchase

A purchase of goods or services so badly needed that an agency will suffer financial or operational damage unless they are secured immediately.

Equivalent Product

A product that is comparable in performance and quality to the specified product.

Escalation Clause

A clause in a bid providing for a price increase under certain specified circumstances.

Excluded Parties List System (EPLS)

The Excluded Parties List System (EPLS) is a federal database that includes information regarding entities debarred, suspended, proposed for debarment, excluded or disqualified under the non-procurement common rule, or otherwise declared ineligible from receiving Federal contracts, State of Texas contracts, certain subcontracts, and certain Federal assistance and benefits. The database can be found at: <https://www.sam.gov/portal/SAM/#1>



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Fiscal Year (State of Texas)

A period of 12 consecutive months, beginning September 1 of each year.

Fixed Price Contract

A contract which provides for a firm price which cannot be increased for the full term of the contract.

Formal Bid

A written bid submitted in a sealed envelope in accordance with a prescribed format, or in accordance with procedures established by the Comptroller.

Historically Underutilized Business (HUB)

A corporation formed for the purpose of making a profit in which 51 percent or more of all classes of the shares of stock or other equitable securities are owned by one or more socially disadvantaged persons who have a proportionate interest and actively participate in the corporation's control, operation, and management. Groups include: Black Americans, Hispanic Americans, Women, Asian Pacific Americans, Native Americans and Service Disabled Veterans.

Interagency Contract (IAC)

Understanding between two or more agencies as authorized by Chapter 771 of the Texas Government Code.

Informal Bid

An unsealed, competitive bid submitted by letter, telephone, electronically, or other means used for purchases less than \$25,000.

Invitation for Bids (IFB)

A written request for submission of a bid; also referred to as a bid invitation. Usually used for normal goods and services

Late Bid

A bid that is received at the place designated in the bid invitation after the time set for bid opening. A late bid is a non-responsive bid.

Lease of Equipment

A contract granting use of equipment or other fixed assets for a specified time in exchange for payment. Title remains with the vendor.

Letter of Award

Letter of notification announcing award of the contract to bidder. May be used in lieu of issuing a Purchase Order to awarded vendor.

Local Government

A county, municipality, school district, special district, junior college district, or other legally constituted political subdivision of the state.

Minority Business Enterprise (MBE)

A business concern that is at least 51% owned by one or more individuals who are African American, Hispanic American, Native American, Asian-Pacific American or Asian-Indian American; and whose management and daily business operations are controlled by one or more of these owners.



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Non-Automated Contract

A term contract that cannot be processed through the CPA's automated system. The purchase order is prepared by the agency and mailed directly to the vendor with a copy sent to the Comptroller. Temporary services and printing services are two examples of non-automated contracts.

Non Resident Bidder

A bidder whose principal place of business is not in Texas, but does not include a bidder whose majority owner or parent company has its principal place of business in Texas.

Notice of Award

A letter signed by the director or his designee which awards and creates a term contract

Open Market Purchase

A purchase of goods, usually of a specified quantity, made by buying from any available source in response to an open market requisition through the Comptroller. Utilized when goods and services are over the agency delegated limits of \$25,000.00 for goods and \$100,000.00 for services.

Performance Specification

A specification setting out performance requirements that have been determined to be necessary for the item involved to perform and last as required.

Principal Place of Business in Texas

A permanent business office located in Texas from which a bid is submitted and from which business activities are conducted other than submitting bids to governmental agencies, where at least one employee works for the business entity submitting bids.

Procurement Card

State term contract credit card program designed as a payment method to streamline small dollar purchases. See Procurement Card Procedures for guidelines.

Proprietary

Products or services manufactured or offered under exclusive rights of ownership, including rights under patent, copyright or trade secret law. A product or service is proprietary if it has a distinctive feature or characteristic which is not shared or provided by competing or similar products or services. A product or service may be proprietary, but available from multiple, competitive sources.

Protest Procedures

Procedures for resolving vendor protests relating to purchasing issues.

Public Bid Opening

The opening of bids at the time and place advertised in the bid invitation, in the presence of anyone who wishes to attend. On request of any person in attendance, bids will be read aloud.

Purchase Orders

- a) Open Market purchase order - A document issued by the Comptroller to accept a bid, creating an open market purchase contract.
- b) Automated Contract purchase order - A release order issued by the Comptroller under an existing term contract and pursuant to a requisition from an agency.
- c) Non-Automated Contract purchase order - An order issued by the agency under an existing term contract with a copy to the Comptroller.



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Purchase Requisition

An internal document by which a using agency requests the procurement department to initiate a procurement. (A) Open Market purchase requisition - An initiating request from an agency describing needs and requesting the commission to purchase goods or services to satisfy those needs. (B) Term Contract purchase requisition - A request from an agency for delivery of goods under an existing term contract.

Purchasing Functions

The development of specifications, receipt and processing of requisitions, review of specifications, advertising for bids, bid evaluation, award of contracts, and inspection of merchandise received. The term does not include invoice, audit, or contract administrative functions.

Recycled Material Content

The portion of a product made with recycled materials consisting of pre-consumer materials (waste), post-consumer materials (waste), or both.

Recycled Materials

Materials, goods, or products that contain recyclable material, industrial waste, or hazardous waste that may be used in place of raw or virgin materials in manufacturing a new product.

Recycled Product

A product that meets the requirements for recycled material content as prescribed by the rules established by the State of Texas.

Remanufactured Product

A product that has been repaired, rebuilt, or otherwise restored to meet or exceed the original equipment manufacturers (OEM) performance specifications; provided, however, the warranty period for a remanufactured product may differ from the OEM warranty period.

Rent

The payment for the use of property.

Request for Information (RFI)

To be used when the end user cannot clearly identify product requirements/specification. Utilized when you know what you need from a vendor but not how to get it. Very technical procurements utilize this method.

Request for Proposal (RFP)

A written request for proposals concerning goods or services the state intends to acquire by means of the competitive sealed proposal procedure.

The solicitation document used in the competitive-sealed proposals process.

The procedure allows changes to be made after other proposals are opened and contemplates that the nature of the proposals and/or prices offered will be negotiated prior to award.

To use this procedure, a determination is made that the use of competitive sealed bidding is either not practical or is not advantageous to the state. RFPs are generally used for purchases of highly technical supplies and services. This method may also be used when contracting for highly specialized or professional services such as medical, social, architectural, engineering and similar professional services.



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Research Funds

Higher education funds to promote the advancement of technology or research projects.

Sealed Bids

A formal bid.

Service

The furnishing of skilled or unskilled labor or professional work but does not include professional services covered by the Professional & Consulting Services Act (defined in Chapter 2254 of the Texas Government Code) <http://www.window.state.tx.us/procurement/pub/manual/2-20.pdf>, or an employee of an ordering entity, and services of public utilities.

Set-Aside Contract

Term often used when referring to contracts under oversight by the Texas Council for Purchasing from People with Disabilities.

Short Bid List

A process to select potential bidders for an open market requisition submitted to the Comptroller, within an ordering entity's delegated purchasing authority, which encourages HUB participation.

Solicitation

An invitation for bids or a request for proposals.

Sole Source

A product or service that is proprietary and can only be obtained from a single source.

Specification

A description of what the purchaser requires and what a bidder or proposer must offer.

Standard

The established and fixed measure used in assessing quality or performance.

Terms & Conditions

The provision specifying the nature of a contract.

Term Contract Purchase

A purchase by an agency under a term contract which established a source of supply for particular goods at a given price for a specified period of time. This information is also located on the Internet at the following website: http://www.cpa.state.tx.us/procurement/cat_page/

Texas Council for Purchasing from People with Disabilities

This entity is not a state agency. The council approves products and services to be included in the TIBH catalogue/contracts.

Texas Department of Criminal Justices (TDCJ)

Goods and services may be purchased directly from this state agency without competitive bidding per the Texas Prison Made Goods Act, Chapter 497 on the Texas Government Code. The Institutional Division of TDCJ offers a Texas Correctional Industries (TCI) catalogue.



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Texas Government Code

Chapters that give oversight of purchasing requirements for the State of Texas. Includes chapters 2155, 2156, 2157, 2158 and 2161. See following website for information:

<http://www.window.state.tx.us/procurement/procedures.html>

Texas Marketplace

State agencies making procurements exceeding \$25,000 without regard to source of funds will upload the bid and award to the Texas Marketplace.

Texas Resident Bidder

A bidder with its principal place of business in Texas, including a bidder whose majority owner or parent company has its principal place of business in Texas.

Texas Specification

A specification adopted by the Comptroller and used whenever possible in the purchase of the item involved. Established standard of minimum quality for items or services purchased in volume by the state.

Total Expenditures on Products with Recycled Material Content, Remanufactured Products, and Environmentally Sensitive Products

The total direct acquisition costs (vendor selling price plus delivery costs) of all such products.

Unit Price

The price of a selected unit of a good or service, i.e., price per ton, or per foot.

USAS

Acronym of the Uniform Statewide Accounting System, which the state's financial system.

Vendor

A supplier of goods or services to the State.

Written Data

Data which is expressly required to be submitted in writing. A bid invitation that expressly requires the submission of written data with the bid must include the following statement or its substantial equivalent: "Failure to provide the required information with the bid response will automatically disqualify the bid from consideration for award in connection with this transaction."

Woman-Owned Business Enterprise (WBE)

A business enterprise, in which at least fifty-one percent (51%) is owned, operated and controlled by citizens or permanent resident aliens who are women.



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Appendix D
Texas Department of Agriculture Vendor Protest Rules

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<u>PART 1</u>	TEXAS DEPARTMENT OF AGRICULTURE
<u>CHAPTER 1</u>	GENERAL PROCEDURES
<u>SUBCHAPTER Q</u>	PROTEST OF CONTRACT AWARDS OR AGENCY PROCUREMENT PROCEDURES
RULE §1.1100	Definitions

The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

- (1) **Agency**--The Texas Department of Agriculture.
- (2) **Commissioner**--The Commissioner of the Texas Department of Agriculture.
- (3) **Deputy Commissioner**--The Deputy Commissioner of the Texas Department of Agriculture.
- (4) **Interested Parties**--All vendors who have submitted bids or proposals for the provision of goods or services to the Texas Department of Agriculture.
- (5) **Office of General Counsel**--The Office of the General Counsel for the Texas Department of Agriculture.
- (6) **Responsible Individual**--The Chief Administrator or equivalent person for the agency division responsible for the procurement, or, only in the event of an absence of the Chief Administrator or equivalent person from work as a result of death, disability, incapacity or illness, the person designated by the Chief Administrator or the Deputy Commissioner, to review and make a determination on the protest, as applicable.



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RULE §1.1101	Filing a Protest; Effect

(a) Any actual or prospective bidder, offeror, or contractor who asserts or complains of improper process or a procedural defect in connection with the agency's solicitation, evaluation, or award of a contract may file a formal protest with the Responsible Individual for the division, subdivision or office that is responsible for the procurement.

(b) A protest must be made in writing and received by the Responsible Individual within 10 working days after the protesting party knows, or should have known, of the occurrence of the action that is protested.

(c) Formal protests must conform to the requirements of this subchapter, and will be resolved through use of the procedures that are described in this subchapter. The protesting party must mail or deliver copies of the protest to the agency and other interested parties.

(d) In the event of a timely protest under this section, the agency will suspend further process with the solicitation or award of the contract unless the Commissioner or Deputy Commissioner makes a written determination that the contract must be awarded without delay, to protect the best interests of the agency.

(e) A formal protest must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision that the protesting party alleges has been violated;

(2) a specific description of each action by the agency that the protesting party alleges to be a violation of the statutory or regulatory provision that the protesting party has identified pursuant to paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) a statement of any issues of law or fact that the protesting party contends must be resolved;

(5) a statement of the argument and authorities that the protesting party offers in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to the agency and all other identifiable interested parties.

(f) Unless the Commissioner or Deputy Commissioner makes a written determination that the contract must be awarded without delay as authorized by this section, the Agency may not proceed with the award and contract until the protest is denied or resolved favorably to the Agency.



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RULE §1.1102	Disposition of Protests by the Responsible Individual

(a) Upon receipt of a timely protest that conforms with this subchapter, the Responsible Individual of the division or office that is responsible for the procurement will review the protest. The Responsible Individual may request written responses to the protest from any staff of the agency and may request from the agency staff any and all documents related to the protest. The Responsible Individual may solicit written responses to the protest from other interest parties.

(b) The Responsible Individual has the authority, prior to appeal to the Commissioner or Deputy Commissioner, to settle and resolve the dispute over the solicitation or award of a contract.

(c) If the protest is not resolved by mutual written agreement, the Responsible Individual shall within 30 calendar days of receipt of a timely protest that conforms with this subchapter, issue a written determination regarding the protest. The Responsible Individual shall consult with the Office of General Counsel and the agency's Financial Services Division prior to issuing a written determination on the protest.

(d) The Responsible Individual shall inform the protesting party, the agency, and other interested parties of the written determination, denying or sustaining the protest, in whole or in part, setting forth the reasons for the determination. The written determination may set forth any appropriate remedial action, including a decision that:

- (1) all or any portion of the award be rebid or repurchased;
- (2) limits or shortens the term of any existing contract and requires rebid or repurchase of the procurement; or
- (3) cancels or declares the contract void, and requires rebid or repurchase of the procurement.

(e) A protest or appeal that is not timely filed with the Responsible Individual will not be considered unless good cause for delay is shown and the Commissioner or Deputy Commissioner determines that the protest raises issues that are significant to agency procurement practices or procedures in general.

(f) Unless a protesting party or interested party timely files an appeal pursuant to §1.1103 of this subchapter (relating to Appeal), the final written determination of the Responsible Individual is the final administrative action of the agency.



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RULE §1.1103	Appeal

(a) A protesting party who is not satisfied with the determination of the Responsible Individual may appeal the determination to the Commissioner or, upon the Commissioner's delegation, to the Deputy Commissioner. The appeal request must be submitted in writing and received by the Commissioner's office no later than ten working days after the date of the Responsible Individual's determination. If a request is not timely submitted as provided under this subsection, there shall be no further action taken by the Commissioner or Deputy Commissioner on the protest.

(b) Upon receipt of a timely appeal that conforms with the requirements of this subchapter, the Commissioner or Deputy Commissioner may designate an employee of the agency to review the protest, the determination made by the Responsible Individual, and the appeal of the Responsible Individual's determination. The designee will prepare and submit to the Commissioner or Deputy Commissioner a written recommendation regarding the appeal within five working days of the designation.

(c) In making a final determination, the Commissioner or Deputy Commissioner will consider only the final written determination of the Responsible Individual, those materials or pleadings submitted to the Responsible Individual, and, if applicable, the written recommendation made by a designated employee. No further arguments, authorities, documents, or pleadings shall be filed with the Commissioner or Deputy Commissioner.

(d) The Commissioner or Deputy Commissioner will issue a final written determination of the appeal, denying or sustaining the protest, in whole or in part, which shall be the final administrative action of the agency.



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RULE §1.1104	Recordkeeping

The agency will maintain all documentation on the purchasing process that is the subject of a protest in accordance with the agency's document retention schedule.



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RULE §1.1105	Applicability of Subchapter

This subchapter does not apply to grant awards made by the agency, or any grant programs administered by the agency.