



TEXAS DEPARTMENT OF AGRICULTURE
COMMISSIONER SID MILLER

Procurement & Contract Management Policy Handbook

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[\(Revision History Log\)](#)



TEXAS
DEPARTMENT
OF
AGRICULTURE

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TEXAS DEPARTMENT OF AGRICULTURE

Purchasing and Contract Management Policy

1 Purpose

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

2 Introduction

TDA must have authority to make desired purchases and, in many cases, must have delegated authority to make those purchases independently. Certain state agencies are vested with legislative authority to purchase for the state (e.g., Texas Comptroller of Public Accounts (CPA), Department of Information Resources (DIR), and Texas Facilities Commission (TFC)). Such agencies sometimes delegate purchasing authority and other times delegation is provided by statute.

State agencies have authority to contract only to the extent provided by law. Prior to initiating a procurement, staff must ensure that the agency has authority to procure the goods or services sought. All applicable state purchasing requirements must be followed.

The purchasing process is driven by customer needs. The mechanics of the purchasing transaction are performed by the TDA's Procurement and Contracts Office (PCO). It is incumbent upon both division staff and PCO staff to be informed and mindful of the legal requirements of a purchasing transaction. To the extent possible, TDA has adopted for its statutory purchasing delegation the same legal requirements and best practices that apply to any other state agency purchasing transaction.

The CPA Statewide Procurement Division (SPD) is the central authority for state agency procurement guidance, education, and statewide contract development services. SPD established and published the Comptroller's Guide to provide state agencies guidance and a framework for the continued development of public procurement processes and best practices. State agencies are required by statute to comply with the Comptroller's Guide.¹ Additional internal procedures may be developed to support policies and their purpose.

Each state agency is required to publish a contract management handbook² that establishes contracting policies and practices that must be consistent with the Comptroller's Guide. This document fulfills this requirement.

¹ Tex. Gov't Code [§ 2262.052\(a\)](#).

² Tex. Gov't Code [§ 2261.256\(b\)](#).

3 Procurement and Contracting Authority

3.1 Overview

The Legislature delegates authority to state agencies. In some instances, authority is held by other agencies and may be further delegated to TDA.

3.2 CPA Delegation by Rule

SPD has delegated its purchasing authority to agencies for the following types of procurements ([Appendix A - CPA Delegated Purchases Table](#)):

- a. One-time purchases of goods that do not exceed \$50,000;
- b. Purchases of services that do not exceed \$100,000;
- c. Direct publications;
- d. Purchases of perishable goods;
- e. Distributor purchases;
- f. Fuel, oil, and grease purchases;
- g. Internal repair purchases; and
- h. Emergency purchases.

3.3 CPA Delegation by Review

For the non-delegated purchase of goods with an estimated contract value of more than \$50,000, the agency must submit its delegation request as an Open Market Request (OMR) to SPD. The purchaser is responsible for downloading the most current OMR form posted on the CPA website. The OMR with all applicable attachments must be submitted to open.market@cpa.texas.gov. If the delegation request is denied, SPD will procure the goods on behalf of the agency.

For procurements conducted under the CPA's procurement authority, purchasers request delegation of procurement authority for services procurements valued at \$100,000 or greater. Delegation must be obtained before posting the solicitation and after the solicitation draft is complete and ready to post. The solicitation is uploaded to the CPA's Procurement Oversight and Delegation portal accessible through the Texas SmartBuy platform.

CPA reviews the solicitation and provides recommendations through the portal. This is typically completed within 30 calendar days. After receiving notification that the recommendations are complete, the purchaser must accept or reject each recommendation within the portal based on information received from the procurement's internal stakeholders. Rejected recommendations must have a justification documented in the portal. Finally, stakeholders will work to incorporate accepted recommendations into the solicitation prior to posting to the Electronic State Business Daily (ESBD).

3.4 Agency Responsibility

All agency purchases are made under the supervision of the Texas Department of Agriculture's Financial Services Procurement and Contracting Office (PCO). PCO functions as the contact between SPD, the vendor, and other TDA staff during the procurement process.

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

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

3.5 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 provide the best value and are timely, not wasteful, compliant with state and federal law and regulation, and 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.

3.5.1 State Of Texas Procurement and Contract Management Guide (Guide)

TDA follows the [STATE OF TEXAS PROCUREMENT AND CONTRACT MANAGEMENT GUIDE](#), developed and maintained by the Comptroller of Public Accounts’ State Procurement Division (SPD).

3.5.2 Code of Federal Regulations (CFR)

TDA follows the Code of Federal Regulations (CFR), [2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#), and related guidance for purchases made with federal funds. In most instances, the CFR requires purchases to be consistent with state rules.

3.5.3 Additional Resources

- a. [Texas Administrative Code Title 24, Part 1, Chapter 20](#)
- b. [Gov’t Code Chapter 2155–Purchasing General Rules and Procedure](#)
- c. [Gov’t Code Chapter 2156–Purchasing Methods](#)
- d. [Gov’t Code Chapter 2157 – Purchase of Automated Information Systems](#)
- e. [Gov’t Code Chapter 2158–Miscellaneous Provisions for Purchase of Certain Goods and Services](#)
- f. [Texas Agriculture Code](#)
- g. [Gov’t Code Chapter 2161–Historically Underutilized Businesses](#)
- h. [Gov’t Code Chapter 2175–Surplus and Salvage Property](#)

3.5.4 Other Guidelines

Policies are supplemented and supported by operating procedures, which give employees additional guidance on carrying out purchasing and contracting responsibilities.

4 Ethical Standards for Procurement and Contracting

All state employees are required to act in an ethical, impartial, transparent, and professional manner. TDA employees must uphold ethical values when carrying out their official duties and must adhere to the *TDA Ethics and Standards of Conduct* as provided in the [TDA Ethics Policy](#).

It is the policy of the State of Texas that a state officer or state employee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur an obligation of any nature that is in conflict with the proper discharge of the officer or employee's duties in the public interest.³

4.1 Statutory Prohibitions

All TDA staff should be aware of statutory prohibitions related to ethics and standards of conduct, including, but not limited to, the following:

- a. Texas Penal Code, Section 36.08 prohibits state employees from soliciting, accepting, or agreeing to accept any benefit from a person the employee knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.
- b. Texas Government Code Section 572.069 prohibits former state employees from accepting employment from a person or entity involved in a procurement or contract negotiation (even if the entity is not selected for the resulting contract) until at least two years after the contract was signed or the procurement terminated, if the employee participated on behalf of a state agency in a procurement or contract negotiation involving that person or entity.
- c. Texas Government Code Section 2252.901 prohibits state agencies from entering into an employment, professional services, or consulting services contract with a former or retired employee before the first anniversary of the last date on which the individual was employed by the agency if appropriated money will be used to make payments under the contract.
- d. Texas Government Code Section 2155.004 prohibits a state agency from accepting a bid or awarding a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. For example, a vendor who is compensated by the agency to participate in drafting the specifications or statement of work for a particular solicitation is not eligible to bid on the resulting solicitation and potential contract.

4.2 Employee Conflict of Interest and Standards of Conduct

Additional information regarding employee conflict of interest and standards of conduct may be found in the Comptroller's Guide, and the [TDA Ethics Policy](#).

All contract and procurement personnel must disclose any actual or potential conflict of interest and any situation that could create an appearance of impropriety. Such disclosure must be timely, complete and in compliance with agency procedures for notifying management of circumstances that could compromise the impartiality of the contract management and procurement process.

If a conflict of interest is identified at any point in the procurement or contract management process, TDA management with oversight over that point must take immediate action to

³ Tex. Gov't Code [§ 572.001](#).

ensure that management of any particular matter or contract does not benefit or create an appearance of a benefit to any employee or employee's family member.⁴

In accordance with the TDA Ethics Policy, all TDA agency staff have a duty to report any potential ethics or standard of conduct violations. Any TDA employee or contractor who has reasonable cause to believe that fraud, waste, or abuse has occurred must report the questioned activity to the TDA Ethics Officer and/or the General Counsel.

4.3 Ethics and Conduct: TDA Procurement and Contracting Staff

Public procurement professionals are gatekeepers for the proper expenditure of the government's limited financial resources. They are entrusted to uphold the highest ethical standards and be good stewards of public funds with every purchasing decision they make. Any erosion of public trust or hint of impropriety is detrimental to the integrity of the procurement and contracting process.

All TDA staff involved in procurement and contracting must act in the best interest of the state and avoid any activity that could potentially impair their ability to carry out duties with independence and objectivity, or even give the appearance of impropriety. Failing to abide by these rules or to disclose a potential conflict of interest may result in dismissal and/or referral to law enforcement.

4.3.1 TDA Staff Responsibilities

All TDA staff must:

- a. Adhere to ethics requirements adopted in rule, ethics policies, and any code of ethics approved by the Commissioner; and
- b. Disclose, in writing, any potential or actual conflict of interest concerning any contract or procurement in which they are or may become engaged.

4.3.2 TDA Staff Prohibitions

To avoid conflicts of interest, TDA staff must not:

- a. Participate in any work on a contract knowing that they, or a member of their immediate family, have an actual or potential financial interest in the contract, including, but not limited to, prospective employment;
- b. Solicit or accept a benefit from a vendor;
- c. Be employed by, or agree to work for a vendor; or
- d. Disclose confidential information.

4.4 Nondisclosure, Conflict of Interest, Nepotism Certification

All TDA staff must disclose, in writing, any potential or actual conflict of interest concerning any contract or procurement in which they are or may become engaged.

⁴ [TDA Ethics Policy](#), p. 2.

TDA Purchasing and Contracts ensures compliance with legal requirements for procurement and contracting-related nondisclosure, conflict of interest,⁵ and nepotism⁶ certifications.

The TDA Purchaser assigned to the procurement must ensure all purchasing personnel who participate in the procurement, including attorneys, complete the State Auditor’s Office (SAO) nepotism disclosure form before the agency may award a major contract (a contract that has a value of at least \$1 million) for the purchase of goods or services to a business entity.⁷ Pursuant to Texas Government Code, Section 2262.004, “‘Purchasing personnel’ means an employee of a state agency who makes decisions on behalf of the state agency or recommendations regarding: (A) contract terms or conditions on a major contract; (B) who is to be awarded a major contract; (C) preparation of a solicitation for a major contract; or (D) evaluation of a bid or proposal.”⁸

4.4.1 Purchasing Personnel

Nondisclosure, Conflict of Interest, and Nepotism Certification, agency “purchasing personnel” that meet the statutory definition may include, but are not limited to, the following positions:

- a. Purchasers;
- b. Contract approvers;
- c. Evaluation committee members;
- d. Attorneys (SAO nepotism disclosure form only);
- e. Technical advisors; and
- f. Contract negotiators.

4.4.2 Required Documentation

Procurement staff and other individuals involved in the procurement and contracting process may be required to complete the following forms:

- a. Non-Disclosure and Conflict of Interest Certification
- b. TDA Procurement – Specific Non-Disclosure and Conflict of Interest Certification: Evaluation committee members and technical advisors must complete a nondisclosure agreement for each procurement.
- c. State Auditor’s Office Disclosure Statement for Purchasing Personnel (SAO [Nepotism Disclosure Form](#)): Purchasing personnel must complete the SAO’s Disclosure Statement for Purchasing Personnel for major contracts (with a value of at least \$1 million) for the purchase of goods or services from a business entity. **A new SAO Nepotism Disclosure Form must be completed for each applicable procurement.**

4.4.3 Disclosure of Actual or Potential Conflict

⁵ Tex. Gov’t Code [§ 2155.003](#); 34 Tex. Admin. Code §§ [20.157](#), [20.158](#).

⁶ Tex. Gov’t Code [§ 2262.004](#).

⁷ Tex. Gov’t Code [§ 2262.004\(b\)](#).

⁸ Tex. Gov’t Code [§ 2262.004\(b\)](#).

- a. If an evaluation committee member or technical advisor, purchasing personnel, or any person required to sign nondisclosure, conflict of interest, or SAO Nepotism Form discloses an actual or potential conflict of interest or relationship with a business entity, or if one arises, they must immediately:
 - i. Notify the TDA Purchaser assigned to the procurement; and
 - ii. If they are a TDA employee or contracted staff, notify their manager.
- b. When notified of an actual or potential conflict of interest or relationship with a business entity, the TDA Purchaser assigned to the procurement must immediately notify the Director of Procurement and Contracts. The director must:
 - i. Direct the purchaser to request a determination from the TDA Ethics Officer or General Counsel in writing; or
 - ii. As an alternative to requesting a determination from the TDA Ethics Officer or General Counsel in writing, such as assigning a different TDA employee or contracted employee to minimize disruption to the procurement schedule.

4.5 Completed Documentation

The TDA Purchaser must place all required documentation for each evaluation committee member or technical advisor, purchasing personnel or any person required to sign a nondisclosure agreement, conflict of interest or Nepotism Disclosure Form in the official procurement file. The TDA Purchaser must also save in the official procurement file written documentation about any reported actual or potential conflict of interest and how it was resolved.

Additional Resources: State of Texas Procurement and Contract Management Guide, ethics, laws, and professional standards section

5 Required Training

A TDA employee must complete the Basic Texas Purchaser Course to engage in purchasing functions on behalf of TDA if the employee has the job title of “purchaser;” performs purchasing activities as 15% or more of their job functions; or makes a purchase in excess of \$5,000.⁹

Purchasing is defined as the receipt and processing of requisitions, development of specifications, development of statement of work, the issuance of purchase orders against existing statewide, cooperative or agency contracts, and the verification of the inspection of merchandise or receipt of services by the agency. The term does not include the development of solicitations and contract awards that must be posted to the Electronic State Business Daily (ESBD)¹⁰ (found on the Texas SmartBuy website) or in the *Texas Register*.¹¹

Contract development applies to actions taken prior to contract execution, including the receipt and processing of requisitions, assessment of need, development and review of specifications,

⁹ 34 Tex. Admin. Code [§ 20.133\(c\)](#).

¹⁰ Located at <http://www.txsmartbuy.com/>.

¹¹ 34 Tex. Admin. Code [§ 20.133\(b\)\(1\)](#).

development and review of scopes of work, identification and selection of procurement methods, identification and preparation of evaluation criteria, preparation and advertising of solicitation documents, tabulation of respondent bids, evaluation of respondent proposals, negotiation of proposals, and the preparation and completion of contract award documents. The term does not include invoice or audit functions.¹²

5.1 Certified Texas Contract Developer (CTCD)

A TDA employee who is not already a Certified Texas Contract Developer (CTCD) or Certified Texas Procurement Manager (CTPM) through the CPA must be certified as a CTCD (formerly CTPM) to engage in contract development functions on behalf of TDA if the employee develops, evaluates, negotiates, or awards a contract posted to the ESBD or in the Texas Register on behalf of a state agency.¹³ To become certified, the employee must take the Certified Texas Contract Developer Course through the CPA, achieve an 80 percent or higher on the Certified Texas Contract Developer exam, have completed payment for the course and examination, and apply for certification.¹⁴

New TDA staff or staff that transfer to a position requiring a CTCD must obtain the required certification within the timeframe established by TDA.

5.2 Certified Texas Contract Manager (CTCM)

A TDA employee must be certified as a Certified Texas Contract Manager (CTCM) to engage in contract management functions on behalf of TDA if the employee has the job title of “contract manager,” “contract administration manager,” or “contract technician;” performs contract management activities as 50% or more of their job activities; or manages any contract in excess of \$5,000,000.¹⁵ TDA must comply with the CPA requirement. TDA management staff has the discretion to assign a CTCM to any contract.

New TDA staff or staff that transfer to a position requiring a CTCM must obtain the required certification within the timeframe established by TDA.

5.3 Licensed Attorney

A licensed attorney employed by an agency is not required to be certified CTCD or CTCM to perform the functions described above.¹⁶

5.4 Continuing Education and Certification Renewal

Continuing education is required by the CPA to maintain certification, and all certifications are subject to mandatory renewal. For more information regarding these requirements, consult the [Continuing Education and Certification Renewal](#) page of the CPA’s website.

5.5 Required Cybersecurity Training for TDA and Contracted Staff

TDA information and information resources (IR) are valuable assets that must be protected from unauthorized disclosure, modification, use, or destruction. TDA must ensure information and resources are maintained with integrity and confidentiality and that their availability is not

¹² 34 Tex. Admin. Code [§ 20.133\(b\)\(2\)](#).

¹³ 34 Tex. Admin. Code [§ 20.133\(c\)\(2\)](#).

¹⁴ 34 Tex. Admin. Code [§ 20.133\(e\)](#).

¹⁵ 34 Tex. Admin. Code [§ 20.133\(c\)\(3\)](#).

¹⁶ 34 Tex. Admin. Code [§ 20.133\(c\)\(5\)](#).

compromised. Texas law imposes mandatory cybersecurity training requirements.¹⁷ TDA employees and contracted staff must complete the TDA Information Security/Cybersecurity Training within 30 days of hire or prior to accessing TDA IR, whichever is earliest.¹⁸ TDA employees and contracted staff must also complete the TDA Information Security/Cybersecurity Training as an annual requirement.

6 Purchasing & Contracting Management Roles and Responsibilities

TDA agency staff serve critical roles in different phases of the procurement and contract lifecycle and may assume more than one role during different lifecycle phases. Clearly delineated roles and responsibilities for agency staff reinforce accountability and awareness of decision-making authorities and responsibilities.

6.1 PCO Purchasers:

- a. Establish internal purchasing and contract management procedures consistent with state statutes, CPA rules, and TDA policies.
- b. Publish procurement action lead times (PALT) as guideline for program area planning.
- c. Perform all departmental purchases, or delegate where authorized and appropriate.
- d. Assist TDA employees with the planning, organization, coordination, specification preparation, and solicitation of purchases.
- e. Assist TDA employees with contract management responsibilities.

6.2 TDA Employees:

- a. In accordance with PCO's published Performance Action Lead Time Guidelines, Project, and plan purchases in advance of need to allow time for requests to be processed and products to be delivered.
- b. Ensure that products and services are requisitioned according to these policies and related procedures and are within available budget.
- c. Confirm receipt of goods and services according to contract.
- d. Timely report vender non-compliance with contract to Procurement and program Contract Managers.

6.3 Division Area Purchasing Liaisons:

- a. Understand and apply agency policies and procedures to program area requisitions.
- b. Serve as contact point for procurement staff to provide information, resolve issues, make corrections, and perform other related tasks.
- c. See that communication and approvals are made timely or delaying issues resolved.

6.4 Contract Managers:

- a. Monitor renewal and end dates of contract and timely notify Procurement if renewal or new solicitation is needed.

¹⁷ Tex. Gov't Code [§ 2054.5191](#).

¹⁸ Pursuant to TDA Policy relating to Tex. Gov't Code [§ 2054.5191](#).

- b. Participating with the procurement team in solicitation development and the review of contract documents;
- c. Serving as the primary point of contact for agency communication with the contractor regarding all matters pertaining to the contract;
- d. Managing any state property used in contract performance, (e.g., computers, telephones, identification badges);
- e. Implementing a quality control and contract monitoring process;
- f. Monitoring the contractor's progress and performance to ensure products and services procured conform to the contract requirements and keep timely records of findings;
- g. Consulting with agency legal counsel in a timely manner to address any legal concerns and/or issues;
- h. Managing, approving, and documenting any changes to the contract through the amendment process authorized by the terms of the contract;
- i. Inspecting and approving the products and/or services by submitting a written document accepting the deliverables or obtaining documentation from the end users responsible for receipt that inspection and approval have been completed;
- j. Verifying accuracy of invoices and authorizing payments consistent with the contract terms;
- k. Monitoring the contract budget to ensure sufficient funds are available throughout the term of the contract;
- l. Identifying and resolving disputes with the contractor in a timely manner;
- m. Exercising state remedies, as appropriate, when a contractor's performance is deficient;
- n. Maintaining appropriate records in accordance with the records retention schedule;
- o. Confirming all products and/or services have been delivered and delivery is completed prior to the expiration date of the contract; and
- p. Performing contract closeout processes by ensuring the contract file contains all necessary contract documentation, reporting vendor performance to VPTS, and documenting lessons learned.

7 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 and extensions 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.

7.1 All purchases:

- a. Program area staff approves expenditures from program budgets through the requisition process.
- b. 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.
- c. Management must approve purchases that require solicitation or are an exception to required solicitation.
- d. Financial Services Procurement staff must approve and issue the PO for all contracts that are not grant agreements.

7.2 State Credit Cards

Exception-based purchases paid with a state credit card should be reviewed for available budget by the card-holder's managing supervisor.

7.3 Vendors Solicited and Selected on Best Value

For purchases that are not evaluated and selected on price alone, the Contract Manager and Procurement Director must approve the evaluation and selection as meeting the state requirements.

7.4 Statutory Approval requirements include:

- 7.4.1 All purchases over \$5,000 but less than \$25,000 require approval by a PCO Purchaser in Financial Services with minimum completion of Basic Texas Purchaser Course.
- 7.4.2 Contracts \$25,000 and above require approval by a PCO Purchaser in Financial Services with Certified Texas Contract Developer (CTCD) certification.

7.5 Additional Approval Requirements

- 7.5.1 Contracts \$100,000 and above require additional approval by HUB/MWBE Coordinator
- 7.5.2 Contracts \$1 million and above must be signed by Commissioner or Deputy Commissioner

7.6 Purchase categories with additional TDA approval requirements:

- 7.6.1 All Computer Related Purchases—Director of Information Systems or designated manager
- 7.6.2 All Publications, print or digital, and all promotional items - Director for Communications or designee
- 7.6.3 Notary Commissions—General Counsel or Designee Approval
- 7.6.4 Professional Memberships—Ethics Officer or General Counsel designee
- 7.6.5 Proprietary/Emergency Purchase Justification—Deputy Commissioner or Designee
- 7.6.6 Vehicle Repair and Maintenance—Fleet Manager or agency administration designee
- 7.6.7 Facilities—TDA Facilities Manager or agency administration designee

TDA may assign additional purchase approvals at any monetary threshold.

8 Procurement Cards (State Issued Credit Card)

The state issued credit card, also referred to as a procurement card (Procard), is used for purchases within TDA divisions. The goal of the Procard program is to increase efficiencies within divisions by providing a cost-effective method of purchasing and paying for goods and services while maintaining strict compliance with state and federal laws, rules, regulations, and TDA policies relating to purchasing, accounting and asset management functions. Compliance with the [TDA Procurement Card Policy](#) is MANDATORY.

The Procard is only a method of payment (not a procurement method) and does not exempt the cardholder from following state purchasing laws, CPA procurement rules and regulations, or TDA purchasing policies.

9 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.

- a. To receive reimbursement, the purchase must be pre-approved in writing by the program administrator, who is also responsible for assuring available budget
- b. The reimbursement request may not exceed \$5,000 if paid by state funds, or \$3,500 if paid by federal funds. Larger purchases cannot be broken down to avoid these limits.

10 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:

- a. encouragement to use HUB businesses for purchases under \$10,000;
- b. solicitation for proposals from two HUB vendors in informal solicitations; and
- c. use of a HUB plan for formal solicitations of \$100,000 or greater.

TDA expends both state and federal funds. To be eligible for these services, HUB certification is required. MWBE certifications are similar federal programs. 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

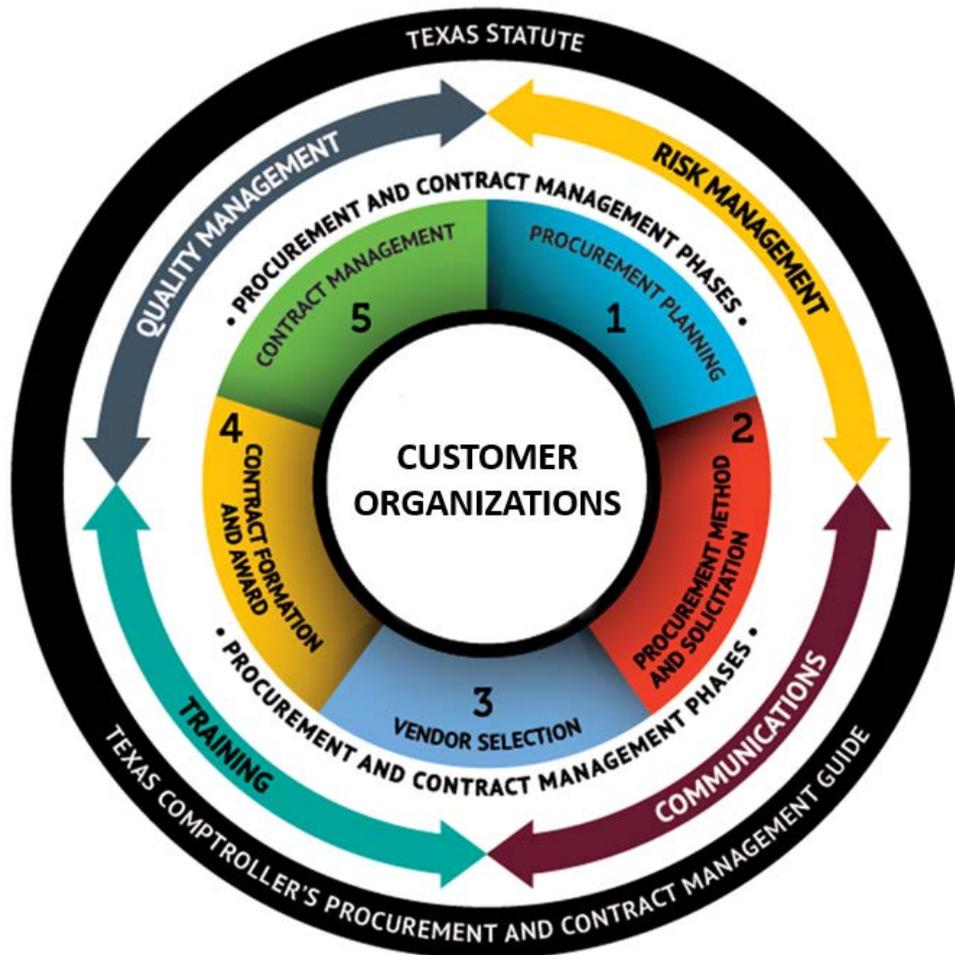
the opportunity to give technical and business presentations that demonstrate their capability to do business with TDA.

Additional Resources:

[State of Texas Procurement and Contract Management Guide, HUB Requirements](#)

11 Purchasing Steps/The Procurement Lifecycle

The image below depicts the TDA Procurement and Contract Section Operating Model, including the Procurement and Contract Management Lifecycle. The Procurement and Contract Management



Lifecycle is a continuous process with common characteristics that exist between all public procurements. Following each of the processes outlined below helps to ensure that the procurement is conducted in a transparent and efficient manner.

The Procurement and Contracting Management Lifecycle identifies the five phases performed for every procurement.

a. Phase 1: Procurement Planning

Define the business need and establish the procurement objectives;

b. Phase 2: Procurement Method Determination

Identify the appropriate Procurement Method and, if applicable, issue a solicitation;

c. Phase 3: Vendor Selection

Fairly and objectively select the vendor that provides best value to the state;

d. Phase 4: Contract Formation and Award

Ensure that the awarded contract complies with applicable procurement law and contains provisions that achieve the procurement objectives; and

e. Phase 5: Contract Management

Administer and enforce the terms of the contract, including termination and closeout.

The following sections provide agency guidelines for each phase of the procurement lifecycle.

Procurement Planning

12 Planning and Development

Procurement planning is the process of deciding what to buy, when to buy, and from what source, based on an identified need. Identifying and defining a need begins the procurement and contract management lifecycle and provides the basis for the procurement and resulting contract. A sound procurement plan helps division program areas define their procurement requirements and to decide where, when, and how to procure. Key results and outputs to the planning process include solicitation and evaluation documents, source selection criteria, the statement of work, specific insurance requirements, and the CAPPS requisition.

As a resource for state agencies regarding allowable expenditures, the Texas Comptroller of Public Accounts created the [eXpendit](#) website to provide information to state agencies and institutions of higher education on how to properly carry out purchase transactions while complying with certain provisions of the constitution, statutes and rules of Texas related to expenditures.

Planning activities, at a minimum, include developing a needs assessment, a cost estimate, and an acquisition plan. For relatively simple and routine procurements, like purchases using the set aside programs (State Use program and TCI program), Texas SmartBuy, or informal bidding, the planning may be as simple as development of an accurate requisition.

For complex procurements, the timeline for the planning and development phase could range from several months to a year or more, depending on the complexity of the requirements and the number of coordinating departmental areas involved in the procurement.

Factors to consider in planning for any procurement include:

- a. Procurement lead times;
- b. Needs assessment;
- c. Specifications and requirements gathering;
- d. Risk management; and
- e. Contract value or cost estimate.

12.1 Procurement Lead Times

Procurement lead time is the interval between a decision to purchase a product or service to when the contract is awarded.¹⁹ Generally the PCO Purchaser, in coordination with division staff and contract manager, will develop a procurement timeline. The timeline should include all key milestones for completing the procurement within required deadlines. However, it is the division's responsibility to conduct appropriate planning and development activities prior to being assigned a PCO Purchaser considering the overall procurement lead time. PCO has developed estimated procurement timelines to serve as a resource for procurement planning. The Procurement Action Lead Time Schedule (PALTS) contains estimated procurement timelines for the different methods of procurements.

Considerations when determining a procurement timeline include:

- a. Complexity of the procurement;
- b. Internal approvals;

¹⁹ *Comptroller's Guide, Solicitation Process.*

- c. External reviews;
- d. Waiver and exemption requests, including those from TCI and WorkQuest indicating that the product or service may be otherwise procured;
- e. Exemption requests (Cooperative Contracts) from DIR indicating that the product or service may be otherwise procured;
- f. Internal proprietary purchase justification approval;
- g. Emergency purchases;
- h. Internal budget approval;
- i. Procurement specific delegation request to CPA for goods exceeding \$50,000 via email open.market@cpa.texas.gov or for services with an estimated contract value of more than \$100,000 via POD web portal found on the Texas SmartBuy website, as applicable;
- j. Contract Advisory Team (CAT) review for procurements with a value of at least \$5 million;²⁰
- k. Quality Assurance Team (QAT) review for major information resources projects (MIRP) with a value of at least \$10 million;²¹
- l. Finding of Fact from the Governor's Office for major consulting procurements; and

12.2 Needs Assessment

The needs assessment must contain sufficient detail to identify the key business requirements. By clearly defining the need at the beginning of the procurement and contract management lifecycle during the procurement planning phase, the following outcomes should be achieved:

- a. Facilitates effective prioritization of the required funding to make the purchase;
- b. Establishes if the service can be provided by internal resources;
- c. Determines how these proposed goods/services fit with existing programs, systems, etc.;
- d. Identifies the type and level of service required to meet the need;
- e. Establishes the procurement objective;
- f. Provides framework to develop the statement of work, solicitation, evaluation, and contract documents;
- g. Establishes whether confidential information will be exchanged under the contract, identifies the Information Owner and Designee, and assesses the information security risk level;
- h. Determines level of insurance necessary to provide protection and mitigate risk to TDA; and
- i. Provides necessary information to determine how performance and quality of goods or service delivery will be measured, documented, and tracked, as well as specific

²⁰ Tex. Gov't Code [§ 2262.101\(a\)](#).

²¹ Tex. Gov't Code [§ 2054.160\(a\)](#).

remedies, sanctions, and/or damages if requirements, specific performance measures, and/or milestones are not met.

12.3 Risk Management

Risk management is critical to procurement and contracting operations and should be carefully reviewed and monitored as a continuous process. TDA is required to develop and comply with a purchasing accountability and risk analysis procedure, as stated in the Texas Government Code Section 2261.256(a).

Stakeholders must incorporate risk management practices at each procurement phase and strive to mitigate risks at the earliest possible moment by utilizing risk assessment tools and implementing necessary controls.

One risk management tool is the Procurement Risk Assessment, PCO 823 Procurement Risk Assessment – Pre-Award. Division staff must complete the form and attach to the requisition for all procurements over \$25,000. For RFX (i.e., RFP, RFO, RFQ) procurements, the form is reviewed and approved with all attendees at the kick-off meeting. For other procurements, program staff and PCO Purchaser must discuss and approve the form. Once approved, PCO Purchaser must incorporate the form into the procurement file.

If the completed form results in a high-risk score, a risk-based review of the procurement must be conducted with the procurement team via teleconference or an in-person meeting to discuss risk mitigation and communication strategies for identified risk factors.

12.4 Contract Value Estimate

During the procurement planning phase, division staff must determine a cost estimate that will be used for the procurement. The cost estimate must be developed in good faith, as it will be used not only in the selection of the appropriate procurement method and determining appropriate approvals, but also for compliance with statutory requirements that may be applicable to the purchase, based on contract value, funding source, or expenditure restrictions and prohibitions,²² as well as required internal agency approvals. The cost estimate should be documented and included in the procurement file.

In accordance with the Comptroller's Guide and CPA administrative rule,²³ for SPD reporting, review, and delegation requirements, contract value is defined as "the estimated dollar amount that an agency may be obligated to pay pursuant to the contract and all executed and proposed amendments, extensions and renewals of the contract." In other words, the contract value is the total maximum potential value of the contract since all potential renewals and extensions are included.

It is imperative that a reasonable estimate of the contract value is established at the beginning of the procurement process because it drives the approval path and determines applicable statutory requirements.

Staff must not under-estimate the contract value in order to circumvent required review submissions, such as to CAT.

²² *Comptroller's Guide, Procurement Planning.*

²³ 34 Tex. Admin. Code [§ 20.25\(b\)\(13\)](#).

The payment method and source of funds are not necessary to be considered in determining the maximum potential contract value. PCO procurement staff must be notified before any changes to the maximum potential contract value is approved.

A contract value estimate is typically developed by using one or more of the following methods:

- a. Market research, which may include methods such as: online research, review of industry periodicals and information obtained from professional organizations, attendance at trade shows, discussions with other customers, informal budget quote by contacting several vendors to obtain pricing information, using a vendor's advertised price list, and consultations with industry representatives;
- b. Historical cost estimate is developed through a historical spend analysis of the agency's similar contracts and/or other agency purchasing data;
- c. Estimate developed in collaboration with subject matter experts within the agency;
- d. Issuing a Request for Information (RFI), which gathers information directly from the industry about a particular type of product or service. (*See Appendix B for more information. See also Appendix G TDA Vendor Interaction Policy, and Appendix H TDA Guidelines for Engaging Technology Vendors Prior to a Formal Solicitation Process*);
- e. Set amount driven by the funding source, such as a grant for a specified dollar amount; and
- f. Benchmarking, the comparison of a particular item, service, or process with other entities or an established industry standard.

12.5 Publications and Promotional Items Planning

To help ensure style uniformity, TDA program staff must receive Communication Department approval for the design of any promotional items, advertisements, signage, posters, or any publication, print or digital, prior to submitting a requisition. Requesters must attach the approval email to the requisition to ensure timely processing by PCO staff. For additional information about printing services procurements, please see section [13.13](#).

12.6 Information Technology Purchasing Planning

IT reviews requests for new technology procurements to assure security and ongoing supportability. TDA Division staff must receive IT approval prior to submitting a requisition for IT commodities. Please see [Appendix C](#) for step-by-step information on submitting an IT procurement for review.

State agencies are required to purchase IT goods and services through the Department of Information Resources (DIR) Cooperative Contracts program unless there is an exemption. There are blanket exemptions and one-time exemptions.²⁴

State agencies must submit statements of work with an initial contract term value greater than \$50,000 for technology services to DIR for review prior to submission to a vendor.²⁵ DIR purchases must adhere to DIR requirements.²⁶

²⁴ [DIR Exemption Overview](#).

²⁵ [DIR Statement of Work \(SOW\)](#).

²⁶ Tex. Gov't Code [ch. 2157](#); See, e.g., [Tex. Admin. Code, Title 1, Part 10; 1 Tex. Admin. Code § 212.41](#).

Thresholds for DIR commodity item purchasing under DIR contracts:

Contract Value (Initial Contract Term)	Number of DIR Vendors
\$50,000 or less	May directly award the contract to a single vendor on DIR contract
More than \$50,000 to \$1 million	Must submit to three vendors (or all DIR vendors in a category with less than three vendors) SOW requires DIR review
More than \$1 million to \$5 million	Must submit to six vendors (or all DIR vendors in a category with less than six vendors) SOW requires DIR review
More than \$5 million	Agencies must conduct an independent procurement and cannot use DIR Cooperative Contracts unless it is a DIR-coordinated bulk purchase. ²⁷

12.7 Determination of Subrecipient, Recipient, or Contractor Relationship

To determine appropriate solicitation method and compliance regulations, the determination of a subrecipient, recipient, or contractor relationship is generally made during the planning phase for a Request for Application (RFA) and a competitive procurement. The determination process involves various stakeholders that may include program staff, legal, and PCO, with the final determination made by TDA’s Legal Division. The final determination shall remain consistent throughout the procurement and contract lifecycle.

12.7.1 Stakeholders

The determination process involves various stakeholders that may include:

- a. Division contract staff;
- b. Program staff;
- c. PCO staff; and
- d. TDA Legal Division staff, with the final determination made by TDA’s Legal Division.

12.7.2 Compliance

TDA must comply with UGG and TxGMS (or its successor), as applicable, when determining the correct solicitation method and implementation. Form PCO 812, *Subrecipient vs. Vendor Determination Checklist*, must be completed to help stakeholders in their assessment of the standards, principles, and requirements that will govern the relationship. Form PCO 812 serves as a tool to assist in the final determination of the relationship. The approved Form PCO 812 must be included in the procurement file or grant application file, as applicable.

12.7.3 Relationship Characteristics

²⁷ Tex. Gov’t Code [§ 2157.068\(e-2\), \(e.-3\)](#).

RELATIONSHIP CHARACTERISTICS	
Contractor	Subrecipient or Recipient
Normally operates in a competitive environment	Determines who is eligible to receive program assistance
Provides similar goods and services to many different purchasers	Has responsibility for programmatic decision making
Provides goods and services that are ancillary to the operation of the program	Federal or state funds are used to carry out the program for public purpose
Provides goods and services within the normal business operations	Performance is measured against federal or state program objectives
Is not subject to federal or state program compliance requirements	Is responsible for adhering to federal or state program compliance requirements

12.8 Planning Exception—Emergency Procurements²⁸

Under SPD’s delegated authority, an emergency purchase occurs when the agency must make the procurement quickly to prevent a hazard to life, health, safety, welfare, or property, or to avoid undue additional cost to the state. Proper procurement planning for anticipated business need is expected. Emergencies occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat or to avoid undue additional cost to the state. **Pending expiration of funds does not constitute an emergency.**

Emergency purchases discussed in this section are different from agency purchases conducted under a Declaration of Disaster by the Governor.²⁹ SPD authority does not extend to purchases made under the Texas Disaster Act of 1975.

For procurements under SPD's authority, SPD has delegated to all agencies the authority to make emergency purchases. Notwithstanding this delegation, emergency purchases are subject to SPD’s rules and procedures. Upon request, SPD will assist in advising agencies on the proper procedures for emergency purchases, but SPD will not certify the existence of an emergency.

The decision to declare an emergency purchase is the sole responsibility of the agency. If an emergency exists, a written determination of the basis for the emergency and for the selection of a particular vendor must be made and approved, using Form PCO 805, and included in the procurement file.

Once the Form PCO 805 is completed, division requester will follow PCO procurement process by completing a requisition, and attaching the approved Form PCO 805, the SOW used to obtain a budgetary quote, the budgetary quote, and any other supporting documentation needed for PCO to complete the purchase. *Reference Section 13.15 regarding Emergency Procurements*, for more detailed TDA procedures regarding emergency purchases.

²⁸ See *Comptroller’s Guide, Emergency Purchases*.

²⁹ Tex. Gov’t Code [§ 418.004\(1\)](#).

For an emergency purchase of goods or services exceeding \$25,000, an agency must send to SPD a full written explanation of the emergency along with other documentation required by SPD. The notification to SPD must be provided via email to spd.policy@cpa.texas.gov as soon as reasonably practical given the nature of the emergency.

Notwithstanding the immediate nature of an emergency, all procurements conducted as emergencies should be made as competitive as possible under the circumstances. For situations where a solicitation is not posted to the ESB, the agency should make a reasonable attempt to obtain at least three informal bids. Emergency purchases greater than \$25,000 must be posted to the ESB; however, the minimum time for posting of the solicitation does not apply to the extent necessary to address the emergency. In addition, emergency purchases are subject to CAT and QAT reviews; expedited reviews are available upon request to these oversight teams. Emergency purchases of goods or services should not exceed the scope or duration of the emergency.

12.9 Procurement Planning Results and Outputs

A sound procurement plan helps program areas define their procurement requirements and to decide where, when, and how to procure. Key results and outputs to the planning process include solicitation and evaluation documents, source selection criteria, the statement of work, specific insurance requirements, and the CAPPS requisition.

12.9.1 The Statement of Work (SOW)

The SOW is the detailed description of the scope of work, product, or services the agency is purchasing and what the contractor is required to provide to be considered for an award and to satisfactorily perform the work.

From a procurement process perspective, the SOW must be completed and attached to the requisition for complex procurements, IT services procurements, or formal IFB for services in order for the procurement process to begin. It is important that the SOW:

- a. Be clearly defined;
- b. Be logically organized and tailored to the business need;
- c. Be contractually sound;
- d. Be unbiased and non-prejudiced toward respondents;
- e. Encourage innovative solutions to the requirements described, if appropriate; and
- f. Allow for free and open competition to the maximum extent reasonably possible.

For more information about creating a Statement of Work, see [Appendix D](#).

12.9.2 Evaluation Criteria

Evaluation criteria are the factors the agency uses to determine which of several competing proposals submitted in response to a solicitation offers the best value for the state and would best meet the agency's needs. If the evaluation criteria and associated weights are not thoughtfully designed, then the procurement will fail because the basis of the award will not correctly identify the response that offers best value to the State.

12.9.2.1 Effective Evaluation Criteria

Effective evaluation criteria should result in the following outcomes:

- a. Provide evaluators with a clear and concise method of identifying the competent offerors;
- b. Allow the agency to rank the proposals and ultimately select the best value; and
- c. Offer all potential offerors a fair and equitable method of having their proposal reviewed and considered in a consistent and similar manner as their competitors.

12.9.2.2 Minimum Requirements Screening

While evaluation criteria must be published with the solicitation, it is recommended that division staff establish evaluation criteria that clearly identify factors relevant to the selection of a contractor before drafting the RFX. This ensures that the program is requesting and communicating the most important items – those that lead to vendor selection. The SOW must clearly identify evaluation criteria relevant to the selection of a contractor and must prioritize or weight the criteria according to importance. Evaluation tool criteria and sub-criteria should not contain “yes” or “no” questions. Yes/no questions are instead exclusively utilized for minimum requirement screening, which is conducted on a pass/fail basis. Minimum requirements are screened by the PCO Purchaser prior to the evaluation, to determine the proposal’s eligibility to advance to the evaluation stage. As needed, minimum requirements will also be reviewed by SMEs to determine the proposal’s eligibility to advance to the evaluation stage. For example:

- a. Financial capacity screening of the respondents’ latest financial statements, balance sheets, and/or Dunn and Bradstreet reports, which is conducted by the Financial Services Division;
- b. Where specialized licenses, certifications, and/or experience is required; and/or various accreditation alternatives are acceptable (e.g., if the minimum requirement states the respondent must be accredited by a CMS-approved accreditation program, the SME will determine whether the respondent’s accreditation is by a CMS-approved program);
- c. In IT procurements where a determination of type of solution or DIR’s Texas Data Center Services (DCS) is needed prior to moving on to the written proposal evaluation (e.g., if the solicitation required a Software as a Service (SaaS) solution, SME(s) determine whether the respondent’s proposed solution is indeed a SaaS or a custom solution);
- d. Number of years of relevant experience must be reviewed by SMEs that possess knowledge of the specific profession, business, or industry that is required by any minimum qualifications. Purchasers must not conduct this review as they are not familiar with the myriad factors that may make the respondent-provided experience qualify or be acceptable to the program area.

For more information on developing Evaluation Criteria, see [Appendix E](#).

12.9.2.3 Adherence to Published Evaluation Criteria

Failure to adhere to the published evaluation criteria during the evaluation process may result in a protest. Evaluation criteria that were not included in the solicitation will **not** be used to rank or select responses. For example, if respondents are to receive additional points for possessing a national accreditation, this criterion must be stated in the solicitation so that all the respondents are notified there is an opportunity to achieve a higher score by submitting the appropriate documentation in its response. Likewise, if the national accreditation information was not requested in the solicitation, respondents who fail to demonstrate this accreditation cannot be penalized.

12.10 Historically Underutilized Business (HUB) Determination

12.10.1 HUB Goals

The intent of the HUB Program is to promote full and equal business opportunities for all certified HUBs in an effort to remedy disparity in state procurement and contracting. State agencies shall make a good faith effort to utilize HUBs in contracts for construction, services (including professional and consulting services), and commodity purchases. The HUB program is administered under the legal authority of Texas Government Code [Chapter 2161](#) and Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter D, Division 1.

All purchases should consider the HUB goals and good faith effort for state funds purchases and MWBE/DBE requirements for federal funds purchases. Each state agency shall make a good faith effort to assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year in accordance with the following Texas Statewide HUB Goals:

- a. 11.2% for heavy construction other than building contracts;
- b. 21.1% for all building construction, including general contractors and operative builders' contracts;
- c. 32.9% for all special trade construction contracts;
- d. 23.7% for professional services contracts;
- e. 26.0% for all other services contracts; and
- f. 21.1% for commodities contracts.

TDA shall make a good faith effort to meet or exceed these goals by contracting directly with HUBs or indirectly through subcontracting opportunities.

12.10.2 HUB Requirements—Solicitation Value of \$100,000 or More

The agency shall evaluate the solicitation documents, including the SOW, before the agency solicits bids, proposals, offers, or other applicable expressions of interest of contracts with a value of \$100,000 or more over the life of the contract, to comply with the agency's good faith effort requirements as stated in Texas Government Code, Chapter 2161, [Subchapter F](#), regarding subcontracting, and CPA administrative rule (34 Tex. Admin. Code [§ 20.284](#)), which include:

- a. Prepare and distribute information on procurement procedures in a manner that encourages participation in all state contracts by all businesses;
- b. Divide proposed requisitions into reasonable lots keeping with industry standards and competitive bid requirements;
- c. Where feasible, assess bond and insurance and design requirements that reasonably permit more than one business to perform the work;
- d. Specify reasonable, realistic delivery schedules consistent with the agency's actual requirements;
- e. Ensure that the specifications, terms, and conditions reflect a state agency's actual requirements, are clearly stated, and do not impose unreasonable or unnecessary contract requirements; and
- f. Provide potential bidders with a list of HUBs or instructions on how to effectively locate HUBs on the Centralized Master Bidders List (CMBL) for solicitations.

12.10.3 Determination of Subcontracting Opportunities

In addition, for contracting opportunities with a value of \$100,000 or more, the agency shall determine whether subcontracting opportunities are probable under the contract. Utilizing the following criteria for determining probable subcontracting opportunities:

- a. Examine the scope of work to be performed under the proposed contract and determining if it is probable;
- b. Research the CMBL and other directories identified by the CPA to identify the availability of HUBs to participate in the contract; and
- c. Review the previous history of similar purchasing transactions within the agency, other state agencies, including institutions of higher education.

12.10.4 HUB Subcontracting Plan (HSP) Requirements

If the agency determines subcontracting is probable, the agency will state the probability in each agency's IFBs, RFPs, RFO or other purchase solicitation document with an expected value of \$100,000 or more and will require a completed [HUB Subcontracting Plan \(HSP\)](#).

To initiate this process, the PCO purchaser obtains the required documentation from the division and submits a copy of the SOW, a copy of the requisition, and a list of probable subcontracting opportunities to include the NIGP codes to the TDA HUB@TexasAgriculture.gov mailbox.

The TDA HUB coordinator will assist with the solicitation and ensure the agency complies with HUB requirements as well as the agency's initiatives. Upon review of the submitted documentation, the HUB coordinator works with the purchaser and program area to determine subcontracting probability and completes the Form PCO 814. The completed Form PCO 814 and the correlating HUB solicitation language is provided to the purchaser to incorporate into the solicitation documents. The purchaser will review Form PCO 814 to confirm and verify the NIGP codes for accuracy.

If the purchaser concurs, they will execute the Form PCO 814 and save the document in the procurement file. If any changes are made to the solicitation documents that impacts the HUB program (i.e., scope of work, procurement timetable, etc.), the purchaser will notify

the HUB coordinator of the change for input or to revise the Form PCO 814. When the solicitation is posted on the ESD, the purchaser will notify the HUB Coordinator that it is posted, so that the HUB Program Office may facilitate additional marketing efforts to engage the HUB vendor community.

12.11 The Requisition

The last step in the procurement planning phase involves the submission of the requisition to initiate a procurement in CAPPS Financials. At this stage, the customer organization has secured documentation of any division-specific external reviews and approvals and appropriate internal approvals.

Once the division requester has submitted the requisition to initiate the solicitation and has been assigned a PCO Purchaser, division staff must promptly provide any approval and review documentation to the PCO Purchaser, to ensure the purchaser has the required documentation for a complete procurement file.

All TDA procurements are initiated through the submission of a requisition into CAPPS Financials. Before PCO can start the procurement processing, division management must approve the request in CAPPS and budget check the requisition.

At a minimum, all requisitions must include:

- a. Complete contact information of the requester including full name, email address, and phone number; and
- b. A clearly stated “need by date” in accordance with published Procurement Action Lead Time Schedule.

Other requirements for common procurements are included in the table in [Appendix F](#).

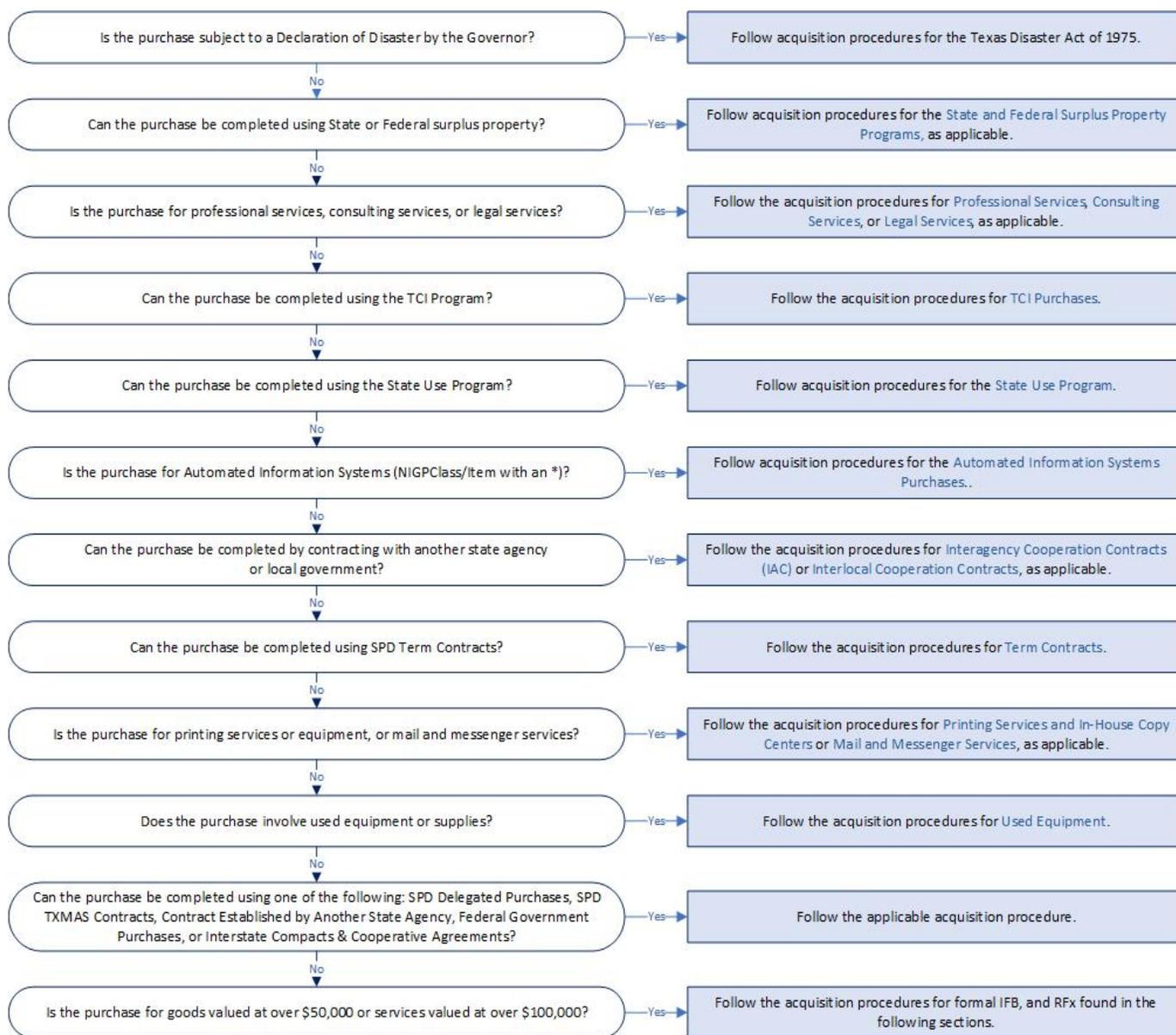
Important Note: Requisitions that fail to include completed documents as detailed in the table below are subject to denial by PCO. The procurement process will not begin, and timelines will not be developed without the completion of this documentation. PCO will notify the division requester of rejections due to incomplete information or documents.

Procurement Method and Solicitation

13 Procurement Methods

Texas law requires that contract awards may only be made to responsive vendors providing best value to the state. The best value standard may vary depending on the procurement method;³⁰ therefore, public procurement personnel must ensure that the appropriate best value standard is used as the basis for contract award.³¹

Prior to making a purchase on the open market, certain procurement methods must be considered. Processes for selecting the appropriate procurement method is illustrated below.



³⁰ Best value standards include, but are not limited to, the following: Tex. Gov’t Code §§ [2155.074](#), [2156.007](#), [2157.003](#), [2254.003](#), and [2254.027](#).

³¹ *Comptroller's Guide, Procurement Method Determination*. Full description of method selection on pp 15-16 of v1.3 of guide.

13.1 Texas Disaster Act of 1975

Under Chapter 418 of the Texas Government Code, the Governor may by executive order or proclamation declare a state of disaster if the governor finds a disaster has occurred or that the occurrence or threat of disaster is imminent. The Governor may suspend the provisions of any regulatory statute³² prescribing the procedures for conduct of state business or the orders or rules of an agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.³³ A purchase made under a disaster must clearly relate to the disaster, conform to the directives of the disaster declaration, and occur within the timeframe specified in the disaster declaration. The requisition must contain a copy of the disaster declaration.

13.2 State and Federal Surplus Property Program

The Texas Facilities Commission (TFC) is charged with administering the State and Federal Surplus Property Programs. There are two methods to acquire State Surplus Property: via transfer directly from the surplus agency or from public sales at the Austin storefront. Examples of items commonly available for transfer include office furniture and equipment, vehicles, heavy equipment, trailers, and computer equipment. For information on property available for direct agency transfer, visit the TFC website for property listings and the Certificate of Acquisition Form.

13.3 Texas Correctional Industries (TCI) Purchases

TCI is a division of the Texas Department of Criminal Justice (TDCJ) that manufactures goods and services for purchase by Texas governmental entities, including TDA. Texas Government Code [Chapter 497](#) requires that agencies purchase goods made by and services offered by TCI. TCI provides a variety of items which can be viewed at: <https://tci.tdcj.texas.gov/>.

Most goods offered by TCI are available for purchase through the SPD Texas SmartBuy online ordering system. PCO will process an internal purchase order and send directly to TCI for services and goods that are not available through the SPD online ordering system. Competitive bidding is not required for items purchased from TCI.

13.3.1 TCI Goods and Services

- a. Graphics: signs, awards, plastics, laser engraved awards, custom printing, cardboard boxes, folders;
- b. Janitorial goods: soaps, detergents, mops, wax applicators, brooms, and brushes;
- c. Garments/textiles: apparel, bedding, mattresses, linens, leather goods, bags, flags, embroidery, windscreens, drapery;
- d. Modular office systems and furniture;
- e. Metal goods: truck beds, trailers, dump truck and tarp accessories, park equipment, toilets, sinks, showers, detention and security equipment, school equipment, kitchen and food service, storage, shelving, fencing; and

³² Tex. Gov't Code [§ 418.0155](#) (Suspension List).

³³ Tex. Gov't Code [§ 418.016](#) (Suspension of Certain Laws and Rules); see also, *Comptroller's Guide, Procurement Method-Texas Disaster Act of 1975*.

- f. Services: auditorium seating, aluminum bleachers, braille transcribing, bus renovation, computer recovery, furniture refurbishing, tire retreading, Geographic Information System (GIS) Data Conversion.

13.3.2 Exceptions

An agency may decline to procure a good or service from TCI if:

- a. TCI grants a waiver;
- b. SPD determines that the good or service produced by TCI does not meet the requirements of the agency; or
- c. SPD certifies that the good or service can be purchased elsewhere at a lower price after the agency gives TCI final opportunity to negotiate on price.³⁴

13.4 State Use Program

The Texas Workforce Commission (TWC) oversees the Purchasing from People with Disabilities Program, commonly referred to as the State Use Program. TWC contracts with a Central Nonprofit Agency, currently WorkQuest (formerly TIBH Industries), to administer the day-to-day operations of the program. WorkQuest partners with Community Rehabilitation Programs (CRP), which employ disabled workers to develop products or provide services for the State Use Program. WorkQuest is the management link between the CRP work centers (e.g., Lighthouse for the Blind), agencies, and TWC. Only products and services approved by TWC qualify as a State Use Program purchase available for agencies to purchase on Texas SmartBuy.

In accordance with Human Resources Code, Section 122.008 (see also, Texas Government Code [Section 2155.138](#)), state agencies are required to purchase products and services offered through WorkQuest that meet the requirements and specifications of the agency and that are available within the time specified.

Purchases of goods and services from WorkQuest do not require competitive bidding. Purchases of *goods* from WorkQuest must be purchased through Texas SmartBuy online ordering system. Purchases of *services* are made through internal purchase orders. Any time the quality of a WorkQuest product or service is deemed unacceptable or failed to meet agency specifications, this information should be reported to WorkQuest, and a vendor performance report must be filed with SPD.³⁵

13.4.1 WorkQuest Commodities (Goods)

Agencies must purchase commodities (goods) offered by WorkQuest that meet the requirements and specifications of the agency and that are available within the time specified. The purchases for commodities (goods) are required to be entered through the CPA Texas SmartBuy online ordering system by PCO personnel. Purchases for commodities (goods) are not allowed to be processed through the online product catalog available on the WorkQuest website.

13.4.2 WorkQuest Services

³⁴ See *Comptroller's Guide, Texas Correctional Industries Purchases*.

³⁵ See *Comptroller's Guide, The State Use Program*.

Agencies must purchase services offered by WorkQuest that meet the requirements and specifications of the agency and that are available within the time specified. The categories of services offered are Outdoor; Indoor; Freight and Logistics; and Office Assistance.

13.4.3 WorkQuest Temporary Staffing Services

CPA has an established managed term contract with WorkQuest for purchasing temporary staffing services. WorkQuest contracts with Peak Performers and Goodwill at the time of initial publication of this Handbook) to provide multiple job classifications across the state with negotiated hourly rates.

WorkQuest provides Regional Representatives for assistance in obtaining temporary staff. The procedure for obtaining temporary staff is stated on the CPA Managed Contract No. 962-M3 which may be accessed at: <http://www.txsmartbuy.com/contracts/view/225>.

If no WorkQuest provider can fill the position, the request will be waived, and the positions must be processed through the appropriate solicitation method applicable to the estimated value.

13.4.4 Moving Service Purchases

Moving services are provided by WorkQuest. To procure moving services, the TDA agency/program requesting the moving services must submit a requisition for the estimated dollar amount of the move.

The assigned purchaser will reach out to WorkQuest to see if they are able to provide the services for this job and request a quote. A site visit may be requested by WorkQuest prior to providing a quote.

If WorkQuest is unable to provide services, they will email a waiver. With a waiver from WorkQuest, moving services may be purchased through an informal or formal procurement process and are also available through TXMAS.

13.5 CPA Statewide Contracts

13.5.1 Texas Multiple Award Schedule (TXMAS) Contracts

Pursuant to Government Code, Subchapter I, SPD has established Texas Multiple Award Schedule (TXMAS) contracts. The TXMAS Program adapts existing competitively awarded government contracts to service the procurement needs of state agencies and Texas SmartBuy members. Neither consulting services nor professional services (such as engineering and architecture) are offered as part of the TXMAS program in accordance with Texas Government Code [Chapter 2254](#).³⁶ TXMAS contracts are available at <http://www.txsmartbuy.com/>.

Agencies may utilize TXMAS contracts without obtaining delegated authority from SPD to make purchases that exceed \$50,000 for goods and \$100,000 for services. Prior to purchasing from a TXMAS contract, however, the purchaser must follow applicable procedures to purchase first from TCI, the State Use Program, and the SPD Statewide Term Contracts. For purchases that exceed \$25,000, the agency must post the award notice on the ESBD.³⁷

13.5.2 Best Value Determination

³⁶ Tex. Gov't Code §§ [2155.001\(2\)](#), [2155.502\(c\)\(4\)](#).

³⁷ See *Comptroller's Guide, Procurement Method – SPD Texas Multiple Award Schedule (TXMAS) Contracts*.

Prior to utilizing a TXMAS contract, the purchaser must conduct a best value determination before issuing a purchase order (PO).

- a. For purchases with a value of no more than \$50,000, the agency may directly award a PO to an SPD TXMAS contractor without submitting a price request to other contractors in the same category.
- b. SPD recommends that for contracts that exceed \$50,000 the purchaser submit a pricing request to at least three TXMAS vendors included in the TXMAS category to which the contract relates or all TXMAS vendors included in the applicable TXMAS category if the category has fewer than three vendors.

13.5.3 Negotiations

Purchasers may negotiate lower prices when purchasing from a TXMAS contract; however, the TXMAS vendor may not charge a price higher than the price published in the TXMAS contract. A TXMAS vendor may provide a lower price than the price listed in its Texas SmartBuy catalog. For orders above the TXMAS contract maximum PO dollar limit and for offers through a promotional program, the purchaser may negotiate lower prices than those listed in the Texas SmartBuy catalog. Lower prices must be noted in the file by the agency, along with the vendor representative's name. The agency must document the description of the good(s) or service(s) for TXMAS purchases and include pricing documentation in the agency's procurement file.

13.5.4 Orders Entered on Texas SmartBuy

Purchase orders for TXMAS contracts must be entered through the Texas SmartBuy online ordering system. Only products or services listed in the underlying contract may be purchased from the TXMAS contract, with one exception: incidental, off-schedule items may be purchased as "best value, open market" items, provided that they are necessary for product integration or product completeness. The purchasing entity is responsible for ensuring that the quoted price for such incidental items is fair and reasonable. These incidental items may be added to the TXMAS purchase order if they are clearly labeled as "open market (OM), best value" items. Incidental items may not exceed \$10,000 or 50 percent of the purchase order total, whichever is less. If the pending order includes incidental items that exceed the stated limits, a request may be submitted to SPD for review and consideration of an exception. Exception requests shall be submitted to txmasquote@cpa.texas.gov. The request must include a copy of the complete vendor quote listing all core items and a detailed incidental charge breakdown.³⁸

13.6 SPD Statewide Term Contract Purchases

SPD establishes Term Contracts (TxSmartBuy Term and Managed), categorized by commodity/service codes (NIGP Class/Item codes), as a supply source for all state agencies. The term of each contract is determined by SPD. Competitive bidding by state agencies is not required for items purchased from SPD term Contracts. All agencies are encouraged to use Term Contracts whenever possible.³⁹ Contracts are based on historical estimated quantities, specified by SPD, and may be ordered as needed.

13.6.1 Required Use of Term Contracts

³⁸ *Comptroller's Guide, Procurement Method – SPD Texas Multiple Award Schedule (TXMAS) Contracts.*

³⁹ *Comptroller's Guide, Term Contracts; see [34 Tex. Admin Code §20.220](#).*

SPD term contracts are required unless:

- a. The item on contract does not meet the agency's needs; or
- b. The quantity to be purchased is less than the item or contract minimum order amount;
or
- c. The term contract does not represent best value; or
- d. The delivery time on the term contract does not meet the delivery need.

13.6.2 Justification for Term Contract Not Used

If the SPD contract is not used, the requesting agency must include the reason why the item does not meet the need in the procurement file. Agencies are required to utilize term contracts except as set forth above. In such a case, the justification should be documented in the procurement file.

13.6.3 PCO Purchaser Responsibilities

- a. When a requisition is received, the PCO purchaser is responsible for reviewing the specifications to determine if the item is available from an SPD Term Contract <http://www.txsmartbuy.com/>. If the purchaser finds an item or items on contract that are similar to the items ordered and appear to meet the agency's need, they will ask the requester to consider the contract item(s).
- b. If the item(s) will meet the agency's need, the purchaser will use the CPA online purchasing system or Texas SmartBuy to complete the purchase order.
- c. If the item(s) will not meet the agency's need, the purchaser will ask for justification from the end-user and purchase the item(s) under another procurement method.

13.6.4 Managed Term Contracts

A "Managed" Term Contract requires manual processing of a purchase order (not entered into SmartBuy online ordering system), and they typically have different pricing structures or may require a quote that is based on a discount percentage due to the need or for regular scheduled deliveries or flexible delivery dates. PCO will process an internal purchase order directly with the SPD Contractor.

13.7 Spot Purchases (Non-IT) - PCO Operating Procedure 005

Procurements for goods and services must, whenever possible, be accomplished through competitive bidding. With the exception of printing services,⁴⁰ if the total value of the purchase is \$10,000 or less, competitive bidding is not required. Dividing purchases to avoid the competitive bidding requirement is expressly prohibited.⁴¹ The PCO Purchaser will review all purchasing methods to determine which is applicable to the procurement.

Historically Underutilized Business (HUB) vendors will be used to the fullest extent possible and may be provided an opportunity to quote on small purchases.

⁴⁰ Tex. Const. art. XVI, §21; purchases for printing must comply with the procedures set forth in the *Comptroller's Guide, Printing Services and In-House Copy Centers*.

⁴¹ Tex. Gov't Code [§ 2155.132\(g\)](#).

13.8 Non-Biddable Requests - PCO Operating Procedure 029

Procurements for goods and services must, whenever possible, be accomplished through competitive bidding. A non-biddable request is a purchase where competitive bidding is not required or feasible, and a best value determination is not applicable. The following are examples that meet the criteria:

- a. Conference registration fees where multiple attendees are being registered;
- b. Membership dues or sponsorships;
- c. Continuing education credits related to job requirements;
- d. Certification training;
- e. Bar dues for attorneys; or
- f. License fees for specific job functions.

While the specific services requests have been identified as not competitive, an encumbering purchase order (any dollar value) must be created for accounting purposes. Purchasers must receive written permission from the PCO Director to procure these services before processing these requests. The approval must be included in the procurement file.

13.9 Competitive Procurements

A competitive bidding procurement method is used when the requirements are clearly defined and described by detailed specifications. For a purchase made through competitive bidding, the solicitation must include the factors other than price that will be considered in determining which bid offers the best value for the state. The purchase price and whether the goods or services meet all specifications are the most important best value considerations. With the exception of printing services, competitive bidding is not required if the total contract value is \$10,000 or less.

COMPETITIVE PROCUREMENT METHODS			
Method	Use When	Advantages	Disadvantages
Invitation for Bids (IFB)	Products or services are standardized or uniform.	Simple award process. In determining best value, price and whether the goods or services meet specifications are the most important considerations.	Defined specifications may be difficult to develop. Does not encourage innovative solutions. Negotiations are not allowed if there is more than one qualified bidder. ⁴²

⁴² Tex. Gov't Code [§ 2155.088](#); 34 Tex. Admin. Code [§ 20.206\(d\)\(5\)](#).

Method	Use When	Advantages	Disadvantages
Request for Proposals (RFP) / Request for Offers (RFO)	<p>Negotiations are preferred.</p> <p>Vendor is expected to provide innovative ideas or solutions.</p>	<p>Allows customized proposals to meet the same business need</p> <p>Allows for negotiations.</p> <p>Considerations in addition to price are used to determine best value</p>	<p>Procurement lead time is much greater.</p> <p>More complex evaluations.</p>
Request for Qualifications (RFQ)	<p>Vendor selection is dependent on the vendor’s skills and qualifications.</p> <p>Procuring a professional service in a non-competitive market, typically a medical professional.</p> <p>Price is not a factor until after vendor is selected.</p>	<p>Emphasizes the competency and experience of the vendors.</p>	<p>Vendor selection occurs before price is negotiated.</p> <p>Two-step process.</p>

13.10 Informal Bidding (Non-IT) - PCO Operating Procedure 007

Informal bidding is used when the value of a contract is over \$10,000, but not more than \$25,000, for the life of the contract (i.e., total value of the contract). The PCO purchaser will provide bid opportunities to vendors active on the CMBL within the National Institute of Governmental Purchasing (NIGP) class/item designated in the solicitation. The PCO purchaser must solicit bids from a minimum of three (3) active vendors on the CMBL, two (2) of which must be current as a Texas-certified HUB.

Purchasers will complete purchases using a consistent and standardized process that allows for the greatest possible competition **without posting to the ESBD**. HUB vendors will be used to the fullest extent possible and will be provided an opportunity to bid on all purchases. Purchases may not be divided into smaller transactions to avoid competition.

Negotiations are not permitted using this competitive bidding procurement method. However, if there is only one qualified bidder then the PCO Purchaser may negotiate with the sole bidder, including price, provided the negotiation does not result in a material change to the advertised specifications.⁴³ Proprietary procurements must also follow all required procedures for proprietary purchases.⁴⁴

⁴³ Tex. Gov't Code [§ 2155.088](#); 34 Tex. Admin. Code [§ 20.206\(d\)\(5\)](#).

⁴⁴ See *Comptroller’s Guide, Competitive Bidding (IFBs, Informal Bidding)*.

13.11 Formal Bidding (Non-IT) - PCO Operating Procedure 009

An Open Market IFB is a formal written competitive sealed bid method (>\$25,000) used to obtain bids from all eligible and active vendors listed on the CMBL within the NIGP class/item for the service or good. If the total value of a solicitation is greater than \$25,000, an IFB must be posted on the ESBD.

PCO purchasers will complete purchases using a consistent and standardized process that allows for the greatest possible competition. Purchases may not be divided into smaller transactions to avoid competition.

Negotiations are not permitted using this competitive bidding procurement method. However, if there is only one qualified bidder, then the PCO purchaser may negotiate with the sole bidder, including price, provided the negotiation does not result in a material change to the advertised specifications.

13.12 Information Technology Purchases – PCO Operating Procedure 010

DIR is the state’s information technology and telecommunications agency. DIR also oversees the Data Center Services (DCS) program. PCO purchasers are required to use contracts established by DIR to obtain automated information systems (AIS) unless the procurement is subject to an exclusion or exemption.⁴⁵ AIS type products and services are associated with computers (automation) or telecommunications systems and are noted with an asterisk (*) on the NIGP class and item code.

Under DIR’s statewide procurement authority, DIR establishes and manages master contracts for use by eligible customers.

13.12.1 Cooperative Contracts

DIR manages over 700 master IT goods and services contracts awarded based on state procurement rules using the request for offer method of procurement. Particular types of DIR cooperative contracts (DBITS, IT Staffing Services, Other Telecom Services, and Information Security) and purchasing requirements are set forth below. Agencies are required to purchase IT commodities using DIR’s cooperative contracts or must request an exemption. Agencies may negotiate lower prices when purchasing from a DIR cooperative contract; however, the DIR vendor may not charge a price higher than the price published in the DIR contract. An agency may not enter into a contract to purchase a commodity item through the DIR Cooperative Contracts Program if the value of the contract’s initial term exceeds \$10 million unless it is a DIR coordinated bulk purchase.

13.12.2 Bulk Purchasing Initiatives

The Department of Information Resources (DIR) offers bulk purchase initiatives for IT hardware, software, and technology services.

In accordance with [Texas Government Code Section 2157.068](#), state agencies making purchases under DIR Bulk Purchase Agreements are not bound by competitive requirements or dollar thresholds otherwise required when making IT commodity purchases for hardware, software, and technology services.

13.12.3 Texas.gov Contracts

[Texas.gov](#) is the official website of the State of Texas. It provides portal and payment services for Texas state agencies and local governmental organizations. Services provided through

⁴⁵ Tex. Gov’t Code [§ 2157.006](#).

Texas.gov enable citizens to conduct government business in a variety of easy, secure ways. Application services feature proactive reminders and alerts, customized dashboard, and stored transaction and payment history to the online convenience of renewing a driver license, vehicle registration, or professional license (along with 1,000+ other services). Texas.gov's payment services solution offers complete transaction management that specifically meet the unique needs of Texas. These services require an interagency or, as applicable, interlocal agreement signed with DIR.

13.12.4 Shared Technology Services Contracts (STS)

STS provides full-service access to diverse managed technology. STS utilizes a multi-sourcing service integrator (MSI) to provide a single point of contact for service delivery.

13.12.5 Telecommunication Services Contracts

DIR manages telecommunication contracts that facilitate the purchase of voice, data, wireless, video, or Internet services. Agencies are required to procure telecommunication services through these contracts or must request an exemption. DIR's Telecom unit serves state agencies in three ways:

- a. Capitol complex telephone system (CCTS) - telephone service within the capitol complex;
- b. Texas Agency Network (TEX-AN) contracts – a contract portfolio of voice and data services; and
- c. Other telecom services contracts (one category of DIR cooperative contracts) – multiple contracts offering wireless, conferencing, and managed telecommunication services.

13.12.6 IT Staff Augmentation Contract (ITSAC)

IT Staffing Services contracts are one category of DIR Cooperative Contracts that provide for temporary IT staffing augmentation services. Contracted staff render services and are paid on an hourly basis. The DIR ITSAC competitive process is managed through DIR's ITSAC portal. The ITSAC Portal solicits responses from all eligible ITSAC vendors for the selected labor category. This ensures that state agencies will have met all pricing request threshold requirements.⁴⁶

The customer ITSAC Portal will be used to post solicitation requests, review details related to submitted solicitations, cancel/withdraw solicitations, review candidates submitted by vendors, award the solicitation, and mark which candidates were interviewed and/or hired. For more information visit [DIR's IT Staffing webpage](#). State agencies are not required to obtain DIR's signature on a resulting purchase order when using an IT staffing services contract.

13.12.7 Deliverables-Based IT Services Contracts (DBITS)

Deliverables-Based IT Services (DBITS) contracts are one category of DIR Cooperative Contracts that provide project-based IT services. These contracts are not used for hourly rate services. DBITS requires acceptance of a Statement of Work (SOW) and authorization for payment of milestone tasks. Agencies must solicit DIR vendors whose contracts meet the required scope written and approved by DIR. For more information, visit [DIR's DBITS webpage](#).

DIR DBITS contract categories include:

⁴⁶ DIR website, IT Staffing page: <https://dir.texas.gov/View-Contracts-And-Services/Pages/Content.aspx?id=13>

- a. Application development;
- b. Application maintenance and support;
- c. Business intelligence and data warehouse;
- d. Enterprise resource planning (ERP);
- e. Independent verification and validation (IV&V);
- f. IT assessments and planning;
- g. Project management;
- h. IT procurement assistance; and
- i. Technology migration and upgrade.

13.12.8 DIR Statement of Work Review Process

State agencies are required to submit SOWs to DIR for review prior to the submission to a vendor for technology services. SOWs must meet [threshold requirements](#) for commodity purchases.⁴⁷ DIR has established contracts that prequalify vendors to respond to SOWs across a variety of technology categories, including:

- a. Deliverables-Based Information Technology Services (DBITS);
- b. End-User IT Outsourcing Services;
- c. IT Security Services;
- d. Cloud Services (when an SOW is executed);
- e. Comprehensive Web Development;
- f. Digital Imaging Services; and
- g. Complex services such as software or hardware customizations, integration, or overall project solutions.

The [SOW review process](#) has four phases: draft submission, draft review, final submission, final review, and execution.

DIR SOW REVIEW PHASES	
Participants	Phase Steps
Agency & DIR	<p>DRAFT</p> <p>Agencies will submit draft SOWs to DIR for review before offering SOWs to vendor(s). DIR will review the SOWs and consult with the agency as necessary to ensure the scope of the SOW aligns with the master contract being solicited. Comments, findings, and determination (approval/rejection) will be by email for record purposes.</p>

⁴⁷ 1 Tex. Admin. Code [§ 212.41](#).

DIR SOW REVIEW PHASES	
Agency	<p>PRELIMINARY</p> <p>The agency will submit the approved draft SOW to appropriate DIR vendors (following procurement thresholds), evaluate responses, and negotiate the final version of the SOW. The agency and vendor will execute their portions of the final SOW. The agency will send the signed version of the SOW to DIR for review.</p>
DIR	<p>FINAL REVIEW</p> <p>DIR will review the final negotiated SOW to ensure it is still within the original scope and, when so, will execute the SOW and return to the agency.</p>
Agency	<p>EXECUTED</p> <p>Once executed, the agency may issue a purchase order to the vendor. The agency must post the SOW on its website.</p>

13.12.9 DIR Threshold Requirements

State agencies are required through Texas Government Code [Chapter 2157](#) to meet bid threshold requirements for IT commodity purchases for hardware, software, and technology services. Thresholds apply to all cooperative contracts including DBITS and ITSAC.

DIR THRESHOLDS	
Procurement Value	Number of DIR Vendors
\$50,000 or less	May award directly to DIR vendor of choice
More than \$50,000 but not more than \$1 million	3 (or all vendors in a category with less than 3 vendors)
More than \$1 million but not more than \$10 million	6 (or all vendors in a category with less than 6 vendors)

13.12.10 DIR Threshold Exemptions

DIR threshold requirements do not apply to:

- a. Contracts procured through the Data Center Services program signed by the contracted vendors (e.g., Atos, Capgemini, and Xerox Corporation);
- b. Agency customer agreements with the Texas.gov program, pursuant to its enabling statute;⁴⁸ and
- c. Contracts for telecommunications services, such as TEX-AN Services and Managed Services for Telecommunications.

⁴⁸ [DIR Website, Threshold Exemptions](#) (citing Tex. Gov’t Code ch. [2054](#), subchs. [F](#) and [J](#)).

All Statements of Work that are being administered through the Data Center Services program as a pass-through expense will be subject to state procurement rules.

13.12.11 DIR Procurement Exemptions

If a government entity wants to procure an item through an avenue outside a DIR contract or service (i.e., any Cooperative Contracts, TEX-AN, CCTS, Other Telecom Services, or other program areas such as Texas.gov), the agency must first obtain an exemption from DIR.

For more information regarding DIR exemptions, see the DIR website. The site provides information regarding exemptions, including:

- a. Cooperative Contracts – Blanket Exemptions;
- b. Cooperative Contracts – One-Time Exemption;
- c. Certification for Purchase through Local Cooperatives;
- d. Data Center Services Exemption;
- e. Telecom Exemption; and
- f. Texas.gov Exemption.⁴⁹

13.12.12 HSPs and DIR Cooperative Contracts

DIR facilitates the HSP process for the plan and procurement phase of the HUB Contract Management Cycle. It is the responsibility of the procuring agency to comply with the contract formation and contract oversight of the contract cycle. The agency must determine whether the existing HSP posted on the DIR website is sufficient for implementing the scope of work. To facilitate this process, upon issuing the purchase order, the purchaser will notify the TDA HUB Coordinator via email to the [TDA HUB office email mailbox](#). The email should contain a copy of the issued purchase order and a copy of the SOW. The HUB Coordinator will contact the DIR vendor and request a clarification to verify the subcontracting needs are being met by the contract's HSP. Once the clarification response is received, if any changes will need to occur, the agency must facilitate the HSP amendment request process through DIR and ensure the prime contractor maintains compliance throughout the life of the agency's purchase order/contract. The HUB Program Office will notify the purchaser and program area once the HSP has been established for the contract, so the DIR vendor may proceed with the contract. *NOTE: the agency obtains 100% HUB credit for any HUB direct and subcontracting payments from these contracts.*

13.13 Printing Services – PCO Operating Procedure 011

Agencies must utilize SPD approved State Print Shops to competitively procure print services for printing procurements estimated to be \$2,500 or more. State Print Shops provide services through interagency contracts with SPD. Examples of what the State Print Shops can provide include design, digital and traditional offset printing, binding, fulfillment, mailing, and other print-related services to agencies. **Note: TDA Programs must receive design approval prior to submitting requisitions for printing services for processing.**

13.13.1 State Print Shops

⁴⁹ [DIR Website, Exemption Overview](#)

If the printing request is under \$2,500, requests can be sourced directly from any of the contracted State Print Shops. For printing jobs that exceed \$2,500, the printing request must be sent to all contracted State Print Shops using the CPA SPD [Print Shop Job Request Form](#).

For print purchases, TCI must be given the final opportunity to meet or beat the lowest price. This process must be followed by whomever submitted the portal request through CPA SPD Print Shop Job Request form. If TCI submitted a bid and TCI is not the lowest bid, TDA personnel are required to request a final bid from TCI. Do not disclose the other bids to TCI during this stage of the competitive bid process. Upon award, the completed bid tabulation noting the successful bidder should be sent to all State Print Shops and SPD with the email subject line: "Print Bid Tabulation for Requisition No XXX." This will notify all State Print Shops. **It is a violation to intentionally divide job request to avoid these procedures.**

13.13.2 Print and Print-related Requests Not Available Through State Print Shop (Exceeding \$2,500)

- a. Specifications and Estimated Price: If the above process is completed and all State Print Shops submit a no bid or no response, division requester will submit a requisition that includes all specifications, required delivery date, and estimated price.
- b. Print-related Purchases less than \$10,000: A quote will be⁵⁰ obtained from commercial vendors and a purchase order will be issued. Purchaser will make every effort to utilize HUB vendors.
- c. Purchases over \$10,000, but less than \$25,000: A solicitation will be completed (traditionally an invitation for bid) using the vendors on the CMBL, HUB rules apply.
- d. Purchases over \$25,000: ESBD posting requirements apply to printing services contracts that will exceed \$25,000.

Please allow time for processing according to dollar threshold and procurement method. For more information, see [State Print Services](#).

13.14 Conference and Meeting Room Space

13.14.1 Prohibitions and Requirements

According to Texas Government Code Section 2113.106, state agencies must use state-owned or state-occupied facilities for meetings, conferences, and administration of group examinations and may not use appropriated money to lease private facilities for these purposes unless state facilities are:

- a. Not available when needed;
- b. Not adequate to accommodate the meeting, conference, or examination; or
- c. Not an economically favorable alternative to other facilities.

13.14.2 Process for Obtaining Conference or Meeting Room Space

The division requesting the purchase of conference or meeting space determines space rental needs, general location, and the potential cost for the purchase. **If division staff contact vendors for estimated costs of their conference or meeting space needs, agency staff must clearly explain to all contacted vendors that the price estimate is sought for informational**

purposes only and that the agency's request for an estimate is not a formal solicitation. When obtaining price estimates from vendors, care must be taken to avoid giving any vendor any competitive advantage in a future procurement initiative.⁵⁰ TDA division staff must not reserve space or sign contracts with hotels or private facilities for conferences or meeting space. Space rental contracts or agreements must be obtained through the procurement process.

TDA staff must check for availability of state-owned or state-leased space in the general location in which the meeting space is needed. TDA staff must use the [Texas Facilities Commission Conference Room Reservation Portal](#) to determine if state space is available that will meet the agency's need. If space and availability do not meet the agency's needs, a copy of the reservation portal calendar search must be saved and attached to the requisition. Additionally, the requesting division must document at least one of the criteria in Section 14.13.1 when entering a CAPPs Financials requisition. If competitive bidding is required, bids are obtained, and the requester is consulted to confirm the winning bid meets the requester's needs. If a formal procurement is required, appropriate formal procurement process will be used.

If a hotel or conference facility requires TDA to agree to certain terms or conditions for use of their space, and negotiations are permitted under the procurement method used, the conditions will be reviewed and approved by PCO and, if required, Legal. If approved, PCO attaches the approved terms and conditions provided by Legal to the purchase order. PCO issues a purchase order and provides a copy to the hotel/facility and the requesting entity.

13.15 Emergency Procurements - PCO Operating Procedure 012

An emergency purchase occurs when the agency must make a procurement quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state. An emergency purchase is not a tool for avoiding proper procurement planning. The pending expiration of funds does not constitute an emergency. An emergency occurs as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat or to avoid undue additional cost to the state. A written determination of the basis for the emergency and for the selection of a particular vendor must be included in the procurement file.

Excerpt from the Comptroller's Guide:⁵¹

NOTE: Emergency purchases discussed in this section are different from agency purchases conducted under a Declaration of Disaster by the Governor. SPD authority does not extend to purchases made under the Texas Disaster Act of 1975. Refer to Procurement Method – Texas Disaster Act of 1975.

13.15.1 Emergency Purchase Justification

If the purchase is over \$10,000, the requesting agency must document and justify the emergency purchase by completing Form PCO 805, Justification for Emergency Purchases. Approval must be provided by either the requesting agency's commissioner or commissioner designee by signing Form PCO 805.

13.15.2 HUB Requirements for Emergency Procurements

⁵⁰ *Comptroller's Guide, Informal Budget Quotes.*

⁵¹ *Comptroller's Guide, Emergency Purchases.*

In accordance with Texas Government Code [Section 2155.137\(b\)](#), emergency procurements are required to contain all the same HUB requirements as all other procurements. It is important to have the HUB program involved as soon as the procurement is identified as an emergency, so that HUB can work with the program area and purchaser to ensure the agency complies with statute and rules in submission of the HUB Subcontracting Plan (HSP), when subcontracting is probable. Generally, the respondent is required to provide HUBs and trade organizations or development centers seven working days to respond to the required subcontracting notice.⁵² In emergency procurements, the agency has the flexibility to determine a different time period, as required by the circumstances. The procurement file must be documented, and the pre-determined reduced timeframe must be clearly stated in the solicitation documents.⁵³ Respondents may also utilize any of the other four available good faith effort methods to submit a responsive HSP other than the solicitation method mentioned above.

13.16 Proprietary Purchases – PCO Operating Procedure 013

A proprietary purchase is one where the specifications or conditions of the proposed purchase are proprietary to one vendor and do not permit an equivalent product or service to be supplied.⁵⁴ The term “proprietary” refers to a product or service that has a distinctive feature or characteristic which is not shared or provided by competing or similar products or services. Because Texas procurement law promotes the use of competitive bidding for purchases, proprietary purchases are subject to enhanced scrutiny.

13.16.1 Competitive or Sole Source

Proprietary purchases may be either sole source or competitive:

- a. Sole Source: The specified product or service is only available for purchase through a single vendor (e.g., manufacturer, publisher, service provider). Examples of sole source proprietary purchases include a back issue of a magazine available from only the publisher and an educational conference available from only the conference sponsor.
- b. Competitive: The specified product or service is available for purchase through more than one vendor (e.g., dealers, distributors, resellers, authorized service providers). Examples of competitive proprietary purchases include brand-specific replacement parts for equipment available through multiple OEM-authorized dealers and software that a software publisher makes available to the public through several resellers.⁵⁵

13.16.2 Proprietary Purchase Justification

Proprietary purchases require a completed Form PCO 806 - Proprietary Purchase Justification, in the procurement file. The Proprietary Purchase Justification form must include the following information in order to document best value to the state:

- a. Describe the product or service the agency proposes to purchase, and provide a statement regarding the agency’s business need and planned use;

⁵² 34 Tex. Admin. Code [§ 20.285\(d\)](#).

⁵³ 34 Tex. Admin. Code [§ 20.206\(d\)](#).

⁵⁴ Tex. Gov’t Code [§ 2155.067\(a\)](#).

⁵⁵ *Comptroller’s Guide, Proprietary Purchases*.

- b. Explain why the agency specifications for the product or service are written as they are, and why those specifications are necessary to accomplish the agency’s goal for the procurement;
- c. State the reason that no other competing products or services will satisfy the need of the agency and provide examples of the technical, practical, or operational risks that would occur if competing products or services are selected; and
- d. Specify whether the purchase is sole source or competitive.
- e. The Form PCO 806 must be signed by a person to whom such signature authority has been properly delegated in the Agency Procurement Plan.
- f. General Procurement Requirements

Proprietary purchases, regardless of whether they are sole source or competitive, are subject to ESBID posting requirements, as well as requirements applicable to SPD delegation, CAT reviews, and QAT reviews.

13.17 Consulting Services Contracts – PCO Operating Procedure 014

Agencies are permitted to contract for consulting services pursuant to Texas Government Code Chapter 2254, [Subchapter B](#).

- a. “Consulting service” means the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee.⁵⁶
- b. “Major consulting services contract” means a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000, or \$25,000 for an institution of higher education other than a public junior college.⁵⁷

13.17.1 Major Consulting Services Special Procedural Requirements

Texas Government Code, Chapter 2254 includes strict procedural requirements for major consulting contracts that if not followed will render such a contract void.⁵⁸ A major consulting services contract requires a finding of fact issued by the Governor that the services are necessary.⁵⁹ Unless an emergency waiver is obtained from the Governor,⁶⁰ a major consulting services contract requires a finding of fact issued by the Governor that the services are necessary and cannot be performed by the agency with its own staff. Additional procedural requirements include conflict of interest provisions and restrictions on contracting with former employees.

A state agency may contract with a consultant only if there is a substantial need for the consulting services; and the agency cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with a state governmental entity.⁶¹ In selecting a consultant, a state agency must base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and if other considerations are equal, give preference to a consultant whose

⁵⁶ Tex. Gov’t Code [§ 2254.021\(1\)](#).

⁵⁷ Tex. Gov’t Code [§ 2254.021\(2\)](#).

⁵⁸ Tex. Gov’t Code [§ 2254.034](#).

⁵⁹ Tex. Gov’t Code [§ 2254.028\(a\)\(3\)](#).

⁶⁰ Tex. Gov’t Code [§ 2254.025](#).

⁶¹ Tex. Gov’t Code [§ 2254.026](#).

principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.⁶²

13.17.2 Notice of Intent and Finding of Fact

Notice of Intent to enter into a major consulting services contract must be given by the agency to the LBB and the Governor's Budget and Planning Office before entering into such a contract. A contract may not be entered into prior to the issuance of a finding of fact by the Governor, or, in the event of an unforeseen emergency, a limited waiver has been issued by the Governor. An "unforeseen emergency" is a situation that suddenly and unexpectedly causes a state agency to need the services of a private consultant including the issuance of a court order, an actual or imminent natural disaster, and new state and federal regulations.

13.17.3 Solicitation Advertisement

Not later than the 30th day before the date it enters into a major consulting services contract, a state agency must post in the electronic state business daily (ESBD) under Texas Government Code, Section 2155.083:

- a. an invitation for consultants to provide offers of consulting services;
- b. the name of the individual who should be contacted by a consultant that intends to make an offer;
- c. the closing date for the receipt of offers; and
- d. the procedure by which the state agency will award the contract.⁶³

If the services relate to services previously provided by a consultant, the agency must disclose that fact in the invitation for offer. If an agency intends to award the contract to a consultant that previously provided the services, unless a better offer is received, the agency must disclose the intention in the invitation for offer. (The invitation for offer will be procured using the RFP procurement method.)⁶⁴

13.17.4 Post Award Requirements

- a. Not later than the 10th day after entering into a consulting services contract if the amount of the contract, including an amendment, modification, renewal, or extension, exceeds \$14,000, written notice of award shall be provided to the Legislative Budget Board on a form prescribed by the LBB.⁶⁵
- b. After the contract is awarded, a notification of award must be posted to the ESBD if the contract is expected to exceed \$25,000.⁶⁶
- c. Pursuant to the Texas Government Code [Section 2254.036\(b\)](#), copies of all documents, films, recordings, or reports compiled by the consultant shall be filed with the Texas State Library. Pursuant to TDA Policy, the TDAC Records Management Division files the applicable documents with the Texas State Library.

⁶² Tex. Gov't Code [§ 2254.027](#).

⁶³ Tex. Gov't Code [§ 2254.029](#).

⁶⁴ Tex. Gov't Code [§ 2254.029](#).

⁶⁵ Tex. Gov't Code [§ 2254.0301](#).

⁶⁶ Tex. Gov't Code [§ 2254.083\(k\)](#).

- d. Pursuant to Texas Government Code, Section 2254.036(a), on request, a state agency shall, after the agency's contract with a consultant has ended, supply the LBB and the Governor's Budget and Planning Office with copies of all documents, films, recordings, or reports compiled by the consultant under the contract.

13.17.5 Renewal, Amendment, and Extension

A state agency that intends to renew, amend, or extend a major consulting services contract shall comply with Sections [2254.028](#) (notice of intent and finding of fact) and [2254.029](#) (ESBD under Texas Government Code, Section 2155.083), if the contract after the renewal, amendment, or extension is a major consulting services contract.⁶⁷

A state agency that intends to renew a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029, if the original contract and the renewal contract have a reasonably foreseeable value totaling more than \$15,000.⁶⁸

A state agency that intends to amend or extend a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029, if the original contract and the amendment or extension have a reasonably foreseeable value totaling more than \$15,000.⁶⁹

13.17.6 Emergency Waiver

The Governor, after receipt of a request complying with Texas Government Code, Section 2254.025, may grant a limited waiver of the provisions of Texas Government Code, Chapter 2254, Subchapter B, for an agency that requires consulting services before compliance with Subchapter B can be completed because of an unforeseen emergency. As soon as possible after the Governor grants a limited waiver, a state agency shall comply with Subchapter B to the extent that the requirements are not superfluous or ineffective because of the waiver. The agency shall include with information filed with the secretary of state for publication in the Texas Register a detailed description of the emergency on which the request for waiver was predicated. In Section 2254.025, "unforeseen emergency" means a situation that suddenly and unexpectedly causes a state agency to need the services of a consultant. The term includes the issuance of a court order, an actual or imminent natural disaster, and new state or federal legislation. An emergency is not unforeseen if a state agency was negligent in foreseeing the occurrence of the emergency.

13.17.7 Mixed Contracts

Texas Government Code Chapter 2254, [Subchapter B](#) applies to a contract that involves both consulting and other types of services if the primary objective of the contract is the acquisition of consulting services.⁷⁰

13.17.8 Distribution of Consultant Reports

A consulting services contract must include provisions that allow distribution of the consultant report or to post the report on the TDA website or the website of a standing committee of the legislature.

⁶⁷ Tex. Gov't Code [§ 2254.031](#).

⁶⁸ Tex. Gov't Code [§ 2254.031](#).

⁶⁹ Tex. Gov't Code [§ 2254.031](#).

⁷⁰ Tex. Gov't Code [§ 2254.038](#).

13.18 Request for Proposal (RFP) – PCO Operating Procedure 015

State agencies are required to purchase goods and services that provide the best value for the state. For a purchase made by RFP, the agency must specify in the solicitation the known factors other than price that the agency will consider in determining which proposal offers the best value for the state. The agency must award the contract to the respondent whose proposal offers the best value for the state, considering price, past vendor performance, vendor experience or demonstrated capability, and any other evaluation factors in the RFP.

PCO Purchasers and managers are responsible for facilitating the procurement process for RFPs. In order to certify the procurement and award process, PCO purchasers should function as the primary contact for each step of the process, from solicitation development through contract award.

All agencies must obtain delegation of purchasing authority from the CPA SPD, Procurement Oversight & Delegation (POD) team (for services) or the Open Market Review (OMR) process (for goods), except for the following procurements:

- a. Consulting services;
- b. Professional services;
- c. Health care services;
- d. Information resources technology; and
- e. Any other procurements for which the contracting agency has been granted procurement authority by statute.

13.19 RFP Construction – PCO Operating Procedure 016

RFPs for construction procurements made under the authority of Texas Government Code Chapters 2156 and 2269 utilize an independent RFP template developed specifically for construction procurements.

13.19.1 Authority

Construction procurements support the TDA initiatives, and can be advertised under both Texas Government Code Chapter 2156 and Chapter 2269:

- a. Texas Government Code [Chapter 2156](#) does not include the State of Texas Uniform General Conditions and is generally used for procurements under \$100,000.00.
- b. Texas Government Code [Chapter 2269](#) includes the State of Texas Uniform General Conditions and is generally for procurements over \$100,000.00.

13.19.2 Types of Construction Projects

Construction procurements made under the authority of Texas Government Code [Chapter 2156](#) and [Chapter 2269](#) include:

- a. New building and site construction;
- b. Renovation of existing structures and site conditions;
- c. Deferred maintenance;
- d. Repairs to facilities and equipment; and

- e. Indefinite Delivery Indefinite Quantity (IDIQ) multiple award contracts in various disciplines.

13.20 Request for Qualifications (RFQ) – [PCO Operating Procedure 017](#)

PCO purchasers are responsible for facilitating the procurement process for RFQs. In order to certify the procurement and award process, PCO purchasers should function as the primary contact for each step of the process, from identification of the need(s) to contract award and ensure the requested procurement meets the definition of professional services as set out in statute.

13.20.1 Professional Services

The RFQ is the commonly used procurement method to procure professional services. Professional services refer to services that are:

- a. Within the scope of the practice, as defined by state law, of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing;
- b. Provided in connection with the professional employment or practice of a person who is licensed or registered as one of the following: a certified public accountant, an architect, a landscape architect, a land surveyor, a physician, including a surgeon, an optometrist, a professional engineer, a state certified or state licensed real estate appraiser, or a registered nurse; or
- c. Provided by a person lawfully engaged in interior design, regardless of whether the person is registered as an interior designer under [Chapter 1053](#) of the Occupations Code.⁷¹

The RFQ method may also be utilized to procure legal or consulting services, although utilization of an RFP is far more common. Reference Section 13.17 regarding Consulting Services Contracts, and contingent fee legal services.⁷²

13.20.2 Audit Services (Requires SAO Delegation)

Texas Government Code Section 321.020 specifies that a state agency, or corporation that is dedicated to the benefit of a state agency, may enter into a contract for audit services only if:

- a. The agency or corporation is authorized to contract with a private auditor through a delegation of authority from SAO;
- b. The scope of the proposed audit has been submitted to SAO for review and comment; and
- c. The services of the private auditor are procured through a competitive selection process in a manner allowed by law.

Division staff must coordinate with PCO to obtain a delegation of authority to procure audit services prior to contracting for the audit services.

The RFP method may also be used to procure audit services, although utilization of an RFQ is the preferred method.

⁷¹ Tex. Gov't Code [§ 2254.002\(2\)](#); see also, *Comptroller's Guide, Procurement Method-Professional Services*.

⁷² Tex. Gov't Code ch. 2254, [subch. C](#).

14 Drafting the Solicitation

A solicitation will be required for a competitive procurement. Drafting of the solicitation begins with development of specifications or scope of work. The process involves collaboration between the division, PCO, Budget, IT, Legal and other key stakeholders. It is imperative the solicitation is written in a manner that attracts responses that meet the division's business need.

14.1 Specification Drafting

Clear, concise, detailed specification drafting is very important for all solicitations. Lack of clarity can lead to non-responsive results as well as other issues.

All participants involved in the procurement process must ensure that specifications provide all potential respondents an equal and fair opportunity to submit a proposal for evaluation and are not intended to favor any particular respondent.

A specification is a description of a product or service the agency seeks to procure and is also what the vendor must offer to be considered for contract award. The most common types of specifications used in government procurements are:

- a. Performance-based;
- b. Design-based; or
- c. Mixed (i.e., a comingling of both performance- and design-based specifications).

14.1.1 Performance-based Specifications

Performance-based specifications focus on outcomes or results rather than the process by which the products and services are produced. Respondents bear the burden of choosing the approach that will be utilized to accomplish the agency requirement. Performance-based specifications allow respondents to bring their own expertise, creativity, and resources to satisfy the agency requirement. Program staff must ensure that performance-based specifications are reasonable and measurable.

14.1.2 Design-based Specifications

Design-based specifications focus on how the vendor must perform the service or how the product is made rather than what the product or service does. Respondents have very little discretion as to the methods or detailed processes to be used. Program staff must ensure that processes are in place to properly inspect and test for compliance with the specifications.

14.1.3 Descriptive Specifications — Referenced Brand or Equivalent

Descriptive specifications (referenced brand or equivalent) for products must provide those principal physical, functional or other characteristics that are essential to the minimum business needs while providing open and competitive bidding. The specifications should not include minimum or maximum restrictive dimensions, weights, materials, or other characteristics that are unique to one brand name or would eliminate competition of other products. As a best practice, a minimum of two known acceptable manufacturer/brand names and model numbers that are currently being manufactured should be referenced as "or equal."

The solicitation should include a clause citing the purpose for the references as "or equal" and the submittal requirements for evaluation. For example, a solicitation clause for a referenced brand is as follows:

“Catalogs, brand names, or manufacturer’s references are descriptive only and indicate type and quality desired. Bids on brands of like nature and quality will be considered. If proposing other than the referenced brands/model number, Bidder must provide the manufacturer, brand, or trade name, product number, and provide complete descriptive information of product offered and include it with the bid.”

The evaluation of “or equal” offers shall be given full consideration and offers meeting the specification shall not be rejected for minor differences in design, construction, or features from the reference models that do not affect the suitability of the product for its intended use.

14.1.4 Restrictive Specifications

Restrictive specifications have the potential to limit competition. Program staff must be careful not to inadvertently customize a product or service when drafting specifications.

As an example, consider an agency purchase of 4-inch resealable bags when the agency’s business need could be satisfied with the industry standard of a 5-inch resealable bag. In this scenario, the agency requirement of a non-standard bag size will reduce the eligible vendor pool to only those vendors capable of providing the customization, as well as result in increased cost to the state due to the customization.

Regardless of whether the specification is performance-based, design-based, or mixed, restrictive specifications that result in proprietary procurements are not permitted unless the procedures for Proprietary Purchases are followed. See PCO Operating Procedure 013 for Proprietary Purchases.

Again, restrictive descriptive characteristics that are essential to the intended use may be included only if all the manufacturer/brands referenced in the solicitation can qualify.

14.2 Entering a Requisition for an RFx

In order to submit a requisition for a complex procurement, the following documents must be attached to the requisition. Requisitions entered that fail to include completed documents as detailed below are subject to being denied by PCO, and customer organization leadership being notified. The procurement process will not begin, and timelines will not be developed, without the completion of this documentation.

14.2.1 Completed Scope/Statement of Work

Program areas can fulfill this requirement by submitting a draft RFx in the current template with the SOW section completed. The requisition may be denied if the SOW does not contain all the required components as detailed in the applicable RFx template.

14.2.2 Contract Value

Contract value is the most common mistake on the request document, and always requires re-routing for approvals because approvals vary at different contract values. Remember, the value of the contract is the value of the initial term plus all renewals. (Example: If the initial contract term is one-year at \$100,000, plus three (3) one-year renewals, the contract value is \$400,000.)

15 Solicitation Review

15.1 PCO Director Review

All solicitations and addendums for RFPs, RFOs, and RFQs must be submitted to the PCO Director for review and approval prior to submission to the CAT, if CAT review is applicable, and prior to posting. Evaluation tools scored criteria and sub criteria, and score sheets will be reviewed for accuracy, relevance, reasonableness, as well as other factors that ensure an effective solicitation.

15.2 Legal Review

All solicitations and addendums for RFPs, RFOs, and RFQs must be submitted to TDA's Legal Division for review and approval prior to submission to the CAT, if CAT review is applicable, and prior to posting. Evaluation tools scored criteria and sub criteria, and score sheets will be reviewed for accuracy, relevance, reasonableness, as well as other factors that ensure an effective solicitation.

15.3 Contract Advisory Team (CAT) Review

CAT assists state agencies in improving contract management practices by reviewing and making recommendations on solicitation and contract documents that have an expected value of at least \$5 million dollars during the full term of the contract, including renewal periods. RFPs, RFOs, and RFQs must be reviewed and approved by the PCO Director and TDA Legal Division prior to submission to CAT.

By statute, state agencies must comply with CAT recommendations or submit to CAT a written explanation why the recommendation is not applicable. See [Texas Government Code, Section 2262.101](#); Comptroller's Guide, CAT – Review of Solicitations with a Value of \$5 Million or More; and applicable CPA administrative rules.

- a. PCO is the point of contact for the CAT review process and will work with the TDA division to consult with CAT.
- b. PCO will work with the TDA Division to comply with CAT recommendations or provide CAT a written explanation as to why a recommendation is not applicable to the procurement under review. The PCO Director and TDA's Legal Division review agency responses to CAT recommendations. Written explanations as to why a recommendation is not applicable to the procurement under review must be reviewed and approved by Legal prior to submission back to CAT.
- c. If substantial changes are made to the initial solicitation documents submitted for CAT review, PCO must resubmit the solicitation documents for CAT review.
- d. PCO will post the solicitation after receipt of CAT approval notification and all other necessary internal and external approvals.
- e. PCO will maintain the TDA's responses to the CAT recommendations within the procurement file.

15.4 Quality Assurance Team (QAT) Review — Major Information Resources Projects (MIRP)

The Quality Assurance Team is an interagency working group comprised of members from the LBB, DIR, and CPA, with SAO participating as an advisory member. The QAT is legislatively tasked with the review, approval, and oversight of MIRPs. All state agencies are subject to QAT

oversight, except for institutions of higher education and self-directed, semi-independent state agencies.

a. Definition of a MIRP

A MIRP is defined as any information resources technology project identified in a state agency's biennial operating plan whose development costs exceed \$5 million and that:

- i. Requires one year or longer to reach operations status;
- ii. Involves more than one state agency; or
- iii. Substantially alters work methods of state agency personnel or the delivery of services to clients; and
- iv. Any information resources technology project designated by the legislature in the GAA as a MIRP.⁷³

b. General Requirements

Procurements for MIRPs must be reviewed and approved by QAT at various stages of the procurement and contracting cycle. Some of the steps required to be followed for a MIRP include:

- i. Texas Project Delivery Framework documents are required to be filed with QAT for each MIRP before the project can be initiated.⁷⁴
- ii. A project plan must be developed and filed with QAT before TDA spends more than ten percent (10%) of allocated funds for the project.⁷⁵
- iii. An acquisition plan is required to be filed with QAT for MIRPs that involve a procurement with a value of at least \$10 million.⁷⁶
- iv. Before issuing a solicitation for a MIRP with a contract value of at least \$10 million, TDA must develop a procurement plan, consistent with any acquisition plan provided in the Comptroller's Guide with anticipated service levels and performance standards for each contractor and a method to monitor changes to the scope of each contract.⁷⁷
- v. TDA is required to notify QAT when it advertises a procurement for a MIRP. The notification is required to include the requisition number of the solicitation.⁷⁸
- vi. Prior to negotiating a MIRP contract with a value of at least \$10 million, TDA must submit the draft contract containing proposed terms to QAT.⁷⁹
- vii. After the final negotiated terms of a MIRP contract with a value of at least \$10 million are developed, TDA must submit the final negotiated, unsigned contract to QAT. QAT will review and provide recommendations. TDA is required to comply

⁷³ Tex. Gov't Code [§ 2054.003\(10\)](#).

⁷⁴ Tex. Gov't Code §§ [2054.158\(b\)\(2\)](#), [2054.303](#).

⁷⁵ Tex. Gov't Code [§ 2054.304](#).

⁷⁶ See generally, Tex. Gov't Code [§ 2054.305](#).

⁷⁷ Tex. Gov't Code [§ 2054.305](#).

⁷⁸ [GAA, H.B. 1, 86th Leg., R.S., art. IX, sec. 9.02\(c\)\(2\)](#).

⁷⁹ Tex. Gov't Code [§ 2054.160\(a\)\(1\)](#) (MIRP with value of at least \$10 million); see also, [GAA, H.B. 1, 86th Leg., R.S., art. IX, sec. 9.01\(d\)](#) (MIRP with value exceeding \$10 million).

with the recommendations or submit a written explanation to QAT why the recommendation is not applicable to the contract at issue.⁸⁰

- viii. Within 10 business days of contract award of a MIRP with a value of at least \$10 million, TDA must provide notice of the completed contract to QAT.⁸¹

c. Amending or Canceling MIRP Contracts

Additional notifications are required before amending a contract for MIRPs including notifications to the governor, lieutenant governor, speaker of the house of representatives, presiding officer of the standing committee of each house of the legislature with primary jurisdiction over appropriations, and the QAT if: (i) the total value of the amended contract exceeds or will exceed the initial contract value by 10% or more; or (ii) the amendment requires the contractor to provide consultative services, technical expertise, or other assistance in defining project scope or deliverables. In addition, if such amendments are being made, TDA must provide a justification for the amendment to the QAT as well as a copy of the final version of the amendment, including all appendices and attachments.⁸² See also, QAT requirements related to canceled contracts and the issuance of new solicitations for identical or similar goods and/or services for the development of the same project.⁸³

Before canceling or continuing an existing MIRP contract subject to QAT monitoring that is more than 50% over budget or over schedule, TDA must conduct a cost-benefit analysis to compare canceling or continuing the contract. The QAT must approve the cost-benefit analysis for the project to continue.⁸⁴

The QAT may waive certain review requirements.⁸⁵ Any waiver received from the QAT should be saved in the contract file.

16 Solicitation Advertisement - [PCO Operating Procedures 018](#)

Solicitations for procurements with a contract that have a maximum potential contract value of more than \$25,000 (including renewal periods) are posted to the ESBD for 14 calendar days or more, in accordance with Texas Government Code, Section 2155.083. A contract or procurement award made by a state agency that violates the applicable minimum time for posting required by Section 2155.083, Subsections (h) and (i) is void. Major consulting services contracts must also be posted to the ESBD.

17 Vendor Conference - [PCO Operating Procedure 019](#)

A vendor conference is a structured, face-to-face meeting with potential respondents to clarify what is being purchased, to further explain PCO's procurement process, and to answer questions related to the requirements in the solicitation packet. The purpose of the conference is to provide

⁸⁰ Tex. Gov't Code §§ [2054.158\(b\)\(4\)](#), [2054.160\(a\)\(2\)](#), [\(b\)](#) (MIRP with value of at least \$10 million); see also, [GAA](#), [H.B. 1, 86th Leg., R.S., art. IX, sec. 9.01\(d\)](#) (MIRP with value exceeding \$10 million).

⁸¹ [GAA](#), [H.B. 1, 86th Leg., R.S., art. IX, sec. 9.02\(c\)\(3\)](#).

⁸² Tex. Gov't Code §§ [2054.1181\(j\)](#), [2054.160\(c\)](#), [\(d\)](#) (MIRPs with value of at least \$10 million); see also, [GAA](#), [H.B. 1, 86th Leg., R.S., art. IX, sec. 9.01\(e\)](#), [\(f\)](#), [\(g\)](#).

⁸³ [GAA](#), [H.B. 1, 86th Leg., R.S., art. IX, sec. 9.01\(h\)](#).

⁸⁴ [GAA](#), [H.B. 1, 86th Leg., R.S., art. IX, sec. 17.10\(c\)](#).

⁸⁵ [GAA](#), [H.B. 1, 86th Leg., R.S., art. IX, sec. 9.01\(i\)](#).

respondents with additional information or clarifications that may be helpful in formulating their responses.

A vendor conference is strongly recommended if the solicitation requires a HUB Subcontracting Plan, is high dollar, or complex. Otherwise, a vendor conference is optional and the decision to hold one is at the discretion of the program/division and PCO Purchaser/contract administrator.

The timeframe to obtain the service should be a consideration when deciding whether to include a vendor conference in the procurement process. A vendor conference should be scheduled in the middle of the open solicitation period, to allow respondents time to review the questions and answers posted on the ESD and develop their proposal accordingly.

18 Non-Competitive Contracts, and Agreements - PCO Operating Procedure 030

18.1 Interagency Contracts—the Interagency Cooperation Act

The Interagency Cooperation Act, Texas Government Code [Chapter 771](#), provides that a state agency may agree to contract with another state agency for the provision of necessary and authorized services and resources. An interagency contract (IAC) entered into pursuant to Chapter 771 must specify:

- a. The kind and amount of services or resources to be provided;
- b. The basis for computing reimbursable costs; and
- c. The maximum cost during the term of the contract.

All IACs must be approved by the administrator of each agency that is a party to the contract.

TDA contracts with many other state agencies to carry out the duties of the TDA programs. In addition, TDA itself relies on a number of other state agencies to procure services either as required by statute, such as telephone and certain information technology services, or because in many cases it results in significant cost savings. IACs are based on reimbursable costs and do not include additional costs or mark-ups for profit. IACs may include memorandums of agreement, memorandums of understanding, and letter agreements.

There are special prohibitions related to IACs with institutions of higher education. Pursuant to [Section 51.955](#) of the Texas Education Code, a state agency that expends appropriated funds may not enter into a research contract with an institution of higher education if the contract includes a provision precluding public disclosure of any final data generated or produced in the course of executing the contract unless the agency reasonably determines that the premature disclosure of such data would adversely affect public safety, the protection of intellectual property rights of the institution of higher education, publication rights in professional scientific publication, or valuable confidential information of the institution of higher education or a third party.

18.2 Interlocal Contracts — the Interlocal Cooperation Act

Interlocal cooperation contracts are agreements between a state agency and a local governmental entity or between two or more local governmental entities, such as cities or counties. Such contracts are authorized and regulated by the Interlocal Cooperation Act, Texas Government Code [Chapter 791](#), and generally relate to the provision of governmental functions and services. The statute should always be consulted for specific authority and requirements. However, generally, an interlocal contract must:

- a. Be authorized by the governing body of each party to the contract unless a party to the contract is a municipally owned electric utility, in which event the governing body may establish procedures for entering into interlocal contracts that do not exceed \$100,000 without requiring the approval of the governing body;
- b. State the purpose, terms, rights, and duties of the contracting parties; and
- c. Specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

In addition, an interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract.⁸⁶

18.2.1 Memorandum of Agreement (MOA) and Memorandum of Understanding (MOU)

A written document that represents the agreement of the parties regarding the subject matter of the document; it does not usually involve the transfer of funds in exchange for services but may document the transfer of funds required by statute. MOUs and MOAs are sometimes directed by statute.

⁸⁶ Tex. Gov't Code [§ 791.011\(d\), \(e\)](#).

Vendor Selection

19 Vendor Selection

19.1 Bid Room -

PCO coordinates the handling of informal and formal solicitations. Upon receipt by PCO, sealed responses must be marked with a date and time stamp directly on the package. Responses remain sealed and kept in a secure place until the solicitation opening date. Responses received by email are treated as sealed response documents and kept secure until the response due date and time. Electronic submissions are submitted to the PCO Bid Room mailbox, bidroom@texasagriculture.gov. A copy of the email received with the response documents attached must reflect the date and time of receipt and must be stored in the solicitation file. All responses received are tracked by logging receipt information into a Response Log.

19.2 Screening Responses — Bids, Proposals, and Applications

19.2.1 Administrative Review

Each response is examined to determine whether it is responsive to the solicitation. Only responses responsive to the solicitation may be evaluated.

19.2.2 HSP Evaluation

When an HSP is required, all respondents (HUBs and Non-HUBs) must include a completed HSP with their solicitation response. An HSP is required regardless of if the respondent intends to self-perform or subcontract for services, equipment, materials and/or supplies to fulfill the contract.

The PCO purchaser will provide the HUB coordinator with the HSP, and a copy of the proposal, for review and approval, prior to forwarding a response for further evaluation. Responses with non-responsive HSPs will be disqualified.

The respondent shall utilize one of the following good faith effort (GFE) methods in preparing the initial HSP for submission with the proposal, or to amend an existing HSP post contract award. The GFE methods are as follows:

- a. **Solicitation Method:** The respondent must notify at least three currently Texas-certified HUBs per subcontracting opportunity and provide the certified HUB at least seven working days to respond. The date the notification is sent is day zero and does not count in the required seven working days (excluding the day the notice was sent, weekends, federal and state holidays, and any other day the executive director has closed the agency (i.e., cold weather days)). The notice must provide the scope of work for HUB to determine if they are interested in pursuing, provide a location where the specifications are located (i.e., link to the posting on ESBD or a physical location, etc.), and information regarding insurance and bonding requirements (if applicable). In addition, the respondent must notify a minimum of two minority, women, trade organizations and/or business development centers providing the same information above as well as the same time frame for response.
- b. **Mentor-Protégé:** A mentor may utilize a protégé from a state agency sponsored Mentor-Protégé (M-P) agreement for subcontracting the protégé is able to provide. The M-P relationship may be utilized in lieu of additional soliciting to HUBs.
- c. **Utilizing 100% HUBs for all subcontracting:** The respondent indicates that all subcontracting will be done utilizing HUB vendors.

- d. Meeting or exceeding the contract's HUB goal: The respondent will meet or exceed the contract HUB goal (whichever is the highest, statewide, or agency-specific) with HUB subcontractors. The respondent cannot utilize a HUB subcontractor used in a previous continuous contract for a period of five years or more.
- e. Self-Performing: The respondent is required to document how they are able to provide all services, equipment, materials and/or supplies needed to perform the contract without subcontracting. The agency must review the proposal to ensure that this is a true statement and pay careful attention to the list of key personnel, to ensure that all personnel listed are employees. Statements within the proposal that include "partners," "affiliates," "team member," and/or "consultants" indicate subcontracting activities. When in doubt, ask the respondent for a clarification. Sometimes, respondents don't think of these examples as subcontractors, but they are according to the state definition.

Regardless of the above GFE method chosen, respondents are required to provide supporting documentation to substantiate compliance. The supporting documentation must be included in the procurement file. If the solicitation response does not contain a completed HSP or contains a HSP that the agency determines was not developed in good faith, the response shall be rejected as a material failure to comply with advertised specifications. The HSP evaluation is performed by the agency's HUB coordinator ([Form PCO 816](#)) and is on a pass or fail bases. Responses that do not contain a responsive HSP cannot be considered for a contract award.

19.2.3 Respondent Evaluation

To select the respondent that provides best value to the state, TDA staff conduct an evaluation of the response in accordance with the evaluation procedure published in the solicitation. Complex procurements may have a standard evaluation process that utilizes an evaluation tool or may be conducted through a consensus scoring method.

At a minimum, an RFX evaluation team should consist of three to five scoring members who represent different subject matter areas related to the final product or service. The division should ensure appropriate subject matter representation on the team, including program, contract management, finance, IT, and others as needed. The PCO Purchaser serves as the evaluation team facilitator and is a non-scoring member. Scoring and non-scoring members of the evaluation team must be noted in the procurement file.

The PCO purchaser or grant specialist will ensure all evaluation team members complete any required ethics, confidentiality, and non-disclosure forms prior to reviewing or discussing any proposals. For contract procurements with an expected value of \$1 million or more, the SAO Nepotism Disclosure Statement for Purchasing Personnel is required. **The evaluation team cannot commence any discussions until each member has signed a non-disclosure statement and a preliminary assessment regarding actual or potential conflicts of interest have been conducted.**

Each member of the evaluation team is provided:

- a. The entire solicitation to include any addenda and Q&A documents;
- b. A list of responses submitted; and
- c. A copy of each response determined to be responsive to the solicitation following the Administrative Review.

Each response is evaluated independently against the evaluation criteria published in the solicitation. Evaluators will record their scores for each response on the evaluation tool's scoring matrix provided to them by the Purchaser. Unless prohibited by statute or agency policy, evaluators should review and score the entire response to facilitate a comprehensive evaluation of the response. In limited circumstances at PCO's discretion, division areas may have dedicated evaluators for certain criteria to best align evaluator knowledge and skillset to the review process. In these scenarios, division areas must identify the specific criteria evaluators are assigned with a clear breakdown of what each group will be assigned to score specific to their area of expertise. The use of technical advisors may be permissible during the evaluation phase if approved and as directed by PCO.

19.2.3.1 Evaluators must not communicate with a respondent. All questions related to the response, or the evaluation process must be directed to the PCO purchaser facilitating the evaluation. The PCO Purchaser may follow up with the respondent to obtain clarification or seek assistance from a technical advisor.

19.2.3.2 Oral Presentations

After the response evaluation phase, if permitted by the solicitation, TDA may provide respondents the opportunity to provide an oral presentation. Oral presentations and demonstrations must be fair to all respondents. To ensure the integrity of the oral presentation process, evaluator information and informational document for the respondents must be kept separate and secure. TDA utilizes a Red and Blue folder system for oral presentations. Both folders are clearly labeled: one folder for evaluator materials and one folder for respondent materials.

19.2.3.3 Best and Final Offer (BAFO)

After oral presentations or demonstrations are completed, TDA staff may work with PCO to request a BAFO from the respondents. BAFOs may be requested prior to negotiation and may be used to narrow the field of competition. BAFOs are only used in the evaluation of RFX procurements.

19.2.3.4 Preferences

Preferences are established by statute.⁸⁷ A vendor must claim the applicable preference(s) in its response by marking the appropriate preference on the preference form included in the solicitation. If the appropriate box is not marked on the preference form, a preference will not be granted unless other documents included in the response sufficiently demonstrate that the vendor may receive the preference and is requesting the preference. Upon the agency's request, the vendor must provide adequate documentation to support a claimed preference below.⁸⁸

- a. Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- b. Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran

⁸⁷ Tex. Gov't Code ch. 2155, [subch. H](#); 34 TAC [§ 20.306](#).

⁸⁸ *Texas Procurement and Contract Management Guide, Preferences*

- c. Agricultural products grown in Texas
- d. Agricultural products offered by a Texas bidder
- e. Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- f. Services offered by a Texas bidder that is not owned by a Texas resident service- disabled veteran
- g. Texas Vegetation Native to the Region
- h. USA-produced supplies, materials, or equipment
- i. Products of persons with mental or physical disabilities
- j. Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
- k. Energy efficient products
- l. Rubberized asphalt paving material
- m. Recycled motor oil and lubricants
- n. Products produced at facilities located on formerly contaminated property
- o. Products and services from economically depressed or blighted areas
- p. Vendors that meet or exceed air quality standards
- q. Recycled or reused computer equipment of other manufacturers
- r. Foods of higher nutritional value
- s. Commercial production company or advertising agency located in Texas

19.2.3.5 Tie Bids

A tie bid occurs when two or more bids or responses to a competitive solicitation receive the same score. If after final evaluation scores are calculated the winning bidder or respondent cannot be determined because two or more bids or responses received the same score, the tie will be resolved in accordance with PCO Operating Procedure 020.

19.2.3.6 Certification of Vendor Assessment Process

Pursuant to Texas Government Code Section [2261.0525](#), before a state agency may award a contract to a vendor, the agency's procurement director must review the process and all documents used by the agency to assess each vendor who responded to the solicitation. The procurement director or designee (a person whose position in the agency's procurement office is at least equal to the position of contract manager) must certify in writing that each response to the solicitation was assessed using the written criteria in the solicitation or, if applicable, the written evaluation criteria established by the agency, and that the final calculation of scoring responses was accurate. Any scoring changes following initial assessment and scoring of responses must be justified in writing. The

written justification must be reviewed by the agency's procurement director and the procurement director must certify in writing that the change in scoring was appropriate. Form PCO 810, Vendor Selection Justification and Procurement Certification is used to document certification of the vendor assessment process.

Pursuant to Texas Government Code Section [2261.054](#), if a state agency awards a contract to a vendor who did not receive the highest score in an assessment process certified under Texas Government Code Section 2261.0525, the agency must state in writing in the contract file the reasons for making the award. Form PCO 810, Vendor Selection Justification and Procurement Certification is used to document the required justification and certification.

The completed Form PCO 810, Vendor Selection Justification and Procurement Certification must be included with supporting documentation used for contract review, approval, and execution. All approved forms must be maintained in the procurement file.

19.2.4 Litigation History Review

If required, the purchaser will submit a request to the contracting attorney assigned to the solicitation. If respondents are required to provide litigation histories, the assigned Contracting attorney will coordinate with:

- a. Any statutory or regulatory prohibitions against the agency's contracting with potential vendors that have been subject to administrative enforcement and/or disciplinary action; and
- b. Litigation to check if the respondent has any active lawsuits pending against the state.

The information may be considered as an indicator 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 and responsibility, and the vendor's ability to provide reliable maintenance agreements.

19.2.5 Financial Capacity Review

TDA's Financial Services Division may provide financial risk assessment of proposed procurements and assistance identifying the need for a review of financial capacity of any respondents; subject matter expert(s) to evaluate financial capacity submitted with responses; assistance developing cost workbooks and financial provisions and requirements; subject matter expert(s) to review price component for high-risk, high-value, or other applicable procurements; and assistance negotiating pricing and developing financial payment structure.

19.2.6 Reference Checks

If applicable, purchasers may check vendor references by completing Form PCO 818 - Vendor Reference Survey Form.

20 Notice of Disqualification and Intent to Award (aka Tentative Award Procedure)

PCO Operating Procedure 022

To provide respondents with timely notice and information, and to ensure transparency and public confidence in TDA procurement processes, it is the policy of TDA PCO that a respondent should be notified as soon as reasonably practicable following the determination that the

respondent's solicitation response is nonresponsive or has been disqualified from further review, including disqualification for failure to submit a compliant HUB Subcontracting Plan. In addition, unless it is determined to be contrary to the best interests of the agency, it is the intention of TDA PCO to provide notice to all respondents of the intent to award at the time the agency has successfully negotiated a contract.

Contract Formation and Award

21 Contract Formation and Award

21.1 Contract Negotiations

Negotiations may not begin until program staff have informed the purchaser of their selection to proceed to negotiations. Division staff must do this by initiating and sending the partially completed [Form PCO 810](#) (Vendor Selection Justification and Procurement Certification) signed by the division staff, to the purchaser. Once the purchaser informs the program in writing that they may begin negotiations, Division staff may begin scheduling the negotiation meetings. PCO is not required to be involved in negotiations. However, Division staff must have their assigned attorney present during negotiations and included on all related correspondence. If Division areas need guidance on conducting negotiations, or need assistance scheduling the negotiations, PCO will be available to assist.

The outcome of contract negotiation will depend on the procurement method and the items being negotiated but will always be guided by obtaining the best value for the state. Negotiation is permitted for RFPs (includes consulting), RFOs, and RFQs for professional services. However, negotiations must not materially alter the requirements, scope of services, or specifications of the published solicitation.

Negotiations are not permitted under an IFB. However, if there is only one qualified bidder, then the contract developer may negotiate with the sole bidder, including price, provided the negotiation does not result in a material change to the advertised specifications.

Negotiations may include obtaining clarifications and discussing any ambiguities or deficiencies in the business proposal, the cost proposal, service delivery strategies, and any other items. Appropriate Division staff involved in negotiations may include Division SMEs; Contract Attorneys; contract managers; and purchaser, if requested. There are a few ground rules for negotiating state contracts:

- a. All changes or revisions to the offer must be documented in writing. **Negotiations must not materially alter requirements of the published solicitation.** Care must be taken by the agency to avoid inadvertently changing the advertised procurement objectives.
- b. Any information related to a negotiation must be provided to all potential contractors who are being considered; however, clarifications may be unique. No contractor being considered for award should receive information that would give them a competitive edge over others. Information about an offer is not shared with any other potential contractors.
- c. Before TDA awards a contract for goods or services, the Director of Procurement, or designee, must certify that the procurement file and procurement checklist are consistent with the model procurement file checklist created by the CPA. The certified checklist must be maintained with the procurement file.

Division staff should begin the negotiation process by developing a prioritized list of issues, including the agency's requirements on risk mitigation items such as insurance, limitation of liability, indemnification, liquidated damages, data use agreements (including protections for breach of confidential data), escalation vehicles, corrective action plans, etc. It is crucial that program staff enter negotiations knowing what is most important and having a list of items to draw from during the give-and-take process of negotiations.

If using liquidated damages, prior to negotiations program staff should also develop a liquidated damages schedule that protects what is most important, keeps the contractor on track, and reflects

as justifiably as possible the value of deliverables for which a value is difficult or impossible to assess. In addition, almost every contract negotiation will cover the following negotiation topics: order of precedence, limitations of liability, indemnification, and data security and ownership.

21.2 Purchase Orders and Contracts

When the solicitation is closed, evaluations are finalized, and contract negotiations are complete, the terms and conditions of the agreement are documented to prevent misunderstanding or conflict and to create a legal, binding, and enforceable obligation.

Purchase orders and contracts are documents processed by TDA to purchase goods or services. The main difference between the two documents is their duration. While purchase orders represent single, short-term transactions, contracts are used to register the long-term agreement between the involved parties and may also include renewal options. Although terms and conditions are typically listed in both purchase orders and contracts, terms and conditions are more specific in contracts and are used when there are more complex terms associated with the purchase.

For TDA procurement operations, additional guidance is provided below to help distinguish the characteristics associated with the following TDA contract documents.

a. Transactional Purchase Order (TPO)

A TPO is a type of purchase order. It is a legally enforceable agreement to purchase a good or service, established for a single procurement term not to exceed 12 months (no stated renewals which may cross fiscal years). The point in time purchase (not attached to an existing contract) begins and ends with the delivery or completion of the purchased good or service.

Once accepted by the contractor, a TPO is a legally binding contract and includes contract monitoring/management activity.

b. Contract

A contract is a legally enforceable agreement between two or more parties.

c. Purchase Order (PO)

A PO — or a TPO — when issued against a contract is an encumbering mechanism for payment purposes.

21.3 Signature Requirements

A PO and contract signature document should contain at a minimum the following:

- a. Agency name and address;
- b. Agency contract or PO number;
- c. Date of the order;
- d. Term of contract (delivery period after receipt of order or beginning and ending dates of service);
- e. Contractor's name, payee/vendor identification number, and address, including zip code;
- f. NIGP Class/Item code for each item;
- g. Purchase Category Code; and

- h. List of contract documents and their order of precedence:
 - i. The “four-corner” contract or PO with listing of awarded items;
 - ii. The original solicitation documents, as modified by addenda;
 - iii. The proposal submitted by the contractor as modified by any best and final offer, if applicable;
 - iv. The assumptions and exceptions as agreed upon by the agency and the contractor, if applicable;
 - v. Listing of awarded items with quantity, unit of measure, and unit price with extended totals; and
 - vi. Signature of authorized/certified purchasing representative.

21.4 Procurement Card (State Issued Credit Card)

The state issued credit card, also referred to as a procurement card (Procard), is used for purchases within TDA. The goal of the program is to increase efficiencies within divisions by providing a cost-effective method of purchasing and paying for goods and services while maintaining strict compliance with state and federal laws, rules, regulations, and TDA policies relating to purchasing, accounting and asset management functions. Compliance with the [TDA Procurement Card Policy](#) is MANDATORY.

The Procard is only a method of payment (not a procurement method) and does not exempt the cardholder from following state purchasing laws, CPA procurement rules and regulations, or TDA purchasing policies.

21.5 Contract Terms

21.5.1 Essential Elements (See Comptroller’s Guide, Legal Elements of a Contract)

As set out in the Comptroller’s Guide, the essential elements necessary to form a binding contract are usually described as follows:

- a. Offer;
- b. Acceptance;
- c. Legal purpose;
- d. Consideration;
- e. Certainty of subject matter; and
- f. Competent parties.

21.6 Essential Provisions (See Comptroller’s Guide, Contract Terms).

Essential provisions that must be included in every contract are:

Terms Necessary for the Formation of a Legally Binding Contract. The necessary elements of a contract are offer, acceptance, legal purpose, consideration, certainty of subject matter, and competent parties. Accordingly, each contract must include terms which address the following:

- a. Scope of work;
- b. Financial provisions (e.g., price and payment terms);

- c. Contract term and termination provisions; and
- d. Identification of the contracting parties.

By their nature, these terms are transaction-specific; therefore, the text may vary for each contract.

21.7 Texas Required Contract Clauses.

The most common statutorily required contract clauses are compiled on the list of Texas Required Contract Clauses located in the Comptroller's Guide Appendix 23. The Texas Required Contract Clauses are required to be included in both solicitations and contracts unless an exception is noted.

21.8 Recommended Contract Clauses

Recommended contract clauses are included in the Comptroller's Guide and are typically included in most contracts. Recommended clauses include, but are not limited to the following:

- a. Administrative provisions;
- b. Provisions that allocate risk and specify remedies;
- c. Provisions relating to the identification and safeguarding of confidential information; and
- d. Provisions relating to rights and ownership of work product and intellectual property.

21.9 Minimum Required Terms and Conditions

At a minimum, a TDA contract must contain the following terms and conditions:

- a. Begin and end date;
- b. Description of the goods and services to be provided;
- c. Specific requirements such as performance measures, and/or milestones, specific remedies, and any liquidated damages;
- d. Data Use Agreement (DUA) and Security and Privacy requirements, as applicable;
- e. Payment and invoicing information;
- f. Renewal periods, if any, available to TDA including extension language: "Following the base term and any allowable extensions, TDA may extend any resulting Contract for not more than one additional option period to address immediate operational or service delivery needs. If the resulting Contract does not include a defined option period, the extension is limited to one year." This does not apply to a TPO. Best practice for TPO is to define the extension period in the contract;
- g. Any service level standards or agreements;
- h. Points of contacts and notice provisions;
- i. The process to change or amend the contract;
- j. All required and applicable affirmations and terms and conditions, both in the Comptroller's Guide and in other governing authority;
- k. As applicable, specific insurance requirements;

- I. Termination provisions; and
- m. Clause that states continuation is contingent on the availability of state or federal funding.

In addition, contracts subject to Texas Government Code [Chapter 2261](#) must include a remedies schedule, a graduated sanctions schedule, or both, for breach of the contract or substandard performance under the contract;⁸⁹ and when feasible, include provisions that require the contractor to carry director or officer liability insurance coverage in an amount not less than the value of the contract that is sufficient to protect the interests of the state in the event an actionable act or omission by a director or officer of the contractor damages the state's interests.⁹⁰

TDA Legal Division develops affirmation and uniform terms and conditions documents for use in contracts.

21.10 Contract File Documentation Note Regarding Texas Government Code Section 2261.204

Contracts, including grants as set forth in the statute, that are subject to Section 2261.204, are subject to specific contract file requirements: "(a) Each state agency shall include in the contract file for each of its contracts for goods or services subject to Chapter 2261 a written explanation of the agency's decision to include or not include in the contract a provision for liquidated damages or another form of liability for damages caused by the contractor. (b) A contract file must also include, if applicable, a written justification for any provision in the contract that limits the liability of a contractor for damages. (3) If an extension of a state agency's contract described in Subsection (a) modifies a provision for liquidated damages or another provision relating to a contractor's liability for damages, the agency must amend the written explanation or justification required by this section to include a justification for the modification.

21.11 Coordination and Preparation of Contract Documents

The contract manager is responsible for the coordination and preparation of the appropriate contract agreement and related documents. TDA staff must not adopt terms and conditions from another contract, even a boilerplate, without a thorough and independent review of how those terms and conditions relate to the specific procurement and contract at issue.

21.11.1 Contract Manager Responsibilities

The contract manager will:

- a. Coordinate with the TDA Legal Division to ensure the mandatory terms and conditions are incorporated into the contract and coordinate as necessary with agency SMEs.
- b. Coordinate with the TDA IT Division to determine whether the contractor will access confidential information and ensure appropriate approved language has been incorporated into the contract.
- c. Coordinate with PCO to ensure:

⁸⁹ Tex. Gov't Code [§ 2261.101](#); State agencies shall design fair and feasible standards that will hold contractors accountable for breach of contract or substandard performance under a contract without diminishing the number of able providers who are willing to contract with the state.

⁹⁰ Tex. Gov't Code [§ 2261.102](#).

- i. Necessary procurement documents like responses, negotiations, SOW, performance measures, and any other pertinent documents, are included in the contract; and
 - ii. For major information technology projects with a maximum potential contract value of at least \$10 million, that the proposed terms of the contract before starting negotiations and the final negotiated unsigned contract are provided to QAT for review.
- d. Upon award of the contract (applicable to contracts that mandated the inclusion of a HUB Subcontracting Plan (HSP) with the solicitation response), the contract manager will contact the HUB Program Office to accomplish the following prior to the contract manager initiating or providing the Notice-to-Proceed to the contractor.
- i. Schedule a HUB-Post-Contract-Award Meeting with the contractor within 10 days of the contract award notification.
 - ii. Provide a copy of the 34 TAC §20.285 outlining HUB compliance requirements throughout the duration of the contract and require the contractor to implement the HSP in good faith.
 - iii. Ensure the contractor notifies all of the HSP subcontractors (both HUB and Non-HUB) within 10 days of the contract award and provides supporting documentation of the notifications for the contract file.
 - iv. Ensure any needed updates to the HSP are done in accordance with 34 TAC §20.285 and are reflected on the Form PCO 816.
 - v. Provide guidance to the contractor for any future changes to the HSP that requires compliance with the good faith effort requirements and must obtain prior approval from the agency (HUB Program and program area) prior to engaging a new subcontractor. Note, engaging a contractor without prior approval may be considered a breach of contract.
 - vi. Provide guidance to the contractor on the submission of the Progress Assessment Report (PAR) with the invoice as required as condition of payment. This includes submitting a copy to the HUB_PAR@TexasAgriculture.gov mailbox for tracking and reporting.
 - vii. Solidify the HSP Contract Provision on the PCO 814 - HUB Post Contract Award Form and require the contractor's signature. Obtain TDA signatures: The HUB Coordinator signs the Form PCO 814 and submits to the contract manager for signature.
 - viii. The HUB Coordinator forwards all the HUB Post Contract Award documents to the contractor manager to include in the contract file.
- e. Ensure the contract addresses concerns or issues raised during review.

21.11.2 Review of Draft Contract

The contract manager must review the draft contract for content and accuracy to include:

- a. Contractor name: The contractor's name on the contract and all required forms is the complete and correct legal name of the entity;

- b. Signature authority: The individual designated to sign the contract on behalf of the contractor and TDA are authorized to bind the party in contracting decisions;
- c. Contract attachments/forms: All required attachments/forms are included with the contract, as applicable:
 - i. The appropriate affirmations and contract terms and conditions
 - ii. The solicitation documents
 - iii. The contractor's response
 - iv. Any negotiated changes
 - v. Required budget documents
 - vi. Complete Security and Privacy Inquiry, as applicable
 - vii. Other required forms (e.g., the Certification Regarding Lobbying form required for contracts, grants, loans, and cooperative agreements that utilize federal funds.)
 - viii. Contractor Written Acknowledgement of Completion of Cybersecurity Training Program Form. *See Section 23.4.*
- d. Payment and invoicing information: If there is a total dollar amount it must be correct, and budgets must be calculated accurately and include invoicing information approved by the TDA Accounts Payable; and
- e. Effective dates: The effective begin and end dates are specified and correct.

21.12 Certification Regarding Lobbying

The [Certification Regarding Lobbying](#) form is required for contracts, grants, loans, and cooperative agreements that utilize federal funds. The Certification Regarding Lobbying is required once during the life of the contract.

If any federal lobbying reporting becomes necessary, a [Disclosure of Lobbying Activities Form \(SF-LLL\)](#) should be provided by the contractor. Any forms received should be maintained in the contract file.

21.13 Required Screening for Potential Contractors

21.13.1 Vendor Checks

TDA must demonstrate due diligence to ensure vendors are eligible to do business with the State of Texas before contract award. Vendor check activities must be documented at the time they are performed, and records maintained in the contract file. This policy applies to all contracts except governmental entities and governmental institutions of higher education. Consult with assigned attorney if further clarification is needed regarding applicability of vendor checks.

When a PCO purchaser is involved in the procurement, the assigned PCO purchaser performs all required vendor checks, **except** for program-specific vendor checks, and maintains supporting documentation. If, for any reason, vendor checks are delegated to another individual to conduct, the purchaser or contract manager, as applicable, must ensure the checks have been completed and required documentation is maintained in the contract file.

Vendor checks are completed before any contract award, extension, renewal, and in conjunction with contractor organizational changes. Program areas may elect to establish policies to conduct checks at other key contract activities, such as monitoring. Procedural information is available in the Legal Entity Screening Quick Reference Guide (Screening QRG).

Screening QRG, which includes a checklist, provides the necessary steps for staff to perform each vendor check. The Screening QRG was developed to aid divisions that procure and manage contracts in complying with general TDA vendor check and documentation requirements. However, the Screening QRG does not address program, solicitation, or contract specific vendor checks that may be required pursuant to applicable law or other governing source and programs must ensure all checks are properly and timely completed and documented. Divisions that manage contracts must utilize the Screening QRG and checklist tools or, if using different tools must ensure alignment with the established requirements (steps and applicability), compiled, and outlined in the Screening QRG and checklist. Also, the contract manager must complete and document any additional vendor checks not included on this tool/job aid, but required pursuant to TDA program policy, program rule or other applicable law, or contract requirement.

Before contract execution, the purchaser or program area, whichever is applicable, must access and search various databases to screen a vendor's eligibility to conduct business with the State of Texas to include:

- a. Texas Identification Number (TIN) – Texas Comptroller of Public Accounts;
- b. Warrant/Payment Hold – Texas Comptroller of Public Accounts;
- c. Franchise Tax Account Status – Texas Comptroller of Public Accounts;
- d. Texas Debarred Vendor List – Texas Comptroller of Public Accounts;
- e. System for Award Management (SAM) – Federal Exclusions;
- f. OFAC Sanctions Lists including the SDN List – Federal Exclusions;
- g. Texas Legislative Prohibitions: Divestment Statute Lists – Texas Comptroller of Public Accounts; and
- h. Vendor Performance Tracking System (VPTS).

The warrant/payment hold check, and the System for Award Management (SAM) Check (Federal Exclusions Search) must be performed not earlier than the seventh day before the date of contract or purchase order execution and not later than the date of contract or purchase order execution.

NOTE: For competitive procurements processed by PCO, an initial warrant hold and SAM checks are conducted by PCO Purchaser prior to contract negotiations. An additional warrant hold and SAM check must be performed within seven (7) days prior to award. If contract execution takes longer than seven (7) days, an additional warrant hold and SAM check must be performed.

If an issue is identified staff may refer to the Screening QRG and [Section 24.22 regarding Escalation of Contract Issues](#), to determine the appropriate course of action. TDA staff must maintain documentation to support the outcome of all vendor checks and any escalation communication in the contract file.

21.13.2 Additional Vendor Checks

Staff are required to complete vendor checks in accordance with federal, state, and agency requirements. Any additional vendor checks required by applicable law, program policy, program rule, contract requirement, or other governing authority must be completed and documented. Below are some examples of additional vendor checks that may be required, although this may not be an all-inclusive list. Consult with program management and, if necessary, TDA Legal Division for questions on required additional checks.

- a. Criminal History Check: If applicable, verify the owners and related parties associated with a legal entity do not have a criminal conviction that would prohibit TDA from contracting with the legal entity; and
- b. Licensure/Certification: If the legal entity is required to be licensed or certified, verify the license/facility identification number, and license/certification expiration date

21.14 Disclosure of Interested Parties

In accordance with Texas Government Code [Section 2252.908](#), disclosure of interested parties applies to a contract with a value of \$1 million or more, a contract that requires an action or vote by the governing body or a contract that is for services that would require a person to register as a lobbyist under Texas Government Code [Chapter 305](#).⁹¹

Exemptions to the requirement are:

- a. A sponsored research contract of an institution of higher education;
- b. An interagency contract of a state agency or an institution of higher education;
- c. A contract related to health and human services if:
- d. The value of the contract cannot be determined at the time the contract is executed; and
- e. Any qualified vendor is eligible for the contract;
- f. Contracts with publicly traded business entity, including a wholly owned subsidiary of the business entity; and
- g. Contracts with electric utility or gas utility, as those terms are defined in the statute.

The Texas Ethics Commission (TEC) is the state agency with the administrative duty over this requirement. TEC rules governing this requirement are located in Title 1, [Chapter 46](#) of the TAC. Additional information, Form 1295 - Certificate of Interested Parties, and an online filing application ([Form 1295 Electronic Filing Application](#)) are located on the TEC's website at www.ethics.state.tx.us. If vendors are required to complete Form 1295 - Certificate of Interested Parties, it must be filed with the TEC and acknowledged by the contracting agency before the agency may sign the contract.

The information reported by a contracting entity on the Certificate of Interested Parties form submitted in support of a TDA contract may require revision during the term of the TDA

⁹¹ Texas Government Code Section [2252.908\(b\)](#) was amended during the 86th Legislative Session to apply disclosure of interested parties to a contract for services that would require a person to register as a lobbyist under [Chapter 305](#) of the Texas Government Code. The amendment was effective June 14, 2019. (The section was amended by both House Bill 1495 and Senate Bill 65. [House Bill 1495](#) was effective June 14, 2019 and [Senate Bill 65](#) was effective September 1, 2019.)

contract. If a change to the disclosure of interested parties should occur or if an amendment or extension of a contract would require disclosure, the contractor must complete Form 1295 - Certificate of Interested Parties to reflect the updated information. The new Form 1295 is submitted to the TDA contract manager, who must acknowledge receipt of the form using the TEC online acknowledgement within 30 calendar days from TDA receipt of the filed 1295 and maintained in the contract file.

TEC posts the completed Form 1295 to its website within seven business days after receiving the TDA's acknowledgement and sends confirmation to PCO. Additional information may be found on the TEC website.

22 Contract Award

22.1 Notification of Contract Award

In the following cases, TDA must provide notice of contract awards (each notice is in addition to other applicable notices listed):

- a. ESB: If the maximum potential contract value exceeds \$25,000.00, the notice of award is posted to the ESB. Proof of the ESB posting is maintained in the procurement file.
- b. QAT: If an award of a major information resources project, notice is provided to the QAT within 10 business days of award.
- c. LBB:⁹² Contracts which meet a certain threshold, unless exempt, are reported through the LBB Contracts Database, subject to specific timelines:
 - i. Maximum potential contract value greater than \$50,000.00 for construction, professional services, or consulting services contracts;
 - ii. Maximum potential contract value greater than \$50,000.00 for all other contract types;
 - iii. Maximum potential contract value greater than \$100,000.00 for major information systems;
 - iv. Maximum potential contract value greater than \$1 million for non-competitive/sole source or emergency procurements; and
 - v. Maximum potential contract value greater than \$10 million for all other contract types.
- d. TDA Website:
 - i. For grants executed from an RFA, a notice of award is posted to the TDA Grants webpage.
 - ii. For contracts not posted to the LBB contracts database, TDA must post each DIR SOW⁹³ entered into by TDA for the purchase of goods or services from a private vendor with a maximum potential contract value greater than \$0.
 - iii. State law requires Texas state agencies to publish the purpose of each grant exceeding \$25,000 awarded from state appropriations on their websites. The CPA's

⁹² Additional information is available on the [LBB Website](#).

⁹³ Tex. Gov't Code [§ 2157.0685](#); 1 TAC [§ 212.41\(c\)](#).

office must post a list of links to the grant information displayed on the agencies' websites.

- e. Respondents: TDA may choose to send written notice of non-selection.

NOTE: Different oversight agencies may not use the same standard for determining contract value. For example, the contract value for SPD reporting, review, and delegation requirements (see Section 13.4 regarding Contract Value Estimate) is defined differently than for LBB reporting purposes, or IT commodity purchases under DIR contracts.

22.2 LBB Notification—Attestation Letters

TDA is required to provide notification to the LBB pursuant to Article IX, Section 7.12 of the GAA by submission of an attestation letter and contract documents for certain contracts in the format required by the LBB. For purposes of Section 7.12 of the GAA, a contract is defined as, "a contract, grant or agreement, including a revenue generating contract, an interagency or interlocal grant or agreement, purchase order or other written expression of terms of agreement or an amendment, modification, renewal, or extension of such for the purchase or sale of goods or services that was entered into or paid for, either in whole or in part, by a state agency or institution of higher education."⁹⁴

22.2.1 LBB Contracts Database

An attestation letter and contract documents must be provided to the LBB for a contract if the expected amount of the contract meets or exceeds, or may reasonably be expected to meet or exceed, either of the following thresholds:

- a. \$10 million; or
- b. \$1 million in the case of a contract awarded:
 - i. As a result of an emergency or following an emergency procedure allowed by statute; or
 - ii. Without issuing a request for proposal, request for bid, or other similar process common to participation in the competitive bidding processes required by statute, rule, or ordinary and commonly recognized state policies and procedures. Enrollments under \$10 million are excluded from the attestation requirement.

Contract documents include the solicitation, contract, amendments and for major consulting contracts, a finding of fact memo from the Governor's Office. Notification is provided by uploading all the required information into the LBB Contracts Database.

22.2.2 LBB Attestation Letter

As applicable, a new contract may not move forward to execution without the letter provides:

- a. A description of the contract;
- b. Certification concerning the process used to award the contract; and
- c. Certification concerning management controls.

⁹⁴ [GAA](#), H.B. 1, 86th Leg., R.S., art. IX, sec. 7.12(a).

22.3 Contract Award Certification

22.3.1 PCO Procurement Process

The Director for PCO will review the procurement process used to award the contract and, if appropriate, certify that the process used was consistent with:

- a. The Comptroller's Guide; and
- b. All applicable statutes, rules, policies, and procedures related to procurement and contracting of goods and services, including compliance with conflict-of-interest disclosure requirements.

22.3.2 Non-PCO Procurement

If PCO did not manage the procurement, the Director for the program area responsible for the procurement shall complete the attestation for contract award. Contract award activity for which program area is regularly responsible includes:

- a. Affiliation agreements;
- b. Interagency agreements; and
- c. MOAs/MOUs.

23 Contract Management Certification

The Director for the program area or Assistant Commissioner or their designee for the area responsible for contract monitoring, management, and oversight will certify the program has an effective process and adequate management controls to:

- a) Verify vendor performance and deliverables for the contract;
- b) Only pay for goods and services that are within the scope of the contract or procurement; and
- c) Calculate and collect any liquidated damages associated with vendor performance.

If the responsible Director or Assistant Commissioner is unable to make certification, they must work with TDA Legal Division to determine if the requirements of Article IX, Section 7.11 of the GAA are inapplicable or if a legal justification exists for the alternative process. If a legal justification is identified, the Assistant Commissioner will certify the alternative process used, identify the individual(s) directing the use of that alternative process, and document this in the attachment to the attestation letter.

It is the responsibility of PCO to upload the solicitation, contract, and the required attestation letter (Reference Section 23.2.2 regarding LBB Notification—Attestation Letters) into the LBB Portal before the first payment under a contract will be made, but no later than 30 calendar days after the date the contract is awarded. For an emergency procurement, the solicitation, contract, and attestation letter must be uploaded within 48 hours of making a payment.

At least 30 calendar days prior to extending an existing contract beyond the base term and optional extensions provided for in the contract, PCO provides notice of the extension by uploading the approved extension memo and documents specified in Article IX, Section 7.12(d) of the GAA to the LBB contracts database, regardless of whether the documents are otherwise required to be uploaded to that database.

Failure to satisfy the notification requirements of Article IX, Section 7.12 of the GAA could result in enhanced monitoring by the LBB, auditing by the State Auditor's Office, required agency consultation with the QAT and/or CAT, or contract cancellation.

23.1 Other Certifications

[Form PCO 810 Vendor Selection Justification and Procurement Certification Form](#) is used to document certification of the following by the procurement director, or designee:

- a. Contracts with a Value Exceeding \$5 Million: Pursuant to Texas Government Code Section [2261.255\(1\)](#), the solicitation and purchasing methods and contractor selection process complied with state law and agency policy.
- b. Verification of Use of Best Value Standard: The agency complied with Texas Government Code Section [2155.0755](#), agency policy, and the Comptroller's Guide in the purchase.

See also, Section 20.2.3.6 regarding Certification of Vendor Assessment Process.

The completed PCO 810 must be included with supporting documentation attached to Form PCO 810 used for contract review, approval, and execution. The approved Form PCO 810 must be maintained in the procurement file.

23.1.1 Form PCO Routing Request and Electronic Signature of Contracts

DocuSign is a tool used by many program areas to obtain electronic signatures from the vendor and the TDA signature authority to execute a contract. Only individuals with signature authority will be given DocuSign accounts.

Program staff must complete [Form PCO 811 Contract Routing and Approval Request](#).⁹⁵ The purpose of Form PCO 811 [Contract Routing and Approval Request](#) is to direct TDA contracts, amendments, renewals, and extensions through approval routing of the proposed contract documents. This form is completed for any document requiring CAPPs Financials approval routing and for all DocuSign signature routing. The requester shall consult with TDA Legal Division before submitting to PCO. The information provided on the routing request form will be used by PCO to create the document routing approval path DocuSign for contractor signatory and TDA signatory execution.

23.2 Vendor Debriefing – PCO Operating Procedure 023

Debriefing is the act of informing vendors, applicants, contractors, or service providers (respondents) that participated in a particular procurement or grant of the strengths and weaknesses of their response – that is, a bid, proposal, offer, or application – relative to the advertised evaluation criteria as well as how the agency's decision complied with applicable procurement law and the published solicitation. It is not a forum to discuss the responses submitted by other respondents, or any information that may be confidential by law. Debrief meetings may not be held until after notification of contract award is publicly posted.

Following the public posting of notice of contract award and upon the receipt by PCO purchaser of a request for a debrief by a respondent, a PCO team member will hold a debrief meeting with the requesting respondents as soon as practical.

⁹⁵ Form PCO 811 meets the requirements of Tex. Gov't Code § 2261.254(c), (d).

23.3 Bid Protests

Bid protests filed by a vendor who is allegedly aggrieved in connection with a solicitation, evaluation or award of a contract by TDA shall follow the requirements set forth in [Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter Q](#).

23.4 Cybersecurity Training and Required Verification of Completion

For contracts where the contractor will require access to a TDA computer system or database, the contractor shall comply with the requirements of [Section 2054.5192](#) of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program. Section 2054.5192 requires all applicable contractors to complete a DIR-certified cybersecurity training program during the contract term and any renewal period.

Except for state agencies and local governments, contractors verify completion of the requisite training by submitting Form 3834, *Contractor Written Acknowledgement of Completion of Cybersecurity Training Program*, to the TDA contract manager maintained in the contract file. Reference DIR's website for more information: <https://dir.texas.gov/information-security/statewide-cybersecurity-awareness-training?id=154>.

23.5 Insurance

When applicable, contractors should carry insurance in the types and amounts set forth in the contract or procurement document. No contractor should commence work until it has obtained the required insurance and until evidence of such insurance has been reviewed and approved by the contract manager.

Insurance should be evidenced by delivery of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates, and compliance with all applicable required provisions. The delivery timing and location should be in accordance with the procurement or contract. Additionally, it is recommended to specify in the insurance requirements of the procurement or the contract that, upon request, the contractor is required to provide, without expense, copies of the policies and all endorsements.

Insurance should be written by a company licensed to do business in the State of Texas at the time the policy is issued and should be written by a company with an A.M. Best rating of A- or better.

Contractor should be responsible for deductibles and self-insured retention, if any, stated in policies. All deductibles or self-insured retention should be disclosed on the certificate of insurance required above. If coverage is underwritten on a claims-made basis, the retroactive date should be coincident with the date of the contract, and the certificate of insurance should state that the coverage is claims made and include the retroactive date.⁹⁶

Insurance coverage should be maintained for the time period set forth in the contract. Coverage, including any renewals, should have the same retroactive date as the original policy applicable to a project. Contractors should be required — on at least an annual basis, upon any policy expiration/renewal, or upon any substantive change — to provide the contract manager with a certificate of insurance as evidence of insurance coverage. **Insurance is the responsibility of the division contract manager.** Upon receipt of each updated certificate

⁹⁶ Certain contracts may have projects or work orders that continue past the contract end date. Contract managers should work closely with the contract attorney to include requirements concerning insurance coverage after termination of the base contract as needed for the specific contract and work at issue.

provided by a contractor, the certificate should be reviewed and maintained in the contract file.

23.6 Bonds

Pursuant to contract purchasing procedures under Texas Government Code [Section 2156.011](#), a performance bond may be required in the amount reasonable and necessary to protect the state's interest before executing the contract. Recoveries under the bond may continue until the bond is exhausted.

Upon receipt, the contract manager or appropriate division staff should verify the total contract amount and the effective date of the contract to ensure that the bond is for the same amount and date. If there are any discrepancies in the value or date of a bond, it will require a revision.

A review of the bond documents should include verification of the following:

- a. Upper left corner shows the proper county;
- b. Principal and insurance fields are completed;
- c. Contract amount is completed;
- d. Course of work, project number, etc. are completed;
- e. Bond is dated and signed by the principal and surety;
- f. Bond has the corporate embossed seal (per carrier indicated);
- g. Bond has a current power of attorney and has the corporate embossed seal (per carrier indicated); and
- h. Bond has the claim notice (per carrier indicated).

23.6.1 Eligibility and bonding capacity of surety companies:

- a. Verify certification with the U.S. Department of Treasury (DOT):
 - i. http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm.
 - ii. Verify that the company is listed on the DOT's list of certified surety companies and that the company is permitted to do business in Texas.
 - iii. Print the bonding company's information for the official contract file.
- b. Verify eligibility with National Association Insurance Commissioners https://naic.org/cis_consumer_information.htm.
 - i. Enter the first surety company's name into the search field.
 - ii. Verify that the surety company is licensed in the State of Texas. If it is, the company will be marked as "Active" or "Eligible."
 - iii. Click on the company's name. This will take you to a detailed information page that includes contact information, financial status, complaint history, etc.
 - iv. Print all pages and attach to the official contract file.
 - v. Verify the underwriting limitation does not exceed the bonding capacity by the "Required 10%."

- vi. The total dollar amount on the bonds must be less than the “Required 10%.” If not, then the bonds and insurance are rejected and shall be escalated to the CQC Insurance Analyst with supporting documentation, including the contract.
- vii. Once reviewed and verified, the original bond package, due diligence paperwork, and any correspondence should be placed in the official contract file.

23.7 Bid Bonds

A bid bond is a form of security deposit that is held by the agency until the awarded vendor provides the minimum required insurance and executes the contract. A bid or security bond is the financial guarantee by the respondent that the:

- a. Response is financially sound;
- b. Response was submitted in good faith; and
- c. Respondent accepts the solicitation requirements and is prepared to accept the contract award.

The amount of the bid bond is typically 5 percent of the total bid/proposal amount. Technically, bid bonds submitted by unsuccessful respondents expire upon award of the project to a successful respondent.

Bid bonds that are submitted by respondents that are in the form of a surety or blanket bond do not require return to respondents. Bid bonds that are submitted by respondents that are in the form of a cashier’s or certified check or irrevocable letter of credit do require return via certified mail with required receipt of acceptance.

23.7.1 Acceptable Bid Bond Submission

Acceptable methods for submitting a bid bond are:

- a. Cashier’s check;
- b. Certified check or irrevocable letter of credit from a financial institution subject to the laws of Texas; or
- c. Surety or blanket bond issued from a surety company chartered or authorized to do business in the State of Texas and acceptable to the agency.

23.7.2 Bid Bond Forfeiture

Forfeiture of bid bonds is a policy decision and should never occur without DEC approval. Forfeiture of bid bonds occur when the successful/awarded respondent either:

- a. Refuses to execute the contract as presented in the solicitation; or
- b. Withdraws for no reason other than for personal benefit. This does not include unsuccessful negotiation or value engineering outcomes, or allowance by the purchaser for a respondent’s request for withdrawal.

23.8 Construction Performance and Payment Bonds

Texas Government Code [Chapter 2253](#) governs performance and payment bonds in public works projects. Section [2253.001\(4\)](#) defines a “public work contract” to mean “a contract for constructing, altering, or repairing a public building or carrying out or completing any public work.” Section [2253.002](#) expressly exempts from the requirements of this chapter the

following public works contracts: those associated with actions relating to (i) cleanup of certain hazardous waste facilities, Health and Safety Code Chapter 361, [Subchapter F](#); (ii) enforcement of orders under the Solid Waste Disposal Act, Health and Safety Code Chapter 361, [Subchapter I](#); and (iii) underground and aboveground storage tanks, Water Code Chapter 26, [Subchapter I](#).

23.8.1 General Requirements

Texas Government Code, Section [2253.021\(a\)](#) mandates that a governmental entity, including a state agency, that enters into a public works contract with a prime contractor must require execution of a performance bond when the contract exceeds \$100,000.00 and of a payment bond when the contract exceeds \$25,000.00. This requirement must be satisfied prior to commencement of work under the contract. Texas Government Code Section [2253.021\(b\)-\(c\)](#) expressly delineate the purpose and terms of performance and payment bonds, respectively. Performance bonds are exclusively for the protection of the state agency that awards the public work contract and are conditioned upon good-faith performance of the work according to project plans, specifications, and contract documents. In contrast, payment bonds protect and may be used by entities that have a “direct contractual relationship with the prime contractor or a subcontractor” to supply labor or material for a public works project, Texas Government Code Section [2253.021\(c\)\(1\)](#). Both types of bonds must be written to provide coverage for the full amount of the contract, Texas Government Code Section [2253.021\(b\)\(2\), \(c\)\(2\)](#).

23.8.2 Additional Requirements

Texas Government Code [Section 2253.021](#) requires bonds to be executed by a corporate surety in accordance with Chapter 3503, Subchapter A of the Texas Insurance Code, made payable to the state, and written on a form that the Attorney General has approved, Texas Government Code Section [2253.021\(d\),⁹⁷ \(e\)](#). Section [2253.021](#) also specifies the contents that must be displayed on the face of the bond or in an attachment, such as: “(1) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or (2) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number,” Texas Government Code Section [2253.021\(f\)](#). Finally, Section [2253.021\(g\)](#) prohibits a governmental entity from requiring that a contractor obtain the required surety bond from a particular insurance or surety company, agent, or broker.

Moreover, [Section 2253.022](#) extends these bond requirements to an insurance company that is fulfilling its obligation by arranging for loss replacement, rather than by a cash payment directly to the governmental entity; these requirements, however, do not extend to a surety company who is complying with an obligation under a bond that had been issued for the benefit of the governmental entity. In the event a state agency does not obtain a payment bond as required by the chapter, the agency essentially takes on the liability of a surety. Section [2253.027\(a\)\(1\)](#) expressly provides that the state agency assumes the same liability that a surety would have if the payment bond had been issued and presented to the entity. Also, Section

⁹⁷ Article 7.19–1, Vernon’s Texas Insurance Code was repealed in 2005 and codified as Subchapter A of Chapter 3503, Texas Insurance Code. Acts 2005, 79th Leg., ch. 727, §§ 3 (adding ch. 3503), 18(a)(5) (repealed), 2005 Tex. Gen. Laws 1752, 2156–57, 2187.

[2253.027\(a\)\(2\)](#) permits a payment bond beneficiary to assert a lien on money due to the prime contractor in the same manner and to the same extent as liens asserted under [Chapter 53](#) of the Texas Property Code governing mechanic's, contractor's, or materialman's lien.

23.8.3 Third Party Right to Copy of Payment Bond and Contract

Texas Government Code [Chapter 2253](#) also addresses a contract party's right to bond information and creates a corresponding obligation on the governmental entity to furnish such information, Texas Government Code Section [2253.026](#). [Subchapter C](#) establishes various notice requirements among the contracting parties, and [Subchapter D](#) provides for claims against the required performance and payment bonds. In particular, Section [2253.071](#) authorizes withholding final payment to a contractor until final completion if the contractor abandons the contract or the contractor's default results in termination of the contract. According to Section [2253.072](#), the state has no liability for costs or expenses of litigation arising from a payment bond. Section [2253.073](#) permits suits on payment bonds by a beneficiary seeking the unpaid balance due; and Sections [2253.073](#) and [2253.074](#) provide a basis for the recovery of attorney's fees. Subchapter D further addresses assignment of claims against a payment bond, restricts the maximum recovery to the amount of the subcontract, and establishes venue as any county in which work was located. Section [2253.078](#) imposes a 1-year statute of limitations for suits on a payment bond from the date notice for a claim is mailed in accordance with [Chapter 2253](#), and a 1-year statute of limitations for suits on a performance bond from the date of final completion, abandonment, or termination of the public work contract. Finally, Section [2253.079](#) makes it a criminal offense to file a false and fraudulent claim against a bond required under [Chapter 2253](#).

23.8.4 Prevailing Wage Rates

Texas Government Code [Chapter 2258](#), construction of a public work, including a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction. The chapter does not apply to work done directly by a public utility under an order of a public authority. [Subchapter B](#) of Chapter 2258 addresses the payment of prevailing wage rates, including workers' rights, determinations of prevailing wage rates depending on the geographic location of the work site, payment of prevailing wage rates by subcontractors, and recordkeeping. An agency contracting for the construction of a public work — including a building, highway, road, excavation, and repair work or other project development or improvement paid for in whole or in part from public funds — must 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 (including the prevailing rate for legal holiday and overtime work). An agency may make its prevailing wage rate determination by 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 by 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. [Chapter 2258](#) includes specific requirements for determining prevailing wage rates for 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. Any solicitation related to a contract for construction of a public work project and the contract itself must include the appropriate wage rate determination for the

project. The bidder to whom the contract is awarded, and all of its subcontractors are required to pay wages of at least the rates contained within the wage rate determination for the project.

[Subchapter C](#) of Chapter 2258 provides for enforcement and civil and criminal penalties related wage rate complaints: “(a) On receipt of information, including a complaint by a worker, concerning an alleged violation of Section 2258.023 by a contractor or subcontractor, a public body shall make an initial determination as to whether good cause exists to believe that the violation occurred; (b) A public body must make its determination under subsection (a) before the 31st day after the date the public body receives the information; (c) A public body shall notify in writing the contractor or subcontractor and any affected worker of its initial determination; (d) A public body shall retain any amount due under the contract pending a final determination of the violation.” Subchapter C also includes arbitration, payment, and withholding provisions.

23.8.5 Uniform General Conditions for Construction

The State of Texas Uniform General Conditions for Construction Contracts (UGC) is a document adopted by the Texas Facilities Commission that, with certain exceptions, is to be incorporated into all building construction contracts made by the state. The UGCs may currently be accessed on the TFC [Forms Index](#) web page.

23.8.6 Texas Facilities Commission

The UGC is published by the Texas Facilities Commission (TFC) pursuant to Texas Government Code [Section 2166.302](#). TFC is required to review the UGCs at least once every five (5) years. As defined by Article 16, Miscellaneous, par. 16.1 Supplementary General and Special Conditions, in between official review of the UGC by TFC, the agency may issue supplementary general conditions to the UGC and special conditions to address specific and provisional conditions pertaining to the site and/or project. The review of the UGCs by TFC includes participation of a committee appointed by TFC.

23.8.7 TDA Construction Documents

For TDA construction projects solicited under the authority of Texas Government Code [Chapter 2269](#), TDA incorporates the UGC into a contract document titled “Texas Uniform Conditions for Construction Projects with TDA Supplementary Conditions.” This contract document not only incorporates the State of Texas UGCs, but also includes a required section for specifying liquidated damages and/or any other agency-required or agency-specific supplementary conditions.

Contract Management

24 Contract Management

Contract management begins with the creation of and execution of a contract. The objective of contract management is to ensure the responsibilities of TDA, and the contractor are properly discharged. Effective and efficient contracting requires adherence to contract management standards, and best practices, as well as statutes, regulations, and policies.

24.1 Document Management

Contract files must be stored in digital format on a protected shared drive (Contract Document Library). The Contract Manager is responsible for maintaining the contract file. Contract managers must maintain documentation in the contract file to support the performance of the contract. The contract file includes the procurement file.

24.2 Contract Manager Responsibilities

The contract manager is responsible for ensuring all contract requirements are satisfied, goods and services are delivered in accordance with the contract, and the financial interests of TDA are protected. The contract manager must have a thorough understanding of all components of the solicitation and contract to ensure the contract is performed satisfactorily and the responsibilities of TDA and contractor are properly discharged.

The primary responsibilities of a contract manager include:

- a. Being involved throughout each stage of the procurement and contract lifecycle;
- b. Serving as the primary point of contact for agency communication with the contractor regarding all matters pertaining to the contract;
- c. Being well versed in the contract terms, including its purpose, scope, requirements, deliverables, and milestones, and ensuring the contractor is held accountable for performance, including timeliness;
- d. Providing training and technical assistance to contractors, as needed;
- e. Promoting the use of best practices throughout the contract lifecycle;
- f. Establishing specific, time-bound performance measures and requirements to ensure contractor accountability;
- g. Hosting a post award contractor conference to ensure all parties are aware of the performance requirements and administrative procedures agreed in the contract;
- h. Verifying completion of data entry into CAPPs Financial Contract Detail and uploading contract documents into the Contract Document Library within 10 days from the contract effective date;
- i. Maintaining thorough and up to date documentation in the Contract Document Library;
- j. Assessing level of risk and establishing a contract monitoring plan;
- k. Monitoring and documenting the contractor's performance and entering results into CPA's VPTS and the contract file;
- l. Identifying and tracking contract deliverables and documenting the status of deliverables in accordance with PCO OP [025](#);

- m. Verifying the accuracy of invoices and authorizing payments consistent with the contract terms;
- n. Consulting TDA's Legal Division to address legal concerns or issues;
- o. Managing, approving, and documenting changes to the contract through the amendment process authorized by the terms of the contract;
- p. Identifying and resolving disputes with the contractor in a timely manner;
- q. Elevating to management in a timely manner disputes or deficiencies with the contractor's performance;
- r. Exercising remedies, as appropriate, when a contractor's performance is deficient;
- s. Confirming services and deliverables are complete prior to the expiration date of the contract or in accordance with the terms;
- t. Monitoring HUB Subcontracting Plan, if applicable;
- u. Completing contract closeout processes to include, as applicable, submission of a vendor performance report; and
- v. Complying with record retention requirements.

24.3 Contractor Training and Technical Assistance

Contract managers must hold contractors accountable for ensuring compliance with state and federal regulations, contract terms and conditions, and protecting the state's financial interest. Communication is essential for a successful partnership; providing training and technical assistance to contractors may be necessary for overseeing compliance, supporting successful contract outcomes, and more transparent expectations.

24.3.1 Training for Contractors

Contract managers and agency staff may provide training to contractors to address program requirements, HUB contract compliance, reporting requirements, changes in agency policies, or to meet state and federal requirements. Contract managers should coordinate with their agency leadership regarding curriculum, materials, presenters, training dates, and locations.

The contract manager must ensure training is adequately documented to include the following items and uploaded into the Contract Document Library:

- a. Date, time, and location of training;
- b. Sign-in sheet with the name and signature of each contractor in attendance; and
- c. A copy of the curriculum and/or materials.

24.3.2 Technical Assistance for Contractors

Contract managers and agency staff may provide technical assistance, as needed, throughout the term of the contract. Technical assistance may be provided by phone, email, or during on-site visits, and can include circumstances such as:

- a. Turnover in key agency or contractor staff;
- b. Difficulty with following contract terms and conditions, policies, and procedures, or reporting requirements;

- c. Clarification of TDA agency policies;
- d. Clarification of monitoring and oversight requirements;
- e. Billing or payment issues; or
- f. Other identified needs.

24.3.3 Documentation

The contract manager must ensure technical assistance is adequately documented to include the following items and are stored in the contract file:

- a. The name of the contractor
- b. The contract number
- c. Date of technical assistance
- d. Summary of technical assistance provided
- e. Action items, if any

24.3.4 Audits

Technical assistance should not be provided to a contractor when an open or ongoing audit is taking place.

24.4 Contract Oversight

Contract managers must conduct contract oversight activities to verify the contractor is performing all contract obligations, so TDA is aware of and able to address any developing issues. Contract oversight includes planned, ongoing, periodic, or unscheduled activities that measure and ensure compliance with the terms, conditions, acquisition, service delivery, and related requirements of a contract.

The objective of contract oversight is to promote accountability and ensure the state gets what it pays for by:

- a. Determining compliance with the terms and conditions of the contract, including applicable state and federal regulations;
- b. Providing feedback and technical assistance to prevent noncompliance;
- c. Evaluating system and process controls to ensure reliable validation of service deliverables; and
- d. Assessing and evaluating progress towards successful completion of performance requirements and outcomes.

24.5 Contract Risk Assessment

By assessing risk and allocating monitoring resources accordingly, TDA can more effectively focus limited resources on contracts that pose the highest risk to the state. A risk-based approach does not mean lower risk contracts are not monitored; rather, more complex, or higher risk contracts may receive more frequent or in-depth monitoring.

24.5.1 Purpose

TDA programs must evaluate contracts for the level of risk they present to the state. The purpose of risk assessment is to:

- a. Strengthen contract management activities to mitigate risk;
- b. Help identify the potential for fraud and abuse;
- c. Prioritize contracts for the contract monitoring plan; and
- d. Determine the highest risk contracts across the TDA.

24.5.2 Exceptions

This policy does not apply to transactional purchase orders (TPOs), revenue generating contracts, MOUs or MOAs that have no monetary value, or Texas SmartBuy purchase orders through the CPA term contracts and TXMAS contracts. Term contracts through the CPA utilize the following Purchase Category Codes (PCC):

- a. PCC A: Purchases from CPA SPD term contracts using the Texas SmartBuy online ordering system. Formerly referred to as “automated” purchases.
- b. PCC C: Purchase from CPA SPD Managed term contracts by issuing internal purchase orders directly to the contractor. Formerly referred to as “non-automated” purchases.
- c. PCC G: Non-Delegated procurements processed by CPA SPD through competitive IFB or RFP on behalf of the requesting agency.
- d. PCC X: Purchase of items from CPA TXMAS contracts through the Texas SmartBuy online ordering system.

24.6 Contract Risk Assessment Worksheet (CRAW)

As per the program area’s internal operations, contract managers may also be required to complete a CRAW (PCO 825); this may be completed in collaboration with PCO or other program staff. The CRAW includes a variety of risk factors that, in aggregate, are used to determine the overall contract risk level (high, medium, or low) and assist development of a contract monitoring plan. The results of the CRAW must be stored in the Contract file and are used to determine the monitoring schedule.

24.7 Contract Monitoring Plan

Contract managers must refer to the Contract Risk Assessment in order to prioritize monitoring activities and establish a contract monitoring plan. A contract monitoring plan establishes the monitoring schedule and activities required for individual contracts. It also tracks the status and progress of monitoring requirements. Each program is expected to develop a contract monitoring plan based on risk that defines which contracts will be monitored within what timeframe (volume and frequency). If new or greater risks are identified for a contract, it may be added to the contract monitoring plan.

The contract monitoring plan must:

- a. Identify the contracts that will be monitored during an established timeframe;
- b. Identify monitoring activities based on the complexity, value, and risk of the contract; and
- c. Track the status and progress of monitoring requirements.

Contracts identified on a contract monitoring plan are to be monitored as per the plan. Contract monitoring plans, to include adjustments, are reviewed and approved in accordance with the program area's internal operations and made available upon request.

24.8 Contract Monitoring

Contract monitoring is the systematic review of a contractor's records, business processes, deliverables, and activities to ensure compliance with the terms and conditions of the contract.

The goals of contract monitoring are to:

- a. Protect the health and safety of those that receive services;
- b. Ensure delivery of quality goods and services;
- c. Ensure contractor performance meets the contract terms; and
- d. Protect the financial interest of the state.

Each state agency that contracts for goods or services is responsible for actively monitoring all contracts by documenting contractor compliance with contract terms and conditions. In addition, agencies must ensure that effective monitoring policies and protocols are in place, including the development of a monitoring plan.

24.9 Contractor Post-Award Checks

TDA contract managers must demonstrate due diligence to ensure every contractor with whom TDA contracts is and remains eligible to do business with the State of Texas. Vendor check activities must be documented at the time they are performed, and records maintained in the contract file.

Vendor checks are completed prior to contract award, renewal, extension, and in conjunction with contractor organizational changes. (*See Section 24.20 regarding Ownership or Name Change, for more information when the Texas Identification Number (TIN) changes.*) Program areas may elect to establish policies to conduct checks at any other key contract activities, such as monitoring. Vendor checks are completed by accessing and searching various databases and verifying and documenting results. Procedural information is available on the Legal Entity Screening Guide, reference section 21.13.

Contract managers must maintain documentation in the contract file to support the outcome of the required checks. If an issue is identified staff may refer to the Legal Entity Screening Guide and Section 24.22 regarding Escalation of Contract Issues to determine the appropriate action. All documentation and applicable escalation communication must be documented in the contract file.

24.10 Contract Monitoring Activities

Contract monitoring activities can be conducted in a variety of ways, as long as they are objective; address contract complexity, value, and risk; and are documented in the Contract Monitoring Plan. There are standard items TDA contract managers may review across all contracts. However, monitoring activities, questions, methods, and tools should also target specific elements or issues of concern unique to each contract. In determining what monitoring activities to conduct for a given contract, consider the following:

- a. Type of purchase;
- b. Contract requirements;

- c. Changes in the contractor's operations, personnel, or environment (e.g., shifts in population demographics or staff turnover);
- d. Individual risk factor scores on the CRAW, *reference Section 24.6*. Consider focusing on risk factors scored the highest to identify weaknesses and help develop solutions for improvement;
- e. Prior monitoring history and past performance (e.g., problems recently resolved, recurring issues);
- f. Contractor strengths in areas tested and proven to be continuously compliant, in which case it may be appropriate to omit or reduce monitoring of those areas; and
- g. Recent reviews from or collaboration with other TDA program areas to coordinate monitoring efforts, reduce duplication, and promote consistency.

24.11 Examples of Monitoring Activities

24.11.1 Billing Validation

Billing validation could include a review of invoices, documents that support service delivery, and expenditure requests to determine if the rates and services are the same as allowed by the contract and to validate claims. Determine if the supporting documents, such as cost reports, third party receipts for expenses, etc., adequately support the request for payment. If the contractor consistently provides incorrect invoices, or the supporting document is insufficient to support the request, additional monitoring, such as an on-site visit, may be necessary.

24.11.2 On-Site Visit

On-site visits are conducted at the contractor's location or service delivery site to review information and documents, personnel, physical facilities, live operations, service delivery, records, or other observable characteristics to objectively validate compliance with contract requirements. A site monitoring checklist is used to identify contract compliance requirements from which to assess the contractor's performance. To assess compliance, it may be necessary to review invoices, service delivery documents, personnel files, policies and procedures, internal controls, system reports and data, and audit files. Face-to-face interviews may be an effective method to use during site visits.

24.11.3 Desk Review

A desk review is conducted at a TDA office to review information and documents to objectively validate compliance with contract requirements. Reviewing reports submitted by the contractor or other documents such as invoices, files, internal controls, system reports and data, audit files, financial records, personnel files, or phone interviews may be effective methods to use during desk reviews.

24.11.4 Third Party Monitoring

Third Party Monitoring is conducted by an independent party to validate and verify compliance with contract requirements. This monitoring may be conducted as either a site visit, desk review or both.

24.11.5 Process Improvement Monitoring

Process improvement monitoring is an approach using statistical data and pool sampling methodology (e.g., six sigma) that measures overall quality to help determine likelihood of compliance and applies root cause analysis to negative findings to support corrective measures. This approach is also used to conduct targeted monitoring for specific requirements to ensure compliance with quality standards.

24.11.6 Team Approach

The team approach is where monitoring is conducted by multiple individuals either simultaneously or at different times with different scopes. A team approach may be most appropriate for extremely complex or large contracts. It may include implementation of a contract management governance framework or committee, which includes formal structures to oversee contractors' obligations and objectives and ongoing communication to promote positive performance and adherence to the contract. All representatives of the review team should be in agreement regarding any issues and corrections, sanctions, or remedies.

24.11.7 Inspection and Testing

Inspection occurs at the contractor's place of business to determine whether the goods or services comply with the contract under which they were purchased. Tests may be performed on samples. When products tested fail to meet all applicable specifications, the costs of the sample used, and any testing performed shall be borne by the contractor.

24.12 Monitoring Types

The scope of monitoring may be categorized into particular types or may include elements of multiple types as shown in the following chart.

TYPES OF MONITORING		
Monitoring Type	Description	Possible Actions
Fiscal Monitoring	<p>A review of a contractor's financial operations, which may include review of internal controls for program funds in accordance with state and federal requirements, an examination of principles, laws and regulations, and a determination of whether costs are reasonable and necessary to achieve program objectives.</p> <p>(This activity involves assessment of financial statements, records, and procedures. It is similar to an audit, but with a lesser degree</p>	<ul style="list-style-type: none"> • Review the terms of their contracts, accounting systems, billings to the funding agency appropriately, and submitted reports for compliance with state and federal laws, rules, and regulations; • Report on the grantee's compliance with TDA contract terms and provisions in regard to fiscal requirements; • Review, accept, and verify Cost Allocation Plans; • Review, reconcile, and accept Grantees' Property Inventory Reports. • Verify that goods and services billed were actually delivered according to contract requirements

TYPES OF MONITORING		
	of detail and depth, and usually a higher degree of frequency.)	
Programmatic Monitoring	<p>A review of a contractor's service delivery system to determine if it is consistent with contract requirements including outputs, outcomes, quality, and effectiveness of programs. In programmatic monitoring, service-related information is reviewed for compliance with process and outcome expectations as identified in standards, rules, and contracts. This activity assesses the degree to which the identified need is being met and the quality of the service being provided.</p>	<ul style="list-style-type: none"> ● Review the provisions of the contract to determine desired outputs and outcomes ● Review materials to determine if goods or services are being provided appropriately <p>Interview agency personnel, contract staff, individuals receiving services, or others to determine if the services are being performed according to the contract</p>
Administrative Monitoring	<p>A review of a contractor's internal controls and operating processes.</p>	<ul style="list-style-type: none"> ● Review personnel files and records ● Verify required training and licensure ● Verifying background check requirements ● Verify contractor insurance coverage ● Review compliance with subcontractor requirements ● Validate internal control processes, such as adherence to contractor's written policies/processes or application of information security protections ● Review of complaints and resolution
Goods	<p>Activities to determine whether the delivered goods comply with the contract under which they were purchased</p>	<ul style="list-style-type: none"> ● Inspection of goods ● Testing using standard industry testing methods ● Verify the invoice is correct

24.13 Sampling

Depending upon the monitoring scope and the risk, complexity, value, and volume of goods or services being performed under the contract, it may be appropriate to select a representative sample of contractor information and documentation when conducting monitoring.

The process of sampling is designed to statistically determine a subset of individuals from within a given population to estimate characteristics of the whole population.

When planning to monitor, sampling can be used to determine what size and selection of information (e.g., the number of files, records, and expenditure items to be tested) accurately represents the contractor's overall performance for the item being reviewed.

Use of a standard sampling methodology helps eliminate the appearance of bias during the sampling selection. This methodology gives each item in the population an equal chance of being reviewed and allow for random selection of individual items. However, it may be necessary to utilize an alternative sampling methodology when there is a small population, or it is needed to evaluate risk for fraud, waste, and abuse.

24.14 HSP Monitoring and Progress Assessment Report (PAR)

The contract manager should be aware that the contractor is required to submit, if applicable, a completed HSP Prime Contractor PAR monthly as a condition of payment. The completed PAR is required to include the subcontracting payments the prime contractor paid to each subcontractor for the reporting (month) period the report covers. The PAR is required to monitor the prime contractor's HSP to ensure the contractor is utilizing only the subcontractors stated on the approved HSP, and that new subcontractors are not being utilized without prior approval from the HUB Coordinator and in compliance with the good faith effort requirements for *subcontracting* (*Reference Section 21.11 regarding Coordination and Preparation of Contract Documents*). *NOTE: Utilizing an unapproved subcontractor is out of compliance with any TDA contract with a total contract value over \$100,000.*

HSP auditing is required to verify the subcontracting payments reflected on the PAR form by comparing the information to the subcontractors' invoices submitted with the request for payment by the contractors.

Should a discrepancy in the PAR be discovered during the contract, the program area, and the HUB Program will work together to address and correct any potential HSP noncompliance. Any documented HSP noncompliance must be factored into the VPTS Score.

At contract close-out, a complete review of the HSP must be conducted to determine whether the prime contractor implemented the HSP contract provision in good faith. If the prime contractor-maintained compliance with the good faith effort subcontracts requirements, then it may be deemed the HSP was implemented in good faith.

24.15 Monitoring Data Use Compliance

The Information Security Officer (ISO) is responsible for administering the information security functions within the agency. The ISO is the agency's internal and external point of contact for all information security matters.

A contract manager may include an assessment of compliance with DUA requirements when monitoring contracts that contain confidential information Appendix F – DUA Confidential

Information Protection, provides an assessment that may be used in conjunction with existing monitoring processes. The contract manager must inform the agency ISO, in addition to program leadership, PCO, and TDA's legal division if monitoring results in issues or findings. Contract managers must also follow-up with additional action to ensure findings are resolved.

24.16 Monitoring of Staff Augmentation Contractors

Monitoring of staff augmentation contractors includes documentation of their tasks and attendance as a form of verification that the agency is receiving value from the acquisition. Documentation may include the following:

- a. A Contract Employee File may include resumes, results of selection process, job description, time sheets, progress reports, feedback, and evaluation notes.
- b. Status Report of tasks performed, or deliverables completed at scheduled intervals (monthly, bi-weekly, weekly).
- c. Timesheet or time tracking system should include a reconciliation of any approved leave or modified schedule approvals.

When monitoring results in issues or findings, contract managers must also follow-up with additional action to ensure findings are resolved.

24.17 Contract Monitoring Documentation and Follow-Up Activities

During the course of a contract monitoring, contract managers must ensure documentation of monitoring activities and results is complete, factual, thorough, and substantiates findings, such as performance deficiencies or instances of noncompliance.

Once the monitoring review is concluded, a monitoring report is developed. The final monitoring report identifies, documents, and communicates to the contractor the facts, findings, and conclusions resulting from the review. The report should be clear and concise. In addition, confidential sample or employee identifying information must not appear in the report.

Monitoring documentation should include:

- a. TDA program or division name;
- b. Name of person conducting monitoring;
- c. Date of monitoring activities;
- d. Fiscal year being reviewed;
- e. Type of monitoring activity (site visit or desk review);
- f. The sampling methodology used and the selected sample;
- g. Monitoring tools and working papers;
- h. Substantiated findings, and if any dispute, the resolution;
- i. Copies of supporting documentation to substantiate findings; and
- j. Actions taken, such as escalation, liquidated damages, corrective action plans, or service or payment hold

Monitoring information, or as applicable, final report, is maintained in the contract file.

EXAMPLES OF MONITORING FOLLOW-UP		
Nature of the Finding	Possible Action Response	Other Optional Steps
Contractor misunderstanding of requirements	Communication with contractor	<ul style="list-style-type: none"> • Technical assistance • Follow-up monitoring to verify compliance • Corrective action plan
Contractor noncompliance with requirements (Non-systemic)	Formal corrective actions	<ul style="list-style-type: none"> • Escalate to program management and PCO • Require a Corrective Action Plan • Impose contract remedies as specified in the contract
<p>Recurring contractor non-compliance issues</p> <p>High Risk Examples: Significant harm or risk of harm to individuals</p> <p>Significant misuse of agency funds or resources</p> <p>Concerns of fraud, waste, or abuse</p>	Contract Remedies to resolve the problem and/or eliminate negative impact	<ul style="list-style-type: none"> • Escalate to program management, PCO, and General Counsel • Implement enhance monitoring • Reduce services or dollars associated with the contract • Collection of improper payments/ disallowances • Impose adverse actions: <ul style="list-style-type: none"> ○ Suspension of referrals or services; ○ Suspension of payments; ○ Assess liquidated damages or penalties; or ○ Terminate prior to contract end date • Report the contractor to VPTS, as applicable, for unsatisfactory performance, to the appropriate licensing organization, the IG, or law enforcement

24.18 Review for Amendment, Renewal or Re-procurement

Contract managers must regularly review assigned contracts to determine which contracts expire soon. The contract manager should consult with their management to determine whether the contract will be renewed, extended, re-procured, or allowed to expire. If no more renewals remain available under a contract, contract managers should consult with program staff to determine whether the services are still needed, and a new solicitation must be issued. The contract manager's assessment should consider all required internal and external timeframes necessary for successful renewal or re-procurement.

24.19 Contract Amendments and Renewals

A contract amendment is a formal, written change to an existing contract. A contract modification can be identified by the contractor, agency program staff, or the contract manager.

Procurement and contract documents serve as the primary guide in establishing whether or not contract modifications can be allowed. The contract must contain provisions that allow changes to services, deliverables, or other aspects of the contract agreement. Additionally, the contract manager must ensure contract modifications comply with applicable law, TDA agency policy, and do not violate procurement requirements. All amendments must be executed prior to the expiration date of the contract.

If a change is needed to a contract, the change has to be within the original scope, or parameters of the solicitation. A significant difference in the scope of work would be a material or substantial change and would not be allowed because it was not originally subject to fair competition. To permit such a change would go against the ideas of competition and a fair playing field for all vendors. If a contract amendment is substantial, a new solicitation is needed to ensure compliance with the competitive bidding statutes.

A request to amend a contract is required if there is a change to the contract terms and conditions, such as:

- a. The service description or the statement of work (SOW);
- b. Performance measures;
- c. Dollar amount;
- d. Geographic service area;
- e. Contract period outside of the contract period stated in the contract; or
- f. An extension to the contract within the contract period stated in the contract.

24.19.1 Major Information Resource Project (MIRP) Contract Amendments

Before amending a contract related to a MIRP, TDA must notify the governor, lieutenant governor, speaker of the house, presiding officers of the house and senate standing committees with primary jurisdiction over appropriations, and the QAT if the total value of the amended contract exceeds or will exceed the initial contract value by 10 percent, or if the amendment requires the contractor to provide consultative, technical expertise, or other assistance defining project scope or deliverables. Notice to the QAT must include justification for the amendment. Reference Section 13.4.2 regarding Amending or Canceling MIRP Contracts.

24.19.2 Contract Renewals – PCO Operating Procedure 028

A contract with expenditures exceeding \$5 million cannot be amended to exercise a renewal option until a vendor performance report has been completed and entered into the CPA's Vendor Performance Tracking System.⁹⁸ *Reference Section 25.1 regarding Vendor Performance Reporting.*

⁹⁸ Tex. Gov't Code [§2155.089\(b-1\)](#)

To amend a contract, the contract manager should consult the procedure to follow the process for renewing the two different types of contract renewals listed below:

a. Bilateral Amendment

All parties to the contract agree to the new contract term and any negotiated modifications (if allowed), or other provision of the contract that needs to be altered. This means that the contractor must agree to the renewal period by signing a bilateral contract amendment; and

b. Tracking Contract

A tracking contract is entered to track allowable renewals in a procurement. To exercise a renewal for this type of contract requires a CAPPS requisition for the PCO Purchaser to execute a signed Form PCO XXX - POCN Contract Amendment.

24.19.3 Certificate of Interested Parties ([Form 1295](#)) – Contract Amendments

The information reported by a contracting entity on the Certificate of Interested Parties form submitted in support of an TDA contract may require revision during the term of the TDA contract. In addition, a 1295 may be required for certain contract amendments.

The contract manager must ensure the vendor completes a new 1295 for the following situations:

a. Form 1295 Required When Not Previously Submitted

If a contract that is not subject to Form 1295 submission requirements under Texas Government Code, Section 2252.908, is later amended, changed, or extended in such a manner that the contract, as amended, changed, or extended, is subject to Form 1295 submission requirements under Texas Government Code, Section 2252.908, Form 1295 must be submitted.

b. New Form 1295 Required When Previously Submitted

Additionally, a Form 1295 must be submitted if there is a change (including an amendment, change order, or extension of a contract) made to an existing contract if a Form 1295 was previously submitted and:

- i. There is a change to the disclosure of interested parties; or
- ii. The changed contract requires an action or vote by the governing body of the entity or agency; or
- iii. The value of the changed contract is at least \$1 million greater than the value of the existing contract.

If vendors are required to complete Form 1295 - Certificate of Interested Parties, it must be filed with the TEC and acknowledged by the contracting agency before the agency may sign the amendment.

If a change to the disclosure of interested parties should occur or if an amendment or extension of a contract would require disclosure, the contractor must complete Form 1295 - Certificate of Interested Parties to reflect the updated information. The new Form 1295 is submitted to the TDA contract manager, who must acknowledge receipt of the form using the TEC online

acknowledgement within 30 calendar days from TDA receipt of the filed 1295 and maintained in the contract file.

Reference Section 21.14 regarding Disclosure of Interested Parties.

24.19.4 HUB Program Office Notification

The contract manager must notify the HUB Program Office of proposed amendments when the aggregate contract amount approaches \$100,000 or more, or when the contract with an existing HSP needs to be amended to comply with [34 TAC § 20.285](#).

When the original statement of work expands beyond the subcontracting opportunities designated by the CPA class and item codes in the original solicitation, the contractor may be required to submit a revised HUB Subcontracting Plan.

If the HUB Program Office determines additional HUB subcontracting opportunities exist, the assigned HUB coordinator and contract manager will work with the contractor to assist them with developing and revising an adequate HSP. Once evaluated, the HUB Program Office will submit the conclusion to the contract manager, who will ensure its inclusion in the contract file.

24.20 Ownership or Name Change

Contractors sometimes undergo ownership changes, name changes, or other changes. Sometimes, contractors seek to assign contracts or to assign payments under contracts. Most organizational changes will result in a new CPA Texas Identification Number (TIN). Examples of circumstances that result in a new TIN include sales and mergers. Name changes do not typically result in a new TIN. All changes must be permitted under the terms of the contract and reported by the contractor to the contract manager. Some contracts may permit certain actions but require advance notice or notice and approval. Each contract must be independently reviewed. All contract changes require a contract amendment.

Contract managers must process vendor checks again if, for any reason, the contractor's TIN changes (whether it is a change in TIN made by the original contractor or a TIN change that results from some type of organizational change or other action (e.g., assignment).

In the event of any change, the contract manager should review applicable provisions of the Comptroller's Guide, review the terms of the contract, and consult division management and the TDA Legal Division to determine the appropriate action.

Reference Section 21.13 Vendor Checks, for additional information.

24.20.1 Name Change

A contractor name change requires a letter from the original contractor on the original contractor's letterhead stating the circumstance of the name change, stating the original name and the new name, as well as the effective date of the change. An authorized representative of the contractor must sign and date the required letter. Upon receipt of the required letter, the contract manager may request a copy of the assumed name certificate filed with the Texas Secretary of State or a sales tax permit as proof of the name change. Name changes do not typically involve any change in the contractor's TIN.

TDA Accounting needs to be made aware to update the Legal Entity name in CAPPs. To request a name change in the CAPPs supplier name field, the contract manager will complete CPA Form

PCR 74-157, Payee Change Request and send it to TDA Accounting at invoices@texasagriculture.gov.

a. Payee Change Request Form PCR 74-157

Payee Change Request Form PCR 74-157 can be found on the [Comptroller's Fiscal Management](#) site. When completing Form PCR 74-157, please note the following additional instructions for completing Section 3:

- i. Item 9: Enter the 11-digit Texas Identification Number (TIN).
- ii. Item 10: Do not enter the mail code (leave blank). This is only needed when it is a location change.
- iii. Item 11: indicate the incorrect name that is appearing.
- iv. Item 12: Enter the correct name you want Vendor Maintenance to change to.

b. New TIN

If a new TIN, the contract manager must conduct all vendor checks under the new TIN, whether the contractor's name changes. If the new TIN is eligible to do business with the State of Texas, the contract awarded to the previous TIN is amended to change the end date to coincide with the begin date of the contract established through CAPPs with the new TIN. CAPPs Financials will not allow a TIN change on an existing contract.

24.20.2 Assignment

[Texas Government Code Section 2262.056](#) prohibits vendors from assigning the vendor's rights under a services contract to a third party without approval by the Agency. In addition, a proposal to transfer by assignment contract responsibilities for a MIRP that exceeds \$10 million for services and involves storing, receiving, processing, transmitting, or disposing of sensitive personal information in a foreign country requires approval by the Commissioner or other similar agency administrator or designee. Assignment of such a contract is not valid and no appropriated funds can be used for contract payments, unless notice of the assignment has been provided to the LBB and QAT at least 14 days prior to the date of approval, including a contract signed by the assignor or proposed assignee but not signed by TDA.

24.21 Contractor Performance Issues and Contract Remedies

The contract manager should communicate with the program area routinely and maintain a reasonable level of awareness of a contractor's performance throughout the duration of the contract. Regulatory and contract management activities should be used as appropriate to alert a contract manager to noncompliance issues.

The contract manager is responsible for investigating and addressing unacceptable contractor performance as quickly as possible.

Contract managers and program staff should be familiar with remedy provisions in the contract and should consult PCO and TDA Legal Division as needed to determine the correct response to a contractor's performance issues.

24.22 Escalation of Contract Issues

TDA programs must develop an escalation process to communicate contract related issues to agency executive management, program leadership, TDA Legal Division, and PCO as appropriate and depending on the severity of the issue. Examples of issues for escalation include:

- a. Loss or misuse of agency funds;
- b. Risk the contract will exceed budget limitations or timeframes;
- c. Harm or risk of serious harm to individuals;
- d. Repeated noncompliance;
- e. Publicized or political concerns;
- f. Patterns of complaints or high-profile complaint;
- g. Appearance of impropriety or potential conflict of interest;
- h. Suspicion of fraud, waste, or abuse; and
- i. Vendor/Contractor/Grantee check results that identify issues.

Contract managers must ensure agency executive management, program leadership, TDA legal division, and PCO and other applicable staff are notified immediately when they become aware of contract issues or risks. Although contractor noncompliance issues are often identified during routine contract management activities or monitoring, contract managers must maintain an awareness of a contractor's performance throughout the duration of the contract.

Effective escalation helps ensure problems and issues are addressed quickly to prevent harm to individuals, gaps in goods or service coverage, or misuse or waste of taxpayer dollars.

25 Contract Expiration, Termination, Closeout, and Settlement

25.1 Contract Expiration

A contract expires pursuant to its term and both parties are relieved of any further performance obligations, except as provided for in the contract. The expiration includes contracts that have available renewal options that the agency does not exercise. Written notification is not required for expiration; however, closeout procedures must be followed.

25.2 Contract Termination

Contract expiration or termination is an end to the contract between TDA and the contractor. Termination occurs when:

- a. The contract expires pursuant to its terms;
- b. Both parties agree to terminate the contract; or
- c. Either party terminates the contract.

Each TDA contract managers must consult TDA's Legal Division for any contract terminations.

25.2.1 Termination Decision

The contract manager must review the contract terms and conditions, agency policy, and applicable laws and regulations to ensure termination is allowed and to determine the basis

for termination. The contract manager must consult with the TDA agency's management and Legal Division regarding a TDA determination to terminate.

Executive approval for the termination must be obtained before taking any action to process an amendment or notification to the contractor. Improper termination may subject TDA to damages and other legal liabilities.

Termination must be coordinated with agency program staff at the earliest possible stage so alternate arrangements can be made for goods or services and to ensure a smooth transition before the contract termination date.

25.2.2 Types of Contract Terminations

a. Termination — Mutual Agreement

TDA and the contractor may mutually agree to terminate the contract, prior to the expiration date, relieving the parties of any further performance obligations, except as provided for in the contract. The parties must document the mutual agreement to terminate by exchange of a formal written correspondence or as a contract amendment. If the contractor wishes to terminate the relationship, the contract manager must require written request to terminate from the contractor.

b. Termination — For Convenience

The Uniform Terms and Conditions include the clause for termination for convenience, which allows for termination when it is in the best interests of the State of Texas. This termination is also referenced to and considered "without cause" and is effective on the date specified in the TDA's notice of termination. This termination is not an automatic right and must be specifically provided for in the contract.

c. Termination for Non-Appropriations — Excess Obligations Prohibited

The Uniform Terms and Conditions refer to this type of termination as "Excess Obligations Prohibited." This termination provision is subject to availability of state funds and occurs without penalty to TDA, either in whole or in part. This termination may occur if TDA becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either TDA's or contractor's delivery or performance impossible or unnecessary. TDA will not be liable to the contractor for any damages that are caused or associated with the termination, and TDA is not required to give prior notice.

d. Termination for Cause

Except as otherwise provided by the U.S. Bankruptcy Code, or any successor law, TDA may terminate a contract, in whole or in part, upon material breach of the contract by the contractor. TDA will have the right to terminate the contract in whole or in part if the agency determines, in its sole discretion, that the contractor has failed to perform or make progress, or in any way has materially breached the contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of the contractor's duties under the contract. This type of termination requires a legitimate basis and involves a contract breach, such as:

- i. Contractor's misrepresentation in any aspect of Contractor's Solicitation Response, if any;
- ii. Failure to deliver goods or services within the time specified in the contract;
- iii. Failure to perform any significant provision of the contract;
- iv. Failure of progress, which could jeopardize the carrying out of the contract;
- v. Failure to comply with TDA rules, policies or procedures;
- vi. Submission of falsified documents, fraudulent billings, or making false statements;
- vii. Failure to obtain or maintain required licensure or certification;
- viii. Inappropriate use or mismanagement of state or federal funds;
- ix. Performance that results in threats to individual health or safety;
- x. Continued instances of unacceptable performance; and
- xi. Contractor's inclusion on the System for Award Management (SAM) as a debarred entity will also constitute a material breach.

25.2.3 Written Notice of Termination

A written notice of termination must be sent to a contractor prior to the contract termination date. When practical, TDA should give the contractor at least a 30-calendar day notice prior to the expiration date of the contract for a termination for convenience. In any case, TDA must comply with contractual provisions regarding required notice.

TDA representative with authority to sign the contract may delegate in writing the signature of the termination notice to a member of the program area's management team.

The contract manager should send notices of terminations for convenience or cause by certified mail, return receipt requested, or by courier with a signature receipt request — or as otherwise provided in the contract. The contract manager or designee must upload the notice and verification of receipt of the termination notice in the CAPPS FIN contract page and maintain the notice in the contract file. A notice for termination by mutual agreement may be sent by email or fax, as applicable — or as otherwise provided in the contract. Again, TDA must comply with contractual notice provisions. So, if there is a provision in the contract regarding method of notice, it must be followed.

a. Notice of Termination for Convenience, Mutual Agreement, or Non-Appropriation

The notice must contain the following, at a minimum:

- i. The effective date of the termination;
- ii. The reason for the termination;
- iii. Contract citation that allows the termination;
- iv. Record retention requirements; and
- v. A description of the closeout procedure.

b. Notice of Termination for Cause

The notice must be approved by the TDA agency's management and Legal Division and must contain the following at a minimum:

- i. The effective date of the termination;
- ii. A statement of all contract provisions that the contractor failed to meet;
- iii. Any related materials demonstrating contractor failures;
- iv. Contract citations that allow the termination;
- v. Notice of the contractor's rights of recourse, if any;
- vi. Record retention requirements; and
- vii. A description of the closeout procedure.

26 Contract Closeout

The contract manager should initiate closeout activities when there is a reasonable certainty that the terms and conditions of the contract have been met and the contract will not be renewed or extended. Unless otherwise stated in the contract, the closeout process must be completed and entered in CAPPs FIN within 90 days of the contract end date, unless extenuating circumstances exist.

26.1 End of the Contract Lifecycle

Contract closeout is the final step and detailed process of the contract lifecycle. The complexity of each closeout can depend on factors such as:

- a. Whether the contract is a TPO;
- b. Whether the contract is competitively or noncompetitively procured;
- c. Whether it is a grant agreement with a contractor or subrecipient;
- d. Whether it is administrative, goods, or services; and
- e. The status of the contract deliverables at the time of contract termination.

26.2 Contract Closeout Process

The contract closeout process may include, as applicable to the contract:

- a. Completion of all administrative actions;
- b. Assignment of a status to each contract deliverable in a tracking system or tool;
- c. Settlement of contract disputes, claims, and agreements;
- d. Protection of any TDA and TDA confidential information;
- e. Settlement of financial claims;
- f. Audit of any records or payments;
- g. Cancellation of any goods or services not yet received;
- h. Transferring of caseloads and files;
- i. Transferring of equipment, hardware, software, and goods;

- j. Transferring access to any information or reporting systems;
- k. Disposition of equipment;
- l. Review of HSP and submitted PAR forms in coordination with HUB Program in accordance with Section 24.14 regarding HSP Monitoring and Progress Assessment Report (PAR); and
- m. Vendor performance (VPTS reporting).

26.3 Contract Settlement

When a contract is terminated, the contract manager assesses any remaining financial transactions, including any overpayments, underpayments, or unprocessed payments.

26.3.1 Contract Manager Responsibilities

The contract manager must:

- a. Negotiate a fair and prompt settlement that accurately reconciles and finalizes the work and any payments in accordance with applicable law;
- b. Protect the interests of individuals served by TDA;
- c. Verify completion of contract terms, including performance measurements;
- d. Identify and document any performance issues or deficiencies, and take appropriate corrective actions;
- e. Consult with TDA management; and
- f. Consult and obtain approval from Legal Division on reaching the settlements.

26.4 Settlement Procedures

TDA divisions must have documented settlement procedures that include required documentation and approval, considering the type, complexity, and value of the agency's contracts. These procedures must include, at a minimum:

- a. Determining approval authority for the settlement agreement;
- b. Required routing of the settlement agreement within TDA for approvals;
- c. Obtaining contractor and TDA signatures on the settlement agreement; and
- d. Reviewing the contractor's compliance with the settlement agreement.

26.4.1 Reimbursement of Allowable Expenses

When applicable, the contractor must be reimbursed for all allowable expenses incurred or services provided under the contract up to the termination date. However, TDA is only obligated to pay for goods and services that meet applicable contract standards. Under termination for cause, TDA may not be liable for the contractor's costs on undelivered work and is entitled to repayment of any advance or progress payments.

26.4.2 Contractor Obligations

The contractor is responsible for the prompt resolution of any claims for its subcontractors and vendors. A subcontractor may have no contractual rights against TDA on termination. Each claim must be documented by the contractor or the contract manager. The contractor may submit bills, records, affidavits, audit reports, and other documents to support contract

invoices within a reasonable period of time, up to 90 days after termination. Contract managers should inspect a subcontractor's records if needed for the contract closeout.

26.5 Provide Contractor with Settlement

The contract manager sends the final settlement agreement to the contractor by certified mail with return receipt requested or by courier with a signature reception request. The letter must explain that the determination is TDA's final decision and must adequately explain each major item. In addition, if the decision constitutes a contract remedy, the letter must meet the requirements of a notice of contract remedy as stated in the contract.

If the negotiated or determined settlement offer indicates the contractor owes payment, the contract manager sends a letter to the contractor requiring payment. The contractor must respond to the settlement within 30 days of receiving the TDA's letter, subject to the limits on filing an appeal if applicable. The contractor's options for responding to the settlement offer include paying in lump sum, paying in installments, or requesting an appeal. If the contractor does not respond within the required timeframe, TDA may begin involuntary collection procedures.

Contractor notices are maintained in the contract file.

27 Contract Records

Maintaining and documenting contract management activities is critical to effectively managing contracts, making informed decisions, settling claims or disputes, and accurately accounting for and reporting contract data.

27.1 Contract Document Library

Contract managers must ensure the contract information in CAPPs FIN is updated throughout the contract lifecycle and is accurate and complete. If corrections to information in CAPPs FIN are required, contract staff either make the necessary correction or submit a request to CAPPs FIN LEVEL 1. Contract records, are maintained in the Contract Document Library and include but are not limited to:

- a. Solicitation;
- b. Executed contract;
- c. Contract amendments;
- d. Contract correspondence;
- e. Disclosures and conflict of interest forms;
- f. Risk assessments;
- g. Deliverables;
- h. Monitoring documents;
- i. Performance outcomes and reports;
- j. Single audits;
- k. HUB subcontracting plan and progress assessment reports;
- l. Data Use Agreement (DUA) and Security and Privacy Inquiry (SPI) forms;

- m. Closeout documentation;
- n. VPTS report; and
- o. Legislative, statutory, or federal required documentation (i.e., Disclosure of Interested Parties, Attestations, federal Assurances and Certification Regarding Lobbying, etc.).

27.2 Contract File Checklists – Form PCO 803

Effective September 1, 2019, [Texas Government Code Section 2262.053](#) requires agencies to maintain contract file checklists that address each stage of the procurement and contracting lifecycle. As a result, PCO created checklists and associated procedures that incorporate requirements outlined in the Comptroller’s Guide. This policy applies to any contract solicitation or management activity initiated or required on or after September 1, 2020.

Purchasers and the contract manager will complete the appropriate checklist for each phase of the procurement and contracting lifecycle and store in the contract file. PCO Procurement will complete checklists for the procurement and award phases of contracts in which Procurement is involved. For contracts established without PCO procurement involvement, the contract manager is responsible for completing, certifying, and uploading into the Contract Document Library all appropriate checklists for the entire procurement lifecycle to document completeness of the contract file at the appropriate contract phase or at certain contract events (i.e., amendments, monitoring, closeout).

Contracting divisions and supervisors are responsible for ensuring the contract files are complete, certified, and uploaded by the contract manager per established requirements.

27.3 Disclosure or Audit of Contract Records

All contract records and documents are subject to examination and audit by the CPA, SAO, TDA Internal Audit, and other state and federal auditors.

Additionally, most government contract documents are public and must be released upon request, unless disclosure is expressly prohibited or confidential under law. All requests for public information must be handled in a timely fashion, and specific, formal protocols apply to requests made under the Public Information Act⁹⁹.

Other than routine communication with staff, external stakeholders, or members of the public, only TDA’s Legal Division is permitted to respond to public information or other external requests for information. If contract or procurement staff receive an information request, refer the requester to Pub.Info@TexasAgriculture.gov. The TDA’s Legal Division will coordinate the development of the response and release the response to the requester.

27.4 Records Retention

In accordance with the Texas Government Code Section 441.1855, all contracts and related documents, including solicitation documents, must be retained for a minimum of seven years after a contract is complete (expired, terminated, or otherwise closed), or all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents are resolved, whichever is later.

A contract solicitation document that is an electronic document must be retained in the document’s electronic form. A state agency may print and retain the document in paper form only if the agency

⁹⁹ [Texas Government Code, Chapter 552](#)

provides for the preservation, examination, and use of the electronic form of the document, including any formatting or formulas that are part of the electronic format of the document. Pursuant to Section 441.1855, “contract solicitation document” includes any document, whether in paper form or electronic form that is used by a state agency to evaluate responses to a competitive solicitation for a contract issued by the agency. TDA also requires contractors to adhere to the same retention provision.

Consult with TDA agency records retention personnel for detailed retention requirements.

28 Required Reporting

28.1 Vendor Performance Reporting

Per section 20.115 of the Texas Administrative Code, when a state agency assigns a grade lower than a "C" and submits a vendor report to the Vendor Performance Tracking system, the comptroller provides a copy of the report to the vendor and allows them 30 days to respond. If the vendor responds within 30 days, the comptroller's office may review relevant information and may change the vendor's performance grade as they deem necessary to insure as accurate and responsible contract reporting as possible. Except for a grade that was revised in the vendor's favor under subsection (c) of TAC 20.115, the executive head of a state agency may, within 48 months of submission of a vendor performance report and grade, request to revise the report and grade for a particular purchase order or contract by submitting a written justification for the grade revision to the comptroller. For more information, see www.cpa.texas.gov

28.1.1 Vendor Performance Tracking System (VPTS)

Texas Government Code [Section 2262.055](#) requires the CPA to track and evaluate vendor performance based on information reported by state agencies. State agencies must consider vendor performance information and ratings contained in the VPTS when determining whether to award a contract to a particular contractor. *Reference Section 21.13 regarding Required Screening for Potential Contractors.*

TDA contract managers are required to accurately report contractor performance to the VPTS to allow state agencies to share vendor information and facilitate better oversight of contracts. Pursuant to Texas Government Code Section 2155.089, vendor performance reporting is required for all contracts, including TPOs (except for contracts listed in [Section 28.1.2 regarding Exemptions from VPTS Reporting](#)):

- a. Within 90 calendar days from the completion of all contractual activities or within 30 calendar days from the TPO end date if the total contract value is \$25,000 or more;
- b. At least once per year during the term of the contract and at each key milestone in the contract if the contract value is \$5 million dollars or more; and
- c. Before amending a contract to execute a renewal period if the contract value exceeds \$5 million dollars.

Vendor performance reporting is also required for all other nonexempt contracts when there are significant performance issues during the term of the contract that were not resolved and resulted in termination of the contract prior to the end date stated in the contract.

28.1.2 Exemptions from VPTS Reporting

- a. Interagency contracts
- b. Interlocal agreements
- c. Interstate contracts
- d. MOUs
- e. MOAs
- f. Sub-contracts issued by a company with which the state has a contract
- g. Grants

In assessing vendor performance, the contract manager should consider whether the contractor met the requirements in the contract and, if applicable, consult with other staff involved in the contract. This information is used to grade (A-F) the contractor's performance.

28.1.3 Vendor Performance Report Requirements

Vendor performance reports must:

- a. Be documented on Form PCO 819;
- b. Be based on solid, well-documented contract management and monitoring activities;
- c. Include supporting documents for reports of negative vendor performance (Grade of D or F);
- d. Be reviewed and approved by the supervisor of the TDA staff completing Form PCO 147; and
- e. Be submitted with any necessary documentation to the PCO Account Manager.

PCO is responsible for reviewing and submitting vendor performance information to the CPA VPTS on behalf of the TDA. After the vendor performance report has been accepted by the CPA and published into the VPTS, the vendor performance report (Form PCO 819) is uploaded by PCO into the Contract File.

For more information about vendor performance reporting, see [CPA VPTS web page](#).

28.2 WorkQuest Exception Reporting — Monthly Report on Set Aside Exceptions

If TDA determines that a product/service offered by WorkQuest needs to be purchased from another source, an exception justification must be included in the file. [Texas Human Resources Code Section 122.016](#) requires PCO to file a WorkQuest exception report to CPA. The report is due the fifteenth (15) working day of each month. PCO is responsible for this reporting.

The Texas Human Resources Code Section 122.016(b) requires the CPA to provide a monthly report to the Texas Workforce Commission (TWC) listing all items/services purchased as exceptions to Texas Human Resources Code Section 122.016(a) and [Texas Government Code Section 2155.138\(a\)](#). In order for CPA to provide this information to TWC, each state agency must provide to CPA all delegated purchases made as exceptions to the set-aside contracts.

28.3 Reporting TDA Contracts¹⁰⁰

There are many reports and notifications related to state contracting that are required by the Legislature, LBB, CPA administrative rules, and statutory requirements. Some of the major reporting and notification requirements related to state contracting are provided in the table below. For more information regarding state agency reporting requirements, see the Texas State Library and Archives Commission’s [Report of Required Reporting by State Agencies and Institutions of Higher Education](#).

Select TDA Contract Reporting and/or Notification Requirements Table ¹⁰¹					
Type	Required Report and/or Notification	Mandated By	Responsible Party	Receiving Body	Due Date
Administrative - Procurement Plan	Agency Procurement Plan	Tex. Gov’t Code § 2155.132 ; 34 TAC pt. 1, ch. 20, subch. B, div. 3, § 20.132(b) ; Comptroller’s Guide	PCO	CPA	November 30
Consulting Contracts - Notice of Intent and Finding of Fact (FOF)	Major Consulting Contracts (exceeds \$15,000)—Notice of Intent and Request for FOF memo from Office of Governor (also applies to renewal, amendment, or extension)	Tex. Gov’t Code §§ 2254.028(a) , 2254.031	Program	Governor’s Budget & Planning Office; LBB	Before entering the contract
Consulting Contracts - Publication	Major Consulting Contracts (exceeds \$15,000) -- Publication in ESBD invitation for offers of consulting services (also applies to renewal, amendment, or extension)	Tex. Gov’t Code §§ 2254.029 , 2254.031	PCO	ESBD	Not later than 30 days prior to entering into a major consulting services contract
Consulting Contracts -Conflict of Interest	Report on Conflict of Interest in Consulting Services Contract	Tex. Gov’t Code § 2254.032	PCO	Deputy Commissioner	Not later than 10 th day after offer submitted by private consultant

¹⁰⁰ MIRPs have specific reporting and notification requirements associated with the amendment of existing contracts. Tex. Gov’t Code §§ [2054.1181\(j\)](#), [2054.160\(c\)](#), [\(d\)](#); [GAA](#), H.B. 1, 86th Leg., R.S., art. IX, sec. 9.01(e) – (g).

¹⁰¹ Always refer to actual governing law (e.g., statutes and other referenced authorities) for specific requirements.

Select TDA Contract Reporting and/or Notification Requirements Table ¹⁰¹					
Consulting Contracts -Contract Notification	Contract Notification– Consultant Services Exceeding \$50,000 (including amendment, modification, renewal, or extension)	Tex. Gov’t Code § 2254.0301	PCO	LBB	Not later than 10 days after contract execution
Consulting Contracts -Archives	Archives—copies of documents, films, recordings, or reports compiled by the consultant under the contract	Tex. Gov’t Code § 2254.036	Program and Records Management	Texas State Library	After contract end
Consulting Contracts - Budgetary Hearing	Report of Actions Taken in Response to Consultant Recommendations	Tex. Gov’t Code § 2054.037	Program and Government Relations	LBB and Governor’s Budget and Planning Office	As part of the biennial budgetary hearing process
Contract Notification	Contract Notification-Posting of contract and solicitation documents (includes POs), as redacted pursuant to statute	Tex. Gov’t Code § 2261.253	PCO	Agency Website	Upon contract execution (may post monthly for contracts valued at less than \$15,000)
Contract Notification - Attestation Letter	Contract Notification- Filing of attestation letter and documents for contracts exceeding \$10 Million or \$1 Million for emergency, sole source or non-competitive contracts (includes amendments and extensions, excludes enrollments)	GAA, H.B. 1, 86th Leg., R.S., art. IX, sec. 7.11	PCO	LBB	Prior to date on which first payment will be made, but no later than 30 calendar days after contract award; within 48 hours of making payment if emergency contract
Contract Notification - Construction	Contract Notification– Construction Contracts exceeding \$50,000 (including amendment modification, renewal, or extension)	Tex. Gov’t Code § 2166.2551	PCO	LBB	Not later than 10 days after contract execution

Select TDA Contract Reporting and/or Notification Requirements Table ¹⁰¹					
Contract Notification - Consulting Contracts	Contract Notification– Consultant Services exceeding \$50,000 (including amendment, modification, renewal, or extension)	Tex. Gov’t Code § 2254.0301	PCO	LBB	Not later than 10 days after contract execution
Contract Notification - Contracts Exceeding \$50,000	Contract Notification- Contracts exceeding \$50,000 (includes amendment, modification, renewal, or extension that increases contract value from less than or equal to \$50,000 to greater than \$50,000)	GAA, H.B. 1, 87th Leg., R.S., art. IX, sec. 7.04	PCO	LBB	Before the 30th day after awarding the contract or granting an amendment, modification, renewal, or extension
Contract Notification - Interagency Contracts	Interagency Contracts exceeding \$10 Million	GAA, H.B. 1, 87th Leg., R.S., art. IX, sec. 17.12	PCO	Agency Website and LBB	Not later than the 30th day after the end of each fiscal year
Contract Notification -Major Information System	Contract Notification- Major Information System Contracts Exceeding \$100,000	Tex. Gov’t Code § 2054.008	PCO	LBB	10 days after contract execution
Contract Notification - Professional Services Contracts	Contract Notification- Professional Services Contracts (excluding physician or optometric services) Exceeding \$14,000 (including amendment, modification, renewal, or extension)	Tex. Gov’t Code § 2254.006	PCO	LBB	Not later than 10 days after contract execution
Contract Notification - Vendor Contracts	Vendor Contracts Exceeding \$100,000	Tex. Gov’t Code § 2054.126(d)(4)	PCO	Agency Website	During the biennium

Select TDA Contract Reporting and/or Notification Requirements Table ¹⁰¹					
GAA - Compliance	Compliance with State Procurement Requirements	GAA, H.B. 1, 87th Leg., R.S., art. IX, sec. 17.9(f)	PCO	Office of the Governor and LBB	9/30/2020 (for activities undertaken in FY 2020) 8/31/2021 (summary report for 2020-21 biennium)
HUB Report - Annual and Semi-annual	Annual and Semi-Annual HUB Report	34 TAC pt. 1, ch. 20, subch. D, div. 1, § 20.287	PCO, HUB Program	CPA	March 15 and September 15
HUB Report- Internal Assessment; Policy Compliance	HUB Participation/ Internal Assessment/ Expenditure Analysis	GAA, H.B. 1, 87th Leg., R.S., art. IX, secs. 7.06, 7.07	PCO	CPA and LBB	December 1 every other year after a legislative session
HUB Report – Legislative Appropriation Request (LAR)	Report on Compliance with HUB Goals (included with LAR, detailed report of compliance with HUB statute)	Tex. Gov't Code § 2161.127	PCO	LBB	Submitted with agency LAR
HUB Report - Progress Report	State Agency Progress Report (submitted with agency non-financial report)	Tex. Gov't Code § 2161.124	PCO	Governor's Budget & Planning Office, Lieutenant Governor, and the Speaker of the House of Representatives	December 31
Major Contracts – CAT Review	Review of Major Contracts of \$5 Million or More (Solicitation and Contract Documents)	Tex. Gov't Code § 2262.101(a)(1); Comptroller's Guide	PCO	CAT	Prior to advertising the solicitation
Major Contracts – Internal Reporting	Major Contracts exceeding \$1 Million (Internal Contract Reporting Requirements)	Tex. Gov't Code § 2261.254	PCO	Internal to Governing Body	As needed
MIRP - Acquisition Plan	Acquisition Plan (MIRPs with a value of \$10 Million or more)	Tex. Gov't Code § 2054.305	IT, Federal State Coordination Team	QAT	Before issuing solicitation
MIRP - Notice of Award	Notice of Completed Contract (MIRPs with value of \$10 Million or more)	GAA, H.B. 1, 87th Leg., R.S., art. IX, sec. 9.02(c)(3)	IT, Federal State Coordination Team	QAT	Within 10 business days of contract award

Select TDA Contract Reporting and/or Notification Requirements Table ¹⁰¹					
MIRP - Post-Implementation	Post-implementation Review	Tex. Gov't Code § 2054.306	IT, Federal State Coordination Team	Agency Executive Director and QAT	After implementation
MIRP - Project Plan	Major Information Resources Project Plan	Tex. Gov't Code § 2054.304(b)	IT, Federal State Coordination Team	QAT	Before spending 10% of allocated funds for the project
MIRP - QAT Review	Draft Contract containing Proposed Contract Terms (MIRPs with value of \$10 Million or more)	Tex. Gov't Code § 2054.160(a)(1) ; GAA, H.B. 1, 86th Leg., R.S., art. IX, sec. 9.01(d)	IT, Federal State Coordination Team	QAT	Prior to negotiations
MIRP - QAT Review	Final Negotiated, Unsigned Contract (MIRPs with value of \$10 Million or more)	Tex. Gov't Code §§ 2054.158(b)(4) , 2054.160(a)(2), (b) ; GAA, H.B. 1, 86th Leg., R.S., art. IX, sec. 9.01(d)	IT, Federal State Coordination Team	QAT	After final negotiations
MIRP - QAT Solicitation Notice	Notice of Solicitation (must include requisition number)	GAA, H.B. 1, 87th Leg., R.S., art. IX, sec. 9.02(c)(2)	IT, Federal State Coordination Team	QAT	Upon public notice of solicitation (advertisement)
MIRP - Texas Project Delivery Framework	Texas Project Delivery Framework documents (Business Case and Statewide Impact Analysis)	Tex. Gov't Code §§ 2054.158(b)(2) , 2054.303	IT, Federal State Coordination Team	QAT	Before project initiated concurrent with filing of agency legislative appropriations request
MIRP – Amendment Notification	Notice of Amendment if the total value of the amended contract exceeds or will exceed the initial contract value by 10 percent or more; or the amendment requires the contractor to provide consultative services, technical expertise, or other assistance in defining project scope or deliverables.	Tex. Gov't Code §2054.160(c), (d) and GAA, H.B. 1, 86th Leg., R.S., art. IX, 9.01(e) – 9.01(i)	Program (IT)	Governor, Lieutenant Governor, Speaker of the House of Representatives, presiding officer of the standing committee of each house of the legislature with primary jurisdiction over appropriations, and QAT	Before amending the contract
Statutory - Cybersecurity Training	Contractor Cybersecurity Training Compliance Report	Tex. Gov't Code § 2054.5192	PCO	DIR	Upon occurrence

Select TDA Contract Reporting and/or Notification Requirements Table ¹⁰¹					
Statutory - ESB	Notice Regarding Procurements Exceeding \$25,000	Tex. Gov't Code § 2155.083(g)-(i)	PCO	CPA / ESB	Upon the posting, a minimum of 14 or 21 days as required by statute
Statutory - ESB	Notice Regarding Awarded Procurements Exceeding \$25,000 (including TXMAS awards)	Tex. Gov't Code §§ 2155.083(k) , 2155.509	PCO	CPA / ESB	Upon award for procurements and after PO has been placed for TXMAS contracts
Statutory –Historic Building	Repair exceeding \$100,000 to a building with historic designation must submit a copy of all bids and evaluation of bidder qualifications	Tex. Gov't Code § 2166.254	Agency Staff Involved with the Purchase (Facilities Staff)	Texas Historical Commission (THC)	Prior to contract award
Statutory - IT Commodity Items	Planned Procurement Schedule (PPS) for IT Commodity Items and notice of substantive changes to PPS	Tex. Gov't Code § 2054.1015(b), (d)	IT	DIR; notice of substantive changes to PPS must be provided to DIR and LBB	Must be provided before the agency's operating plan may be approved; Based on a rolling 12-month reporting period
Statutory – State Building	Notification of intent to alter, renovate, or demolish any 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 THC	Nat. Res. Code § 191.098	Agency Staff Involved with the Purchase (Facilities Staff)	THC	60 days prior to work
Statutory - State Use Program	State Use Program Exception Report	Tex. Hum. Res. Code § 122.0095(a)(2)	PCO	CPA and TWC	15th of each month

29 Version History of the Handbook

This section is used to document revisions made to the Handbook in accordance with instructions in the Preface.

29.1 Revision History Log

Revision Date	Version	Description of Revisions
03/21/2022	1.0	Publication date of the TDA Procurement and Contract Management Handbook

Glossary of Terms

Administrative Contract: A contract for goods or services primarily for direct use by TDA in the day-to-day support of an agency's administrative operations.

Amendment: Written addition or change to a contract.¹⁰²

Assignment: Transfer of contractual rights from one party to another party.¹⁰³

Assignee: The person to whom an assignment is made.

Assignor: The person who makes the assignment.

Biennium (State of Texas): A period of 24 consecutive months, beginning on September 1 of each odd numbered year: For example, September 1, 2017, through August 31, 2019.¹⁰⁴

Bridge Extension: An extension to an existing contract beyond the period of performance (including any renewals or optional extensions provided in the contract), to address immediate operational or service delivery needs caused by a delay in awarding a new contract.

Business Day: Any day other than Saturday, Sunday, or a day when state offices are authorized or obligated by law or executive order to be closed.

CAPPS: Centralized Accounting and Payroll/Personnel System. The CAPPS Financials module is the agency's system of record for procurement activities.

Centralized Master Bidders List (CMBL): An online directory, maintained by SPD, containing contact information and product categories of vendors registered to receive procurement opportunities from public entities.¹⁰⁵

Contract File: Encompasses the procurement file and any other documentation related to the management and monitoring of the resulting contract.

Contract Manager: A person who is: (i) employed by a state agency; and (ii) has significant contract management duties for the state agency as determined by the agency in accordance with CPA requirements, see Texas Government Code Section 656.052 and CPA administrative rule (34 TAC § 20.133).

Contract Period: A definite period of time stated in the contract, within the Contract Term, to which a specified amount of the contract's value may be allocated and can be expended. A contract may have multiple Contract Periods within the Contract Term.

Contract Record: The complete set of information for a contract, including any hard-copy or electronic files and any contract information contained in other systems. The term may also be referred to as contract file.

Contract Term: The period of time beginning with the commencement date or effective date of a contract and ending when the contract expires in accordance with its terms or when it

¹⁰² *Comptroller's Guide, Appendix 1: Glossary.*

¹⁰³ *Comptroller's Guide, Appendix 1: Glossary.*

¹⁰⁴ *Comptroller's Guide, Appendix 1: Glossary.*

¹⁰⁵ *Comptroller's Guide, Appendix 1: Glossary.*

has been terminated. The contract term includes any exercised renewal and extension periods.

Contractor: A business entity or individual that has a contract to provide goods or services to TDA.¹⁰⁶

Corrective Action Plan: Specific steps to be taken by a contractor to resolve identified deficiencies and to address concerns that the contracting agency has regarding the contractor's compliance with contract terms or other applicable laws, regulations, and policies. The corrective action plan may also focus on improving contractor performance (as it relates to service delivery, reporting, or financial stability).

Cost Allocation: The process of identifying, accumulating, and distributing allowable costs that are allocable to one or more than one cost objective. The cost allocation plan identifies the allocation methodology used for distributing costs to cost objectives in proportion to the benefit received. Cost allocation plans are consistent across funding sources and uniform for the business entity.

Customer Organizations: the offices, divisions, departments, sections, and units that receive procurement and contracting information, guidance, and services from TDA PCO, including departmental groups within FSD.

Electronic State Business Daily (ESBD): An online directory, administered by SPD, that publishes solicitations for the purpose of informing vendors of procurement opportunities and provides public notice of contract awards.¹⁰⁷

Extension: The continuation of the contract for a set period of time that is stated in the contract that is beyond any renewal periods.

Fiscal Year (State of Texas): A period of 12 consecutive months, beginning September 1 of

each year and ending August 31 of the next year.¹⁰⁸

Generally Accepted Government Auditing Standards (GAGAS): Auditing standards published by the U.S. Government Accountability Office, also known as the "Yellow Book."

Handbook: TDA Procurement and Contract Management Policy Handbook.

HUB: Historically underutilized business as defined by Texas Government Code Section 2161.001(2). See also 34 TAC § 20.282(11).

Indirect Cost: Costs incurred for a common or joint purpose benefiting more than one cost objective, and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. Indirect cost allocation is one method of cost allocation.

Local Government: A county, municipality, school district, special district, junior college district, or other legally constituted political subdivision of the State.

Major Information Resources Project (MIRP): Any information resources technology project identified in a state agency's biennial operating plan whose development costs exceed \$5 million and that: (i) requires one year or longer to reach operations status; (ii) involves more than one state agency; or (iii) substantially alters work methods of state agency personnel or the delivery of services to clients; and any information resources technology project designated by the legislature in the GAA as a MIRP. See Texas Government Code Section 2054.003(10).

Procurement File: Written documentation pertaining to the management of a procurement.

¹⁰⁶ *Comptroller's Guide, Appendix 1: Glossary.*

¹⁰⁷ *Comptroller's Guide, Appendix 1: Glossary.*

¹⁰⁸ *Comptroller's Guide, Appendix 1: Glossary.*

Quality Assurance Team (QAT): An interagency workgroup established to provide oversight of major information resources projects. The QAT is composed of representatives from the LBB, DIR, and CPA. The SAO serves on the QAT as an advisor. See Texas Government Code Section 2054.158.

Retention Period: The period during which records must be kept before they may be disposed of, usually expressed in years or contingent upon an event, such as end of calendar year. Record retention periods apply to state agencies and to the entities that contract with state agencies. Records must be retained in accordance with agency records retention policies and as specified in contract documents. Records may also be subject to additional federal record retention timelines.

Subcontract: A written agreement between the original contractor and a third party to provide all or a specified part of the work or materials required in the original contract.

Transactional Purchase Order (TPO): A legally enforceable agreement to purchase a good or service established for a single procurement term not to exceed 12 months (no stated renewals). The point in time purchase (not affiliated with an existing contract) begins and ends with the delivery or completion of the purchased good or service, other than the warranty of the good or service to meet expectation.

Unallowable Costs: Costs that are expressly unallowable under applicable state and federal laws and regulations or under the terms and conditions of the contract, or that are unreasonable or unnecessary.

Unit Price: The price for a good or service in accordance with the unit of measure provided in the solicitation,¹⁰⁹ (e.g., price per ton, per labor hour, or per foot).

Vendor: A potential provider of goods or services to the State.¹¹⁰

¹⁰⁹ *Comptroller's Guide, Appendix 1: Glossary.*

¹¹⁰ *Comptroller's Guide, Appendix 1: Glossary.*

Acronyms and Abbreviations

AIS	Automated Information Systems
BAFO	Best and Final offer
CAPPS	Centralized Accounting and Payroll/Personnel System
CAT	Contract Advisory Team
CCTS	Capitol Complex Telephone System
CFDA	Catalog of Federal Domestic Assistance
CFR	US Code of Federal Regulations
CMBL	Centralized Master Bidders List
CPA	Comptroller of Public Accounts
CTCD	Certified Texas Contract Developer
CTCM	Certified Texas Contract Manager
CTPM	Certified Texas Procurement Manager (Replaced by CTCD)
D&B	Dun & Bradstreet
DBITS	Deliverables-Based It Services
DCS	Data Center Services
DIR	Department of Information Resources
DOT	US Department of Treasury
DUNS	Data Universal Numbering System
EIR	Electronic and Information Resources
ERP	Enterprise Resource Planning
ESBD	Electronic State Business Daily
FAIN	Federal Award Identification Number
FFATA	Federal Funding Accountability and Transparency Act
FOF	Finding of Fact
GAA	General Appropriations Act
GAGAS	Generally Accepted Government Auditing Standards
HSP	HUB Subcontracting Plan

HUB	Historically Underutilized Business
IAC	Interagency Contract
IDIQ	Indefinite Delivery Indefinite Quantity
IFB	Invitation for Bids
IR	Information Resources
IT	Information Technology
ITSAC	IT Staff Augmentation Contract
IV&V	Independent Verification and Validation
LAR	Legislative Appropriations Request
LBB	Legislative Budget Board
MIRP	Major Information Resources Project
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NOFA	Notice of Federal Award
NOGA	Notice of Grant Award
OAG	Office of The Attorney General
PAR	Prime Contractor Progress Assessment Report
PCC	Purchase Category Codes
PCO	Procurement and Contracting Office
Procard	Procurement Card
PO	Purchase Order
POCN	Purchase Order Change Notice
POD	Procurement Oversight & Delegation
PPS	Planned Procurement Schedule
PRAI	Program-Specific Risk Assessment Instrument
QAT	Quality Assurance Team
RACI	Responsible, Accountable, Consulted, and Informed

RFA	Request for Applications
RFI	Request for Information
RFO	Request for Offers
RFP	Request for Proposals
RFQ	Request for Qualifications
RFQIT	Request for Quotes for Information Technology
RFx	Complex Procurement Methods that Include RFAs, RFOs, RFPs, AND RFQs
SAO	State Auditor’s Office
SOW	Statement of Work
SPD	Statewide Procurement Division
STS	Shared Technology Services
TAC	Texas Administrative Code
TCI	Texas Correctional Industries

TDCJ	Texas Department of Criminal Justice
TEC	Texas Ethics Commission
TEX-AN	Texas Agency Network
TFC	Texas Facilities Commission
THC	Texas Historical Commission
TIN	Texas Identification Number
TPO	Transactional Purchase Order
TWC	Texas Workforce Commission
TxGMS	Texas Grant Management Standards
TXMAS	Texas Multiple Award Schedule
UGC	State of Texas Uniform General Conditions for Construction Contracts
UGG	Uniform Grant Guidance
VPTS	Vendor Performance Tracking System

PCO Operating Procedures

(Only accessible by TDA Staff)

Number	Name
	12.1 Procurement Action Lead Times (PALTS)
	12.3 Procurement Risk assessment Tool
	12.4 Request for Information (RFI)
	12.6 Emergency Procurements Form
	12.8.4 HUB Form
PCO 005	13.7 Spot Purchase (Non-IT)
PCO 006	14.3 Texas SmartBuy
PCO 007	13.9 Informal Bidding (Non-IT)
PCO 008	13.9 Informal Open Market Purchase IQR without Renewals (<\$25k)
PCO 009	13.9 Informal Bidding (>\$25k)
PCO 010	13.11 Information Technology (IT) Purchases
PCO 011	13.12 Printing Services
PCO 012	13.14 Emergency Procurements
PCO 013	13.15 Proprietary Purchases
PCO 014	13.16 Consulting Services Contracts
PCO 015	13.17 Request for Proposal (RFP)
PCO 016	13.18 RFP Construction
PCO 017	13.19 Request for Qualifications (RFQ)
PCO 018	16. Solicitation Advertisement
PCO 019	17. Vendor Conference
PCO 020	19.2.3.6 Vendor Selection Justification and Procurement Certification
PCO 021	19.2.6 Reference Checks Survey Form
PCO 022	20. Notice of Disqualification and Intent to Award
PCO 023	23.2 Vendor Debriefing
PCO 024	24.1 Document Management System

Number	Name
PCO 025	24.2.I Identifying and Tracking Contract Deliverables Form
PCO 026	24.2.U Contract Closeout
PCO 027	24.6 Contract Risk Assessment Worksheet (CRAW)
PCO 028	24.19.2 Contract Renewals
PCO 029	13.8 Non-Biddable Requests

PCO Forms and Templates

(Only accessible by TDA Staff)

Number	Name
PCO 800	Procurement File Checklist
PCO 801-0	PCO Checklist – Doc Type 9
PCO 801-A	PCC A Checklist
PCO 801-C	PCC C Checklist
PCO 801-D	PCC D Checklist
PCO 801-E	PCC E Checklist
PCO 801-F	PCC F Checklist
PCO 801-G	PCC G Checklist
PCO 801-I	PCC I Checklist
PCO 801-K	PCC K Checklist
PCO 801-L	PCC L Checklist
PCO 801-M	PCC M Checklist
PCO 801-P	PCC P Checklist
PCO 801-Q	PCC Q Checklist
PCO 801-S	PCC S Checklist
PCO 801-T	PCC T Checklist
PCO 801-X	PCC X Checklist
PCO 802	POCN Contract Amendment Checklist
PCO 803	Contract Final Checklist
PCO 804	Contract Closeout Checklist
PCO 805	Emergency Purchase Justification
PCO 806	Proprietary Purchase Justification
PCO 807	Purchase Requisition Form
PCO 808	Justification for a Purchase Pertaining to a Lease Agreement
PCO 809	Solicitation Approval
PCO 810	Vendor Selection Justification and Solicitation Certification

Number	Name
PCO 811	Contract Routing and Approval Request
PCO 812	Contractor and Subrecipient Determination
PCO 813	CMBL Supplementation Approval Request
PCO 814	HUB Subcontracting Determination
PCO 815	HUB Subcontracting Plan Review
PCO 816	HUB Post Contract Award Form
PCO 818	Reference Survey Forms (Reference Checks)
PCO 819	Vendor Performance Report
PCO 820	Notice of Intent and Finding Fact (FOF)
PCO 821	Acquisition Plan
PCO 822	Kickoff Meeting Agenda
PCO 823	Procurement Risk Assessment – Pre-Award
PCO 824	Consultant Contract Notice and Finding of Fact Request

Appendix A – CPA Delegated Purchases Table

(See [Comptroller's Guide v.2.0](#), Procurement Method Determination, Summary of Minimum Requirements for Delegated Purchases)

MINIMUM REQUIREMENTS FOR SPD DELEGATED PURCHASES*								
Contract Value	Purchases of Goods**	Purchases of Services**	Direct Publication Purchases	Perishable Goods Purchases	Distributor Purchases	Fuel, Oil, and Grease Purchases	Internal Repair	Emergency Purchases**
\$0 - \$10,000	Competitive Process Not Required PCC E	Competitive Process Not Required PCC E	Competitive Process Not Required PCC K	Competitive Process Not Required PCC L	Competitive Process Not Required PCC M	Competitive Process Not Required PCC P	Competitive Process Not Required PCC E	Competitive Process Not Required PCC E
\$10,000.01 - \$25,000	Informal Competitive Solicitation PCC F	Informal Competitive Solicitation PCC Q	Competitive Process Not Required PCC K	Informal Competitive Solicitation PCC L	Informal Competitive Solicitation PCC M	Informal Competitive Solicitation PCC P	Informal Competitive Solicitation PCC Q	Informal Competitive Solicitation PCC Q
\$25,000.01 - \$50,000	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC L	Formal Competitive Solicitation PCC M	Formal Competitive Solicitation PCC P	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC T
\$50,000.01 - \$100,000	Non-Delegated PCC S	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC L	Formal Competitive Solicitation PCC M	Formal Competitive Solicitation PCC P	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC T
Over \$100,000	Non-Delegated PCC S	Non-Delegated PCC S	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC L	Formal Competitive Solicitation PCC M	Formal Competitive Solicitation PCC P	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC T

*Procurements made under SPD's delegation authority are subject to ESBID posting requirements as well as requirements applicable to CAT and QAT reviews.

**Purchases for printing must comply with the Printing Services and In-House Copy Centers procedures.

Appendix B – Request for Information (RFI)

A Request for Information (RFI) is a formal research method used by an agency to gather information directly from the industry about a particular type of product or service. One of the benefits of the RFI process is that information, pertinent to an agency's business need, is obtained in real-time directly from the vendor community regarding applicable industry standards, best practices, potential performance measures, cost structures or pricing methodologies, and feedback on innovative items.

A common practice is to publish the RFI on the ESBD or submit the RFI to an appropriate professional or trade organization. This practice has the benefit of not only utilizing a venue that optimizes access by the vendor community, but also serves to control vendor communications so that they only occur with designated agency contacts. By establishing a prescribed communication protocol at the beginning of the RFI process, the agency is ensuring that a "level playing field" is maintained within the vendor community if there is a subsequent procurement initiative.

It is important to note that an RFI is not a procurement opportunity; a contract cannot be developed from a response to an RFI. Responses to an RFI are strictly voluntary and there is no downside for vendors who choose not to participate; consequently, an RFI cannot be used to establish a pre-qualified vendor list as voluntary participation in the RFI process cannot disadvantage vendors that choose not to participate. Vendors may choose not to participate in RFIs for a variety of reasons. For instance, a vendor may have a company policy of not responding to RFIs. Vendors may also decide, on a case-by-case basis, not to respond to RFIs seeking information readily available on the internet. The number of responses to an RFI, therefore, should not be used to gauge industry interest in any subsequent procurement initiative.

An agency may choose to use information received from RFI responses to develop specifications for a solicitation. Responses to RFIs, therefore, are public information. Public procurement professionals must be mindful not to provide any information during the RFI process that would give a vendor an advantage in a later procurement or could be construed as preliminary negotiations. If RFI respondents are requested to deliver oral presentations, the same agency staff should attend all presentations and the respondents should be offered the same amount of time to conduct their presentations. It is best practice for RFI activities to conclude prior commencement of specifications drafting.

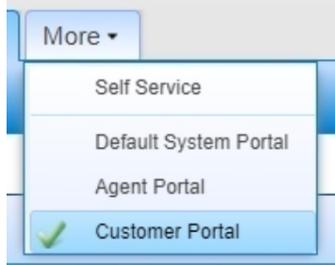
Steps for posting an RFI:

1. Draft the RFI using the same subject matter experts (SMEs) that will be involved in drafting your SOW. Make sure all relevant users and any program area attorneys that might have an interest in the outcome of the procurement get a chance to review the RFI.
2. Email a request with the final RFI document attached to the Director of Procurement and Contracts (PCO Director). Inform the PCO Director of the closing date and if any groups should be notified regarding the posting.
3. PCO will post the RFI and return the responses to the division requester after closing. The RFI responses may be used to **inform** your SOW development.

Appendix C – IT Procurement Approval Process (Replaces AIR-605)

To submit an IT procurement for review, you will need to login to the service desk system at <https://servicedesk.texasagriculture.gov/servicedesk/application.html>. Once you are signed in, the ticket submission process begins.

To start, make sure you are in the Customer Portal, as seen here:



On the '**Services**' tab, you will see a box for '**IT Purchase/Software Review**'.



Clicking this will open the new Procurement Request ticket type. You will need to fill in the information fields here, most of which were on the AIR-605, which is no longer used. When done, click the Submit button.

Once submitted, the ticket will run through approvals from the Systems Architect, Information Security Officer (ISO), and the CIO. You will receive emails updating you on the status as it moves through the process.

To view your current submissions, you can click the '**Open Tickets**' tab, or for your completed submissions you can click the '**Closed Tickets**' tab

This covers IT's review of proposed new technology procurements. The procurement itself will continue to work through CAPPs. When IT-related comp-object codes being purchased reach the CIO for approval in CAPPs, the CIO will be prepared with the needed information to make a determination.

Appendix D – The Statement of Work (SOW)

1.1.1 SOW Types

A statement of work can be performance-based, a design specification, or a mixture of both:¹¹¹

- a. Performance-based specifications focus on outcomes or results rather than processes, and on the required goods and services rather than how the goods and services are provided.
- b. Design specifications outline exactly how the contractor must perform the service or how the goods perform.

1.1.2 Drafting Specifications

All specifications should:

- a. Permit competition between products of equal quality;
- b. Include a statement regarding the qualitative nature of the purchase; and
- c. Identify the minimum essential characteristics and standards to which the purchase must conform if it is to satisfy the intended use.

1.1.3 SOW Development

Tips to keep in mind when writing a statement of work:

- a. Identify SMART objectives: specific, measurable, achievable, realistic, and timely.
- b. Consider appropriate project development or design methodology. Waterfall methodology works well with projects that have assured predictability, like construction projects. Agile methodology is intended for projects that may benefit from incremental development and successes, like software development.
- c. Use simple descriptions: Write so a person unfamiliar with the good or service can easily understand what the agency is buying.
- d. Avoid acronyms and definitions: Avoid acronyms and references to definitions contained in other sections of the solicitation, including a glossary.
- e. State requirements once: The statement of work should not duplicate terms and conditions or other provisions in the solicitation, contract, or terms and conditions.
- f. Use non-proprietary terminology: Requiring the use of proprietary goods or services limits competition and increases the risk of a bid challenge or allegation that the requirements are slanted to a particular contractor.
- g. Write with the evaluation criteria in mind: The statement of work must include all of the requirements that will be used to evaluate and choose a contractor. A well-written statement of work will allow the agency to differentiate between competing proposals.

1.1.4 SOW Best Practices

¹¹¹ *Comptroller's Guide, Scope of Work.*

An SOW brings together work details, schedules, terms, and expected outcomes to define exactly what should be done on a project and how it should be procured, as well as to protect against scope creep, where features, additions, and nice-to-haves can balloon beyond what was initially planned.

A good SOW involves team collaboration to collectively build a solid business requirement document that describes how requirements will be executed, analyzed, and managed. Moreover, a contract manager should participate in the development of the statement of work and be part of the team early in the process.

1.1.4.1 Primary Sources

While a SOW is unique for each project, best practices in writing an SOW share basic elements that are generally consistent across projects. Primary sources for developing the SOW are:

- a. Needs assessment;
- b. Previous procurement for the service;
- c. Any current or prior contracts for the service and how those contracts did or did not result in the desired outcomes; and
- d. Description of the service maintained by the agency (e.g., in the TAC or agency program handbook).

1.1.4.2 Key Elements

When developing an SOW, the drafter should not only consider the elements of proper specification drafting, but also other elements such as key performance measures (desired outcomes, such as a 99% answer rate in a call center), deliverables (such as reports), project milestones, and other aspects to ensure the outcome of the contractor's work meets the outcomes intended by the program. When PCO reviews an SOW submitted by a program area, they assess the following key elements:

- a. Sufficient detail: The SOW must contain sufficiently detailed description of what is required of the contractor to satisfactorily perform the work. The program must ensure that all requested goods and/or services are clearly stated.
- b. Clear deliverables and deadlines: The SOW should outline the deliverables and associated deadlines clearly and completely. It must also identify the responsible party for each deliverable. Clarity in responsible party for each task is imperative in holding the contractor accountable.
- c. Acceptance criteria: Specify how the agency will determine if the product or service is acceptable.
- d. Contractor performance and financial capacity: The SOW must clearly specify the contractor qualifications, experience, and financial capability being requested in the proposal.
- e. Consider the dollar amount: Program areas should consider the dollar amount when requesting evidence of financial capability. High estimated

value of contracts may need more evidence from a respondent of financial viability. Examples of proof of financial viability include contacting bidder's current customers, written descriptions of size and scope of operations, prior contracting experience with the State, balance sheets, D&B reports, or an audited statement by a CPA.

- f. Eligible population: Define and describe the population eligible to receive services under the resulting contract and ensure it is consistent with the eligibility information in existing program documentation, such as the program handbook, as applicable. Identify who will determine eligibility.
- g. Characteristics of the service population: Define the characteristics of the individuals to be served under the resulting contract. The intent is to give the contractor information on the population it will be serving. For example, will individuals served be court-ordered into services, receiving services voluntarily, have open abuse and neglect cases.
- h. Service authorization and referral process: Identify how individuals will be referred for services provided by the contractor (e.g., agency, self-referral, contractor outreach) and describe the process, including any forms, through which individuals will be referred or approved for services.
- i. Location of work or service areas: Describe where the work is to be performed (e.g., region, counties, cities, zip codes) and where people will meet to do the work.
- j. Period of performance: Specify the allowable dates for projects, such as start and finish time, number of hours that can be billed per week or month, and anything else that relates to scheduling.
- k. Deliverables schedule: List and describe what is due and when, including any reports the contractor is required to submit.
- l. Minimum qualifications: List the minimum acceptable qualifications for the service provider's staff and organization.
- m. Professional licenses and certifications: Describe the applicable license and certification standards required for completing the work.
- n. Record keeping: Describe in detail all records the contractor and service providers are required to keep, such as: referral records, individuals' records, case files, reports, notifications, performance measure supporting documentation, billing records, personnel records, subcontractor files and agreements, licenses, certifications, qualifications, background check results, health records, or investigation records. Specify the format for these records.
- o. Established standards: Describe any regulatory, agency, or industry specific standards that need to be followed in fulfilling the contract.
- p. Type of contract and payment schedule: Define the payment methodology, basis for payment, and invoicing process.

- q. Liquidated damages and other remedies: Determine whether liquidated damages are appropriate (e.g., for failure to meet specific performance measures or milestones), as well as stating other remedies (such as, corrective action plans, escalated monitoring, payment holds) that may be applied if contract requirements (e.g., specific performance measures and/or reporting requirements) are not met. All remedies that may be utilized must be stated in the solicitation. Some remedies, one common example being contract termination, are included in TDA's Uniform Terms and Conditions (UTCs). In drafting the SOW, care should be taken to ensure consistency regarding damages and remedies throughout the entire solicitation package.
- r. Monitoring activities: Describe the strategy to be used to monitor and assess contractor performance.
- s. Transition and turnover planning: Identify any transition activities the new contractor will be required to perform in order to be ready to effectively provide services on the contract effective date. Identify any transition activities the new contractor will be required to perform at the end of their contract in order to effectively transition individuals and services to a subsequent contractor, as well as the anticipated time period for transition activities.

1.1.5 Contract Performance Standards and Key Measures

Including performance measures in the SOW sets the expectation of performance. Contracts must include specific performance measures that set clear expectations for the contractor and hold contractors accountable for those expectations. Performance measures encourage routine improvement, effectiveness, and efficiency. Strong performance measures allow the TDA System to:

- a. Establish performance measures with clearly defined indicators;
- b. Develop processes for collecting performance data and information;
- c. Develop processes for analyzing and reporting data and information;
- d. Conduct quality improvement planning, implementation, and evaluation;
- e. Ensure contract goals, objectives, and strategies align with outcomes;
- f. Operate efficiently and effectively;
- g. Maximize resources; and
- h. Provide data to determine whether contractors are meeting their objectives.

Contracts must specify remedies for noncompliance (e.g., contract termination) and may include any incentives for exceeding standards.

Performance standards will vary based on the contract and additional standards may be necessary.

1.1.6 Characteristics of Good Key Performance Measures

The SOW must contain minimum objective performance standards that are clearly stated, so that contractor’s performance under any resulting contract can be monitored and measured. For services, PCO will look for program’s method, procedure, or test condition to verify each stated performance standard. For commodity elements, PCO will look for means for program to verify quantity and whether specifications are met. The characteristics of good key performance measures include the following:

- a. Simple: Can our stakeholders understand it?
- b. Relevant: Does it matter to key stakeholders?
- c. Stable: Is it usable during business cycles over time?
- d. Timely: Is it taken when and where results appear?
- e. Accurate: Does it consistently measure what it purports to?
- f. Used: Does it change what the agency is doing?
- g. Informative: Does it tell us about what we are doing, or should be doing?
- h. Specific: Does it allow for, or factor out, other measures?
- i. Unique: Is it measuring something already measured?
- j. Cost-effective: Is measuring worth it, and how good is good enough?
- k. Non-disruptive: Does it create ethical, legal, or other types of conflicts?

KEY PERFORMANCE MEASURES	
Types and Definitions	Examples
Outcome and Effectiveness: Measurable indicator of the agency's effectiveness in serving its customers and in reaching the mission, goals, and objectives.	<ul style="list-style-type: none"> a. Percentage of license applications processed in 30 days. b. Percentage of licensees inspected annually. c. Percentage of licensees with no violations.
Output: Measurable indicator of the number or volume of services an agency produces. Used to assess workload and the agency's efforts to address those demands.	<ul style="list-style-type: none"> a. Number of complaints. b. Number of inspections conducted. c. Number of license applications processed.
Efficiency: Measurable indicator of productivity expressed in unit costs, units of time, or other ratio-based units. Used to assess the cost-efficiency, productivity, and timeliness of agency operations, outcomes, and outputs.	<ul style="list-style-type: none"> a. Average cost per case. b. Average cost per inspection. c. Average time for complaint resolution.

KEY PERFORMANCE MEASURES	
Explanatory/Input: Indicator of factors, agency resources, or requests received that can impact an agency's performance.	<ul style="list-style-type: none"> a. Percentage of inspectors certified. b. Number of business facilities registered. c. Number of cases received.

1.2 Contractor Compensation

The method of payment has a direct impact on how the SOW is written and how the contract is managed. TDA agencies must measure or verify that the work is complete and how much and how often the agency will pay the contractor, if more specific than stated in the Uniform Terms and Conditions. Program should be mindful of, and consistent with, applicable law (e.g., the [Texas Prompt Payment Act](#)).

Payments should be:

- a. Consistent with the type of product or service delivered;
- b. Structured to fairly compensate the contractor and encourage timely and complete performance of work;
- c. Approximately equal to the value of the completed work; and
- d. The solicitation should specify the payment type (fees, costs, and price) that is consistent with the type and value of work performed and as defined in the solicitation.

Retainage may be considered under payment provisions, as well.

1.3 Determination of Payment Type

Determination of the appropriate compensation method to make payment to the contractor helps ensure the State receives the best value.

1.3.1 Compensation Method/Primary Payment Type

TDA agency staff must determine the most effective compensation method or primary payment type during the procurement planning stages. The payment type selected will be one that best ensures:

- a. Delivery of services;
- b. Efficiencies and effectiveness of those service; and
- c. The best value to the program and individuals served.

1.3.2 Multiple Payment Types

In some cases, the best structure may include multiple payment types for different services within the same contract. Examples of payment types include:

- a. Cost Plus Incentive;
- b. Fee-for-Service;

- c. Fixed Price;
- d. Performance Based;
- e. Rate Based; and
- f. Time and Material.

Appendix E - Evaluation Criteria

1.1.1 Developing Evaluation Criteria

Developing the evaluation criteria should be an extension of the solicitation objective and should align directly with the end user's desired results and expectations. The weight assigned to each evaluation criterion must correlate to its importance. When developing the evaluation criteria, consider the overall objectives of the procurement and the expected results. Apply relative importance and weight to the criteria accordingly. Generally, cost weights should fall somewhere between 30-40%, and other criteria should not fall below 5% or exceed 30%.

The evaluation tool must measure items described in the solicitation, and the evaluation tool must contain a column that contains a reference to the area in the solicitation from which each criterion and subcriterion comes.

The chart below illustrates how weights effect numeric scores:

Line-Item Score using Scoring Guide		Line-Item Weight and Final Score												
		1%	2%	3%	4%	5%	10%	15%	20%	25%	30%	40%	60%	70%
Unacceptable	1	0.10	0.20	0.30	0.40	0.50	1.00	1.50	2.00	2.50	3.00	4.00	6.00	7.00
	2	0.20	0.40	0.60	0.80	1.00	2.00	3.00	4.00	5.00	6.00	8.00	12.00	14.00
	3	0.30	0.60	0.90	1.20	1.50	3.00	4.50	6.00	7.50	9.00	12.00	18.00	21.00
Marginal	4	0.40	0.80	1.20	1.60	2.00	4.00	6.00	8.00	10.00	12.00	16.00	24.00	28.00
	5	0.50	1.00	1.50	2.00	2.50	5.00	7.50	10.00	12.50	15.00	20.00	30.00	35.00
	6	0.60	1.20	1.80	2.40	3.00	6.00	9.00	12.00	15.00	18.00	24.00	36.00	42.00
Acceptable	7	0.70	1.40	2.10	2.80	3.50	7.00	10.50	14.00	17.50	21.00	28.00	42.00	49.00
	8	0.80	1.60	2.40	3.20	4.00	8.00	12.00	16.00	20.00	24.00	32.00	48.00	56.00
	9	0.90	1.80	2.70	3.60	4.50	9.00	13.50	18.00	22.50	27.00	36.00	54.00	63.00
Exceptional	10	1.00	2.00	3.00	4.00	5.00	10.00	15.00	20.00	25.00	30.00	40.00	60.00	70.00

- 1.1.1.1 **Recommended.** 10% - 25% (green columns) are the safer, recommended weights for all criteria and sub- criteria, **except for Cost.**
- 1.1.1.2 **Not Recommended.** Below 5% or exceeding 30% (red columns) are weights that result in too small or too large score variances and are not recommended. These scores are harder to defend, pose a higher risk, and significantly increase the potential for unsuccessful protests.
- 1.1.1.3 **Proceed with Caution.** 5% and 30% (yellow columns) may be appropriate in certain circumstances with further consideration.

1.1.2 Characteristics of Effective Evaluation Criteria

The TDA PURCHASER will return ineffective evaluation criteria to the program. For criteria to be effective, they should have the following characteristics:

- a. Clear: not subject to multiple interpretations, not ambiguous;
- b. Relational: all key elements of the project requirements must relate to the requirement definition and be covered by evaluation criteria;
- c. Discriminating: separate best, average and weaker proposals;
- d. Non-discriminatory: fair and reasonable;
- e. Realistic: given the nature or value of the contract;
- f. Measurable: must have distinguishing importance;
- g. Economical: use of the criteria should not consume an unreasonable amount of time or resources; and
- h. Justifiable: makes sense and can be justified on common sense, technical and legal basis; mandatory and heavily weighted criteria must be justified.

1.1.3 Evaluation Criteria for Goods and Services

Purchase price and evidence that goods and services meet specifications are the most important considerations when goods and services are procured through a competitive process. It is common for there to be three to five evaluation criteria which broadly address the following:

- a. Respondent's relevant qualifications, experience, and past performance (15%);
- b. Proposed approach and work plan to meet solicitation requirements (30%);
- c. Adequate staffing, organization structure, subs, and key personnel to meet solicitation requirements (15%);
- d. Proposed Key Personnel's relevant qualifications, experience, and past performance (10%); and
- e. Cost/Price (30%).

Examples of additional and more detailed evaluation criteria may be found in the best value standards found in statute. Best value standards include, but are not limited to, the following: Sections 2155.074, 2156.007, 2157.003, 2254.003, and 2254.027 of the Texas Government Code.

1.1.4 Cost Evaluation Methodology

The scoring method used for the cost criterion must be reviewed for each solicitation to ensure it is appropriate for the products and services to be procured. The method for evaluating cost must be determined prior to posting the solicitation. And must provide respondents a fair and equitable method of having their proposal reviewed and considered in a consistent and similar manner as their competitors.

Failure to adequately account for the method of evaluating cost prior to posting and failure to do so in a manner supported by law may result in the cancellation of a solicitation. For example, Texas Government Code Chapter 2254 requires that qualifications for certain professional services, not price, be considered in selecting a respondent for negotiations.

In general, an RFP and an RFO should have approximately 30-40% of its evaluation criteria devoted to cost. Limited exceptions may be made when funding is fixed and the goal is to spend the entirety of the allotted money at the highest possible benefit (e.g., services are procured to fulfill the terms of grant funding). Exceptions may also be made for indefinite delivery/indefinite quantity (ID/IQ) procurements where the solicitation will establish master agreements, and the specific scope is defined in subsequent work orders. For this type of solicitation, a lower weight (possibly 10-20%) is assigned to cost criteria for review of the general rates proposed in the solicitation and a higher (30-40%) weight to cost criteria when the work orders are reviewed.

1.1.4.1 Cost Evaluation Methods

Cost evaluation may be objective, subjective, or a combination of both. All types of cost evaluation are tied to an evaluation criterion that factors into the Respondent's overall score. It is not a pass/fail criterion, but rather tied to a specific percentage of points.

The scoring method used to assess the cost criterion must be carefully considered. An objective cost evaluation relies on a quantifiable mathematical formula, rather than independent judgement, to calculate the score. In contrast, a subjective cost evaluation considers factors such as the appropriateness of the cost metric chosen by the respondent and the impact of any identified assumptions or constraints on the proposed cost.

Appendix F - Requisition Requirements

Procurement	Requisition Requirements
Goods (non-IT)	<ul style="list-style-type: none"> • Separate line item for each good and include the following: <ul style="list-style-type: none"> ○ Item Description* ○ Quantity ○ Unit of measure (UOM) ○ NIGP Code – Class & Item ○ Price • Line Comments should contain, if applicable: <ul style="list-style-type: none"> ○ Contract information and/or number (e.g., SPD Term Contract, TXMAS, etc.) ○ Quote/Wishlist/Cart from the preferred vendor or screenshot of desired item ○ Additional documentation (e.g., SOW or item specifications, diagrams, etc.) • Header Comments should contain, if applicable: <ul style="list-style-type: none"> ○ Contact information (names, email addresses, and phone numbers) for lead contact, contract manager, and responsible party for the order ○ Contact Information for the preferred vendor (i.e., name of vendor, vendor representative name, email address, phone number, and VID, if known) ○ Bill-To and Ship-To information ○ Program-specific info (e.g., end user contact info, special delivery instructions, AP contact info, etc.) • Expedite and Emergency Requisitions: <ul style="list-style-type: none"> ○ Once requisition has been submitted and has received all necessary workflow approvals, email: Kelly.Parker@TexasAgriculture.gov. ○ Include the requisition number and a justification statement in the email message. ○ For Emergency Requisitions, fill out TDA Form PCO 805 Emergency Purchase Justification

Procurement	Requisition Requirements
	<p>with signature from program’s manager or designee. Attach form in email message.</p> <ul style="list-style-type: none"> • Proprietary and Sole-Source Procurements: <ul style="list-style-type: none"> ○ Fill out PCO 806 Proprietary Purchase Justification ○ Attach completed TDA Form PCO 806 in submitted requisition signed by the program’s manager or designee <p>* Item Description should include Manufacturer’s Name, Full Product Name, Manufacturer Part Number, Size, Color, Type, and Grade. Include screen shots or catalog page numbers if available.</p> <p>Sample Description: Avery, 8160, Easy Peel White Address Labels w/ Sure Feed Technology for Inkjet Printers, 1 x 2.63, White, 30/Letter-size Sheet, 25 Sheets/Pack, Item #574566</p>
Temporary Staff Services	<ul style="list-style-type: none"> • Service Dates • Job Class # • Job Class Title • Highway District # • Rate (Entry Level, Experienced, Expert) • Job Description • Knowledge, Skills, and Abilities • Work Hours (AM/PM) • Workdays (Mon-Fri) • Work Hours per Week • If overtime is allowed, it is calculated at a different rate and requires an additional line on the requisition • Prior to issuing a purchase order, the purchaser will need the name of the person for each position <p>Sample requisition line: Temporary Staffing, 09/01/2020-08/31/2021, Job Class 0006, Receptionist, District 1, Entry Level, John Doe, Up to 40 hours per week</p>
Moving Services	<ul style="list-style-type: none"> • Estimated dollar amount of the move • SOW with moving details to include, but not limited to: <ul style="list-style-type: none"> ○ Move Dates ○ Locations

Procurement	Requisition Requirements
	<ul style="list-style-type: none"> o Items to be moved o Hours when moves should occur o Floorplans (if available) o Site Contact Person(s)
Printing Requisitions	<ul style="list-style-type: none"> • All print jobs: <ul style="list-style-type: none"> o Proof(s) attached to requisition o Quote attached to requisition o Communications approval email attached to requisition • For jobs over \$2,500, in addition to the above, the following is needed: <ul style="list-style-type: none"> o Print Shop Job Request Form o All bids or no bids received by State Print Shops o Bid Tabulation o Email to TCI giving the opportunity to negotiate price if not the lowest bidder o Email to stateprintshops@cpa.texas.gov showing award notification with bid tabulation o Documentation to show that an unsuccessful request to the State Print Shops was made
Conference/Meeting Room Space	<p>If state-owned or state-leased facilities do not meet the agency's needs, the following is needed:</p> <ul style="list-style-type: none"> • Documentation of at least one of the following: <ul style="list-style-type: none"> o Not available when needed; o Not adequate to accommodate the meeting, conference, or examination; or o Not an economically favorable alternative to other facilities. • Copy of TFC reservation portal calendar.
IT Products	<ul style="list-style-type: none"> • IT approval via the Service Desk (https://servicedesk.texasagriculture.gov) for products over \$50K • Product Part Number • Product Description (a screen shot) • Budgetary Estimate: DIR contract number must be referenced on budgetary estimate • Legally approved signature page for IT amendments • Form PCO 811 Contract Routing and Approval Request for IT amendments

Procurement	Requisition Requirements
	<ul style="list-style-type: none"> • DIR Cooperative Contracts, if needed, to facilitate the IT procurement process
IT Services	<ul style="list-style-type: none"> • IT approval via the Service Desk (https://servicedesk.texasagriculture.gov) for services over \$50K • Completed SOW: For IT services over \$50,000, DIR review is required • Budgetary Estimate: DIR contract number must be referenced on budgetary estimate • Legally approved signature page for IT amendments • Form PCO 811 Contract Routing and Approval Request for IT amendments • DIR Cooperative Contracts, if needed, to facilitate the IT procurement process • Clearly state contract manager's name, email, and phone number in requisition comments, as applicable • Requisition should be created to match how purchase order will be billed as well as received
Formal Procurements >\$25k	<ul style="list-style-type: none"> • Completed SOW. • Contract Value. Contract value is the most common mistake on the Request Document, and always requires re-routing for approvals because approvals vary at different contract values. Remember, the value of the contract is the value of the initial term plus all renewals and extensions, if applicable. (Example: Initial contract term is one-year at \$100,000, plus 3 one-year renewals. The contract value is \$400,000.) • Form PCO 812 Contractor or Subrecipient Determination must be completed in order to determine whether the contract will operate under a subrecipient or contractor relationship.
Construction	<ul style="list-style-type: none"> • The required documents include the solicitation template and all related exhibits. • Contract Value. Contract value is the total estimated construction budget for the project. The total construction budget does not include

Procurement	Requisition Requirements
	professional services fees associated with the project.

Appendix G – TDA Vendor Interaction Policy

1. PURPOSE

The Texas Department of Agriculture TDA assists Texans through multiple programs. To accommodate citizens of Texas and to remain conservative with state funds, strategic planning is necessary to provide goods and services effectively and efficiently for the state's current needs as well as to anticipate future needs.

Industry research is essential in keeping up with the latest developments and trends. It enables TDA to spend its limited funding in a strategic manner that can ensure programs remain viable and sustainable.

Communication between public procurement professionals, agency staff, and the vendor community is imperative and encouraged. Through interaction with the vendor community, TDA can share general information about the needs of the agency, and understand what vendors are able to provide. If used effectively, communication with industry representatives can provide the best products, resources, and services for procurement needs.

Texas Government Code Section 2155.090(b)¹¹² requires the Comptroller of Public Accounts to maintain a contract management guide that include policies regarding interactions and communications between state agency employees and the vendor community. The contract management guide encourages the exchange of information between the agency and a vendor who is interested in doing future business with the state agency or communicate with a vendor to monitor an existing contract. Agency personnel must remain mindful that one-on-one communications with vendors occurring outside of the procurement process are subject to enhanced scrutiny due to the importance of maintaining an equal playing field among all eligible vendors during competitive procurements.

Each employee is expected to use their best judgment when interacting with vendor representatives. Employees should be familiar with the agency's Ethics Policy and the specific Ethics Policy for Contracting and Procurement Personnel and ensure that all training and disclosure requirements related to ethics issues are up to date prior to meeting with any vendor representative. If at any point an employee is faced with an ethical dilemma that is not addressed in the agency Ethics Policies, the employee should immediately cease all communications with the vendor representative and consult with the agency's procurement office, their supervisor, or the TDA Ethics Officer for guidance.

2. GENERAL GUIDELINES

2.1 Vendor Meetings Encouraged

TDA staff should make every effort to meet with vendors to learn more about the goods, services, and resources that are available. Meetings can be in person or by teleconference but must follow this policy.

¹¹² [TGC 2155.090\(b\)](#)

This policy is intended to promote and guide collaboration between TDA staff and the vendor community. The policy provides parameters to facilitate communication while protecting the integrity of the procurement process.

First and foremost, at the beginning of any vendor interaction, TDA staff should inform all vendor representatives that if at any point during vendor communications or during the vendor meeting, agency staff believes communications are inappropriate, unethical, or can in any way compromise a current or potential solicitation, the communications and or meeting will be immediately stopped.

Note that vendor communications and meetings regarding technology demonstrations prior to a formal solicitation process must adhere to the **TDA Guidelines for Engaging Technology Vendors Prior to a Formal Solicitation Process**. (See [Appendix H.](#))

2.2 Quiet Period

Texas Government Code Section 2155.090(b) allows the exchange of information between an agency and a vendor related to future solicitations; however, once the actual solicitation-drafting process has begun, communications with vendors related to or with an appearance of being related to the subject matter of the solicitation must cease. This time period encompassing solicitation-drafting, open solicitation (posting), and contract negotiation is considered the “Quiet Period.” No meetings other than those within the specific procurement process should occur.

The TDA solicitation document will identify a procurement and contracting office (PCO) Point of Contact for the duration of the open procurement that is referred to as the Quiet Period. Communication by a vendor must be addressed to that Point of Contact following the procedure. Other agency staff that are contacted by a vendor regarding an open solicitation must immediately refer the vendor to the Point of Contact outlined in the solicitation. The Quiet Period ends once a fully executed contract is issued.

TDA staff are encouraged to contact PCO prior to scheduling a vendor meeting to ensure the subject matter to be discussed is not subject to the Quiet Period.

2.3 External Events

TDA staff should be mindful of any vendor communication that may occur while attending an external event such as an expo, conference, or other event outside of the normal day-to-day business setting. Casual communications in such settings could be perceived as inappropriate by the public, other state employees, and other vendors. TDA staff should avoid any situation or communication that would create even the appearance of impropriety.

2.4 Declining a Meeting

If a vendor requests to meet about an open procurement or if a conflict of interest exists, TDA staff should decline the meeting and refer the vendor to PCO.

TDA staff is encouraged to contact PCO with any questions regarding meeting with a vendor.

2.5 PCO Resource for Agency Staff

TDA PCO staff interact with the vendor community on a regular basis as part of their program specific duties. As public procurement professionals, the PCO team is an experienced resource regarding vendor interactions. TDA staff may request that a member of the PCO team is included during vendor communications or meetings.

3. PROGRAM-LEVEL MEETINGS

Generally, the starting point for any vendor interaction is at the program level. Vendors will often seek meetings with program staff to make staff aware of the vendor's offerings, market trends, and suggestions for program efficiencies.

3.1 Vendor Meetings with Vendors Currently Under Contract (Current Contractors).

Requests for vendor meetings from vendors under an active contract (Current Contractors) are the most common interactions agency staff will encounter. These meetings are an essential element of properly managing and delivering on an executed contract and may be requested by the Current Contractor or by the agency. In addition, meetings may be necessary to introduce personnel, discuss current contract performance, or to seek guidance on service adjustments being provided within the scope of the Current Contractor's executed contract. Interactions must be restricted to the scope of the executed contract and care should be given to not create the perception of favoritism to any Current Contractor for work outside the scope of the contract. Agency personnel should use caution to avoid providing the Current Contractor a future unfair competitive advantage by sharing future business requirements, information about systems or internal processes, or protocols outside the scope of the current contract that the Current Contractor may be able to use in the development phase of a future solicitation. When in doubt, staff should consult with the procurement office, their supervisor, or the TDA Chief Ethics Officer for guidance.

Meetings with Current Contractors are an expected part of the contractual relationship. The purpose in distinguishing this type of meeting from those meetings discussed below, is to stress that the meeting should be restricted to the scope of the existing, executed contract. Any other type of meeting, such as meetings outside of the scope of the current, existing contract, should be conducted in the same manner as a general vendor meeting with a vendor that is not currently under contract. Communications with a Current Contractor may not be about an open procurement.

3.2 Vendor Meetings with Vendors Not Currently Under Contract.

Requests for general vendor meetings are not unusual and are a valuable way to stay ahead of market, technology, service, and resource trends and capabilities. These meetings may be requested by the vendor or the agency to introduce key personnel, capabilities, or to seek guidance on the market, product, or service strategies and trends. In some cases, these meetings may involve a request from the vendor to discuss possible contracting opportunities within the agency. Because agency staff may not be aware of a planned or active solicitation, employees should check with the agency's procurement office before agreeing to a vendor meeting. Agency personnel should use caution to avoid providing the vendor a future unfair competitive advantage by sharing information not otherwise publicly available about systems, future business requirements, internal processes, or protocols the vendor may be able to use in the development phase of a future solicitation. When in doubt, staff should consult with the procurement office, their supervisor, or the TDA Ethics Officer for guidance. In general, it is acceptable to receive information from the vendor but not to give information to the vendor that is not otherwise publicly available or disclosable under transparency policies of the Texas Public Information Act. For specific questions regarding the Texas Public Information Act, staff should contact the agency's Office of the General Counsel.

Finally, prior to scheduling a meeting, staff is encouraged to check the vendor's grade on the Vendor Performance Tracking System (VPTS), available at <http://www.txsmartbuy.com/vpts>. This system shows vendor performance scores that are calculated based on ratings provided by other state agencies that have contracted with the vendors. The VPTS also identifies vendors that have been debarred. A state contract may not be awarded to a debarred vendor.

To search the VPTS, enter the vendor's name in the "Vendor Name" box and click "Search." Then, select the correct vendor from the search results. Contact PCO if there are any questions regarding the VPTS score.

4. CROSS-DIVISIONAL MEETINGS

If a vendor would like to discuss goods or services that may possibly benefit multiple program areas in TDA, a cross-divisional meeting should be established. When receiving such a request from a vendor, ask the vendor to submit an email to the PCO Director at kelly.parker@texasagriculture.gov. The email should include the purpose of the meeting and outline any presentation resources that may be needed.

5. EXECUTIVE-LEVEL MEETINGS

Some vendors have goods or services that apply to the entire TDA system or that may directly affect a key strategy or goal of TDA. In those cases, it is permissible for the vendor to seek a meeting with executive leadership. Such meetings will be scheduled by the appropriate office and the PCO Director or designee may attend.

6. VENDOR RESPONSIBILITIES

Although the following requirements are the responsibility of the vendor representative, if applicable, reminding the vendor representative of these requirements prior to any meeting is encouraged.

6.1 Texas State Lobby Laws.

Texas Government Code Chapter 305 regulates certain direct communications with an officer or employee of any state agency, department, or office in the executive branch of state government. Vendor representatives who meet the Texas Ethics Commission's lobby registration requirements must be registered with the Texas Ethics Commission. State lobby laws work hand-in-hand with prohibitions on bribery in the Penal Code. There are criminal and civil sanctions for violation of the lobby law or the Penal Code. Vendor representatives should contact the Texas Ethics Commission with any questions concerning the requirement to register as a lobbyist.

TDA staff should contact the TDA Ethics Officer for any questions or concerns about meeting with vendor representatives that are or may be registered lobbyists.

6.2 Representation Before State Agencies.

Texas Government Code Chapter 2004 requires an individual who has contact with an officer or employee of a state agency to register with the agency. Failure to register as required by Chapter 2004 is a misdemeanor punishable by a fine of not more than \$500, confinement in jail for a term not to exceed six months, or both the fine and imprisonment. For more specific information vendor representatives should consult with the Texas Ethics Commission or review the [Texas Ethics Commission guide to Chapter 2004, Government Code](#) to determine if registration is required.

6.3 During an Open Procurement

A basic premise of Texas procurement and contracting is competition. Therefore, vendors should be advised that discussions that occur during an open procurement, especially during oral presentations or best and final offer discussions, continues to be a part of the “quiet period.” Discussions between the agency and a potential awardee may occur, for example during contract negotiations, but vendors and grantees should be discouraged from having discussions outside of this process so that the procurement process is not compromised.

7. GUIDELINES FOR ALL MEETINGS

In order to assure appropriate communications and efficient use of time, TDA staff must abide by these guidelines:

- a. Do not discuss active procurement projects or provide specifications or information about potential, future procurements.
- b. Do not accept any confidential information from a vendor. Any information that the vendor provides to TDA staff becomes subject to the Public Information Act, Government Code Chapter 552. Staff must advise vendors that information may be subject to public release pursuant to the Public Information Act. For specific questions regarding the Texas Public Information Act, staff should contact the Office of the General Counsel.
- c. At a minimum there should be at least two agency staff members present at meetings.
- d. Meetings should include documentation of attendees and description of the purpose for the meetings. An agenda, sign-in sheet, and minutes are recommended.
- e. Do not meet with vendor representatives if the subject matter to be discussed or presented relates to a pending solicitation that is in process or development or a current solicitation that is posted. No meeting may occur during the Quiet Period of an open procurement.
- f. Treat all vendors equally and impartially.
- g. Do not share agency strategies that are not publicly known.
- h. Do not accept gifts or donations.
- i. Do not commit to accept, or plan to accept, products or services.
- j. Do not guarantee or imply that a solicitation may result from a meeting.
- k. Be familiar with the **TDA Ethics Policy and the Standards of Conduct and Conflict of Interest Provisions of the Government Code, Chapter 572, Subchapter C and the Penal Code, Chapter 36, Bribery and Corrupt Influence**. Ensure that all TDA staff attending the meeting are up to date on any TDA disclosure and training requirements. For specific questions concerning the TDA Ethics Policy and state ethics laws, including matters involving the standards of conduct, or conflicts of interest provisions, staff should reference the [TDA ethics policy](#). (All TDA staff are expected to be current on any agency training required for their specific job duties.)
- l. Inform all vendor representatives that if at any point during vendor communications or during a meeting, agency staff believes to be inappropriate, unethical, or communications would compromise a current or potential solicitation, the meeting and all vendor communications will be terminated immediately.
- m. **Information technology related meetings should include a representative from IT.** Vendor

communications and meetings regarding technology demonstrations prior to a formal solicitation process must adhere to the **TDA Guidelines for Engaging Technology Vendors Prior to a Formal Solicitation Process.** (See [Appendix H](#))

7.1 Opening a Meeting

To ensure compliance with item I. referenced above, TDA staff should make the following **announcement** at the commencement of any vendor communication or meeting:

“TDA is committed to ensuring the integrity of active or potential procurements including ensuring that all vendors have an equal opportunity related to any potential or active procurement. No information related to the subject matter of a procurement that is in the development phase or has been issued may be exchanged or discussed outside of the procurement process. Vendors should contact TDA’s Procurement and Contracting Office regarding potential or active procurement matters.”

STATUTORY PROHIBITION REMINDERS

[Texas Government Code Section 572.069](#). A state employee who participates in a procurement or contract negotiation that results in the award of a contract to a vendor may not accept employment from that vendor before the second anniversary of the date the contract is signed, or the procurement is terminated or withdrawn.

[Texas Government Code Section 2155.004](#). A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. In other words, a vendor that participates in drafting a request for offer (RFO) or statement of work (SOW) in most cases is not allowed to respond to the same RFO or SOW.

[Texas Government Code Section 2252.901](#). A state agency may not enter into an employment contract, a professional services contract, or a consulting services contract with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by the agency if appropriated money will be used to make payments under the contract.

Appendix H – TDA Guidelines for Engaging Technology Vendors Prior to a Formal Solicitation Process

1. Purpose

The purpose of this policy is to provide guidelines to TDA staff for engaging technology vendors to conduct demonstrations prior to a formal solicitation process.

2. Policy

TDA Agency staff, in coordination with TDA PCO, may engage Information Technology vendors PRIOR TO A FORMAL SOLICITATION PROCESS to conduct demonstrations, displays and/or discussions about their products or services for the sole purpose of demonstrating the capabilities of a product or service.

TDA Agency staff may NOT engage vendors to install their products, including hardware and software (aka proof of concept) in the TDA environment prior to a formal solicitation process.

This policy is intended to complement existing and emerging TDA ethics policies in which stringent ethics related procedures, policies must be followed and if not - penalties would apply. (see “Responsibilities” below)

6 TDA personnel must follow these guidelines:

- TDA personnel must request PCO approval prior to scheduling the demonstration/discussion with the vendor.
- TDA personnel must ensure the appropriate business/data owners and management that may have interest in the activity have been notified of the demonstration/discussion with the vendor(s) prior to the session(s) occurring.
- TDA personnel must notify the vendor that there is no guarantee or implication that there will be a solicitation related to the demonstration.
- TDA personnel must notify the vendor that TDA will not be responsible for any costs incurred by the vendor to conduct demonstrations of their product/services.

7 TDA personnel must NOT allow the following to occur:

- TDA personnel may not endorse the vendor’s or other vendor’s products or services.

- TDA personnel may not provide or give insight into specific business requirements of an upcoming project.
- TDA will not give the impression or appearance to be bound, obligated or in any way to give any special consideration to the vendor on any future solicitations.
- TDA will not give the impression or appearance to be responsible for any costs incurred by the vendor to conduct demonstrations of their product/services.
- TDA will ensure that no “real data” or confidential policy/technical design is divulged, displayed, or delivered through hardcopy or media at any time during the session/engagement. Expectations for controlled viewing and the containment of information shared is implicit in this policy.

3. Definitions

- Information Technology (IT): The Information Technology department of TDA.
- Procurement & Contracting Office (PCO): The TDA Procurement & Contracting department.
- “Real Data” – This would be data that is from recent intake or historical storage which contains actual client information or proprietary, regulated, or confidential agency information.
- Confidential policy / technical design – This would be proprietary policy information not available to the public or safeguarded design related to application or network infrastructure.

4. Persons Affected

This policy applies to all TDA employees and/or other authorized staff which includes temporary and contract employees.

5. Responsibilities

It is the responsibility of all TDA staff to comply with this policy as well as the:

- [TDA Access Control Security Policy](#)
- [Acceptable Use Policy](#)
- [Data Privacy and Classification Policy](#)
- [TDA Ethics Policy](#)

6. Procedures for Requesting and Receiving Approval

To request approval to schedule a demonstration, please contact PCO by emailing: TDA PCO Director or designee; and include “Request Approval to Schedule Vendor Demonstration” in the subject line.

Include the following information in the email:

- Name of Program Staff Scheduling Vendor Demonstration
- Name of Company
- Company Contact Name
- Company Contact Phone Number
- Company Contact Email
- Service or product to be demonstrated
- Email addresses of persons to be invited to the demonstration

The approval to schedule a vendor demonstration will be provided via email to the requestor and will include the name of a PCO team member to attend the demonstration.

Approvals will be granted for a period not to exceed 180 calendar days from the approval date. If additional time is needed it must be resubmitted for extension.

Without extended approval the authorization for engagement will expire 180 days from the approval date.

Any changes or exceptions to this policy must be requested and approved by PCO.

APPENDIX I - DUA CONFIDENTIAL INFORMATION PROTECTION

Questions for DUA Confidential Information Protection

Category	Monitoring Questions	Response
Policies & Procedures	<ul style="list-style-type: none"> Does the contractor have written policies and procedures regarding the protection of confidential information? 	Yes No
Policies & Procedures	<ul style="list-style-type: none"> Do the contractor's policies and procedures include limitations on the use and disclosure of confidential information? 	Yes No
Policies & Procedures	<ul style="list-style-type: none"> Do the contractor's policies and procedures include protocols for responding to a breach? 	Yes No
Training	<ul style="list-style-type: none"> Does the contractor have a training curriculum regarding protection of confidential information? 	Yes No
Training	<ul style="list-style-type: none"> Have all staff authorized to access confidential information taken the training? 	Yes No
Training	<ul style="list-style-type: none"> Was the training taken in a timely manner by all authorized staff (within 30 days of hire for new staff, annually for existing workforce)? 	Yes No
Sub-contractors	<ul style="list-style-type: none"> Does the contractor have a signed Subcontractor Agreement Form (DUA Attachment 1) for all subcontractors? 	Yes No
Safeguards for Protection of Confidential Information (Paper, Oral, & Electronic)	<ul style="list-style-type: none"> Can the contractor demonstrate compliance with minimum safeguards for protecting confidential information? <p>Consider the following, as applicable:</p> <ul style="list-style-type: none"> Secured physical premises (building, locked file cabinets) Unique computer login/password for each authorized user Secured Wi-Fi (Password-Protected; Not Public) Records destruction (shredder v. trash can) 	Yes No
Safeguards for Protection of Confidential Information (Paper, Oral, & Electronic)	<ul style="list-style-type: none"> Encryption software 	What encryption software (brand/version) does the contractor use?