

Texas Ethics Commission Contract Policy

The Texas Ethics Commission follows all contract and procurement requirements as established in Texas Government Code Chapters 571, 2155 and 2262 and any additional applicable requirements. Corresponding rules related to contract and procurement requirements can be found at 1 Tex. Admin. Code Chapter 7.

Best Value Standard

Per Tex. Gov't Code § 2155.0755 and 34 Tex. Admin. Code § 20.217, the Director of Administration shall:

- approve every contract that uses the best value standard,
- ensure that proper documentation for the best value standard exists, and
- acknowledge in writing that the Commission complied with the Commission's and Comptroller's contract management guide.

Any contract that uses the best value standard must be reported in the vendor performance tracking system to certify that vendor satisfied the standard.

Per the Contract Management Guide, when using the best value standard, the agency must specify in the solicitation the factors other than price that will be considered in determining which bid offers the best value for the state and the proposal criteria the agency will use when considering the factors.

In determining the best value for the state, the purchase price and whether the goods or services meet specifications are principal considerations that must be balanced with other relevant factors. The agency may, however, consider other relevant factors, including:

1. installation costs;
2. life cycle costs;
3. the quality and reliability of the goods and services;
4. the delivery terms;
5. indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance agreements and support;
6. the cost of any employee training associated with a purchase;
7. the effect of a purchase on agency productivity;
8. the vendor's anticipated economic impact to the state or a subdivision of the state, including potential tax revenue and employment;

9. the impact of a purchase on the agency's administrative resources; and
10. other factors relevant to determining the best value for the state in the context of a particular purchase.

Contract File Checklist

Per Tex. Gov't Code § 2262.053, each contract file shall include a checklist to ensure the compliance with state laws and rules relating to the purchase of goods and services.

The checklist must include at least:

- The documents that are required to be maintained throughout the process; and
- The procedures and documents required to be completed.

Before a contract is awarded, the Director of Administration must

- review the contents of the contract file for the contract, including the checklist, to ensure that all documents required by state law or applicable agency rules are complete and present in the file; and
- certify in a written document to be included in the contract file that the review required under Tex. Gov't Code § 2262.053(f) was completed.

In addition, the checklist should include all of the steps in the solicitation process, including pre and post award, and detail the duties for each relevant division. The checklist will be provided to all employees who are a part of that contract.

Contract Monitoring

Per Tex. Gov't Code § 2261.202, each agency shall establish and adopt by rule a policy that clearly defines the contract monitoring roles and responsibilities, if any, of internal audit staff and other inspection, investigative, or audit staff.

Enhanced Contract Monitoring:

Per Tex. Gov't Code § 2261.253 and 34 Tex. Admin. Code § 20.507, each state agency shall establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body or, if the agency is not governed by a multimember governing body, the officer who governs the agency.

Any contracts subject to this section will be reported on at each Commission meeting.

The agency's Director of Administration shall immediately notify the agency's governing body or governing official, as appropriate, of any serious issue or risk that is identified with respect to a contract monitored under this subsection.

Contracts over \$5M

Per 34 Tex. Admin. Code § 20.218, for each contract for the purchase of goods or services that has a value exceeding \$5 million, the Director of Administration must:

- (1) verify in writing that the solicitation and purchasing methods and vendor selection process comply with state law and agency policy; and
- (2) submit to the Commission information on any potential issue that may arise in the solicitation, purchasing, or contractor selection process.

In addition, the Director of Administration will ensure that solicitations for contracts over \$5M are reviewed by the Contract Advisory Team per Tex. Gov't Code § 2262.101.

For major information projects over \$10M, the Director of Administration will ensure that solicitations are submitted to the Quality Assurance Team at the Department of Information Resources for review and approval.

Multiple Award Contracts Procedure

- (a) Per 34 Tex. Admin. Code § 20.231, the Commission may use the multiple award contract procedure only after the Executive Director or the Director of Administration has made a written determination that its use is in the best interest of the state. In arriving at a determination, the agency will consider the following factors:
 - the quality, availability, and reliability of the supplies, materials, equipment, or service and their adaptability to the particular use required;
 - the ability, capacity, and skill of the bidder;
 - the sufficiency of the bidder's financial resources;
 - the bidder's ability to provide maintenance, repair parts, and service;
 - the compatibility with existing equipment;
 - the need for flexibility in evaluating new products on a large scale before becoming contractually committed for all use; and
 - any other relevant factors.
- (b) When the Executive Director or Director of Administration finds that one or more of the above factors is important to the contract and that objective specifications for those factors cannot be prepared, the Executive Director or Director of Administration may determine that the multiple award contract procedure will serve the best interest of the state.
- (c) Bids on multiple award invitations will be evaluated as are other bids under 34 Tex. Admin. Code § 20.207(b) (relating to Competitive Sealed Bidding), except that more than one award may be made. The basis for determining awards shall be reasonably related to the factors

relied upon in using the multiple award contract procedure and shall be disclosed in the bid invitation.

Reevaluation of Payment and Reimbursement Rates

Per Tex. Gov't Code § 2261.151, the Director of Administration shall reevaluate payment and reimbursement methods and rates at least biennially to ensure payment and reimbursement methods and rates are appropriate.

Required Posting of Certain Contracts

Per Tex. Gov't Code § 2261.253 and 34 Tex. Admin. Code § 20.507, each contract for the purchase of goods or services shall be posted on the Commission website. The information posted on the website will include:

- each contract entered into,
- the statutory authority for entering into the contract if it was not competitively bid, and
- the request for proposals related to a competitively bid contract.

Contracts valued at less than \$15,000 may be posted monthly.

Memorandums of understanding, interagency contracts, interlocal agreements, or no cost contracts do not need to be posted. In addition, a contract posted on the major contracts database do not need to be posted, as those are posted on the Legislative Budget Board system.

Any contract information posted should have the confidential information redacted.

Vendor Protests

Per Tex. Gov't Code § 2155.076, and 1 Tex. Admin. Code § 7.5, the Commission has established procedures to resolve vendor protests related to contract awards.

Filing of Protest

(a) A valid protest must be:

1. In writing and contain:

- (a) the specific rule, statute or regulation the protesting vendor alleges the solicitation, contract award or tentative award violated;

(b) a specific description of each action by the agency that the protesting vendor alleges is a violation of the statutory or regulatory provision the protesting vendor identified in subparagraph (a) of this paragraph;

(c) a precise statement of the relevant facts including:

i. sufficient documentation to establish that the protest has been timely filed;

ii. a description of the adverse impact to the agency and the state; and

iii. a description of the resulting adverse impact to the protesting vendor;

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

(e) an explanation of the subsequent action the vendor is requesting.

2. signed by an authorized representative with the signature notarized; and

3. filed in the time period specified in this section.

(b) To be considered by the Commission, a protest must be filed:

1. by the end of the posted solicitation period, if the protest concerns the solicitation documents or actions associated with the publication of solicitation documents;

2. by the day of the award of a contract resulting from the solicitation, if the protest concerns the evaluation or method of evaluation for a solicitation; or

3. no later than 10 business days after the notice of award, if the protest concerns the award.

Protests should be sent to the Director of Administration at contracts@ethics.state.tx.us

In the event of a timely protest or appeal under this section, the Commission shall not proceed further with the solicitation or with the award of the contract unless the Executive Director makes a written determination that the award of the contract without delay is necessary to protect the best interest of the Commission.

Review of Protest Determination

(a) Upon receipt of a protest, the Director of Administration, after consultation with the General Counsel, may:

(1) dismiss the protest if:

(A) it is not timely; or

(B) does not meet the requirements of this section;

(2) solicit written responses to the protest from using agencies or other affected vendors; or

(3) attempt to settle and resolve the protest by mutual agreement.

(b) If a protest concerning a solicitation is not resolved by mutual agreement, the Director of Administration shall issue a written determination that resolves the protest.

Appeal

(a) A protesting party or any other interested party who is not satisfied with the determination of the Director of Administration may appeal the determination to the Executive Director. The appeal must be submitted in writing to the Executive Director and received no later than ten business days after the date of the Director of Administration's determination.

(b) The appealing party must mail or deliver copies of the appeal to all other interested parties. The appeal must contain an affidavit that such copies have been provided.

(c) Upon receipt of a timely appeal that conforms with this subchapter, the Executive Director shall review the protest petition, any requests for and written responses to the protest petition from any respondent who submitted a bid, proposal or offer for the contract or other interested parties, the determination and the appeal.

(d) A written decision issued by the Executive Director shall be the final administrative action of the Commission.

(e) The Commission shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the retention schedule of the Commission.

Failure to File Timely

Protests and appeals which are not filed timely will not be considered, unless good cause for delay is shown or the Executive Director determines that a protest or appeal raises issues significant to the Commission's procurement practices or procedures.

Reporting Vendor Performance

Per Tex. Gov't Code § 2155.089, any completed or terminated contract will be subject to a vendor performance review in the Comptroller's Vendor Performance Tracking System (VTPS). State agencies are required to report vendor performance for any purchase of goods or services exceeding \$25,000. If the contract has a value of over \$5 million, the review will happen at least once a year and at each key milestone of the contract. A contract may not be extended until this review occurs and is reported in VTPS. This does not apply to the purchase of IT commodities or purchases made by the Comptroller's office on behalf of the Commission.

The vendor performance report must be made within 30 days of the reporting event, either the completion or termination of the contract, the annual review or the meeting of a previously established milestone. Details of the report are shared with the vendor. For grades of “A”, “B” and “C”, there is no vendor response. For grades of “D” and “F,” a vendor may submit a vendor response within 30 calendar days.

Vendor responses are forwarded to the submitting agency for its review and consideration. The Executive Director can determine whether changes/revisions will be made to the report at their discretion.

Below are the grades for the VTPS System.

Grade A

An “A” is assigned when it has been determined that the vendor significantly exceeded the requirements of the purchase order or contract to the state's benefit, that any problems with the purchase order or contract were minor and that corrective actions taken by the vendor to address such problems were highly effective. If the best-value standard was used to award the purchase order or contract, an “A” means that the vendor satisfied that standard.

Grade B

A “B” is assigned when it has been determined that the vendor exceeded some requirements of the purchase order or contract to the state's benefit, that any problems with the purchase order or contract were minor and that corrective actions taken by the vendor to address such problems were effective. If the best-value standard was used to award the purchase order or contract, a “B” means that the vendor satisfied that standard.

Grade C

A “C” is assigned when it has been determined that the vendor met the requirements of the purchase order or contract and that corrective actions taken by the vendor to address minor problems were satisfactory. If the best-value standard was used to award the purchase order or contract, a “C” means that the vendor satisfied that standard but that the vendor's performance did not merit an “A” or “B.”

Grade D

A “D” is assigned when it has been determined that the vendor did not meet some of the requirements of the purchase order or contract, that problems with the purchase order or contract were serious and that corrective actions taken by the vendor to address such problems were only marginally effective or not fully implemented. If the best-value standard was used to award the purchase order or contract, a “D” means that the vendor did not satisfy that standard.

Grade F

An “F” is assigned when it has been determined that the vendor did not meet the requirements of the purchase order or contract, that problems with the purchase order or contract were serious and that corrective actions taken by the vendor to address such problems were ineffective. If the best-value standard was used to award the purchase order or contract, an “F” means that the vendor did not satisfy that standard