



# TEXAS ETHICS COMMISSION

## Contract Management Handbook

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## 1. General Provisions

### 1.1. Introduction

This Contract Management Handbook contains guidelines and procedures that govern the Texas Ethics Commission's (Commission) contracting process. The information contained in this Handbook is subject to change at any time due to business needs. The Commission will attempt to provide employees with advance notice of any change but due to possible unforeseen circumstances, reserves the right to alter this handbook at any time without advance notice.

The Commission does not tolerate noncompliance with the contract procedures. If an employee believes that anyone associated with the Commission has requested or directed him or her to perform an action that is not in compliance with the contract procedures, or to omit an action required by the procedures, the employee should report this immediately to a Director, General Counsel, or the Executive Director.

For purposes of this handbook, a contract is defined as a written agreement in which a contractor provides goods or services and the agency pays for such goods and services in accordance with the established price, terms and conditions. Texas law governs certain aspects of contracting for state agencies. Various types of purchases and contracts may be subject to different legal standards, practices, processes, and strategies for successful implementation. The suggestions, comments, techniques, examples and recommendations included in this handbook are not appropriate for every type of contract. This handbook is to be used as a guide for purchases over \$25,000 and those that require a formal bidding process, Statement of Work (SOW), Request for Proposal (RFP and / or Invitation to Bid (IFB). All other purchases and or contracts that fall below \$25,000 will be generated on a purchase order and must follow the State of Texas Procurement Manual, which may be found at: <https://www.comptroller.texas.gov/purchasing/publications/procurement-manual.php>

### 1.2. Purpose of the Contract Management Handbook

The purpose of this handbook is to, comply with requirements of the Texas Government Code, §2261.256(b) and, establish consistent contract management policies and procedures. Additionally, best practices are included to provide guidance for managing Commission contracts. This handbook includes guidelines for:

- Ethical standards of conduct for contracting staff;
- Contracting activities from planning to closeout;
- Contract management requirements and best practices; and
- Risk-based contract monitoring.

Specific procedures have been developed outlining daily processes for the development and management of Commission contracts.

Additionally, the Comptroller of Public Accounts publishes a State of Texas Contract Management Guide located at [www.comptroller.texas.gov/purchasing/docs/contract-management-guide.pdf](http://www.comptroller.texas.gov/purchasing/docs/contract-management-guide.pdf). The Guide provides the framework for understanding general

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governmental contracting in Texas and can also be used as a reference tool for contract management. Section Five of this handbook details the Contract Management process.

### 1. 3. Ethics and Standards of Conduct

All employees involved in procurement and contracting activities must act in an ethical, impartial, transparent and professional manner. State employees must uphold ethical values when carrying out their official duties and must remain independent and free from the perception of impropriety. Any erosion of public trust or hint of impropriety is detrimental to the integrity of the procurement and contracting process.

#### 1.3.1. Conflict of Interest – Purchasing Staff

In accordance with Texas Government Code, Chapter 2261.252, any agency staff involved in procurement and contracting activities must sign a Conflict of Interest statement each year. The Conflict of Interest statement will be signed upon completion of the Commission’s annual mandatory Procurement and Contracts training.

##### Conflict of Interest statement

No member of the Commission or any employee or appointee of the Commission shall be interested in, or in any manner connected with, any contract or bid for furnishing supplies, materials, services, and equipment of any kind to the Texas Ethics Commission. Neither shall any member or employee or appointee, under penalty of dismissal, accept or receive from any person, firm, or corporation to whom any contract may be awarded, directly or indirectly, by rebate, gift, or otherwise, any money or other thing of value whatever, nor shall any employee receive any promise, obligation, or contract for future reward or compensation from any such party.

#### 1. 3.2. Non-Disclosure and Conflict of Interest Statements

At the start of a formal procurement, each member of the Contract Management Team, evaluation committee and each technical advisor will sign a Non-Disclosure Statement and Conflict of Interest Statement. In addition, the following persons who are or may be involved in the procurement process will sign a Non-Disclosure and Conflict of Interest Statement for Procurement, Legal Financial Advisors, the Contracts Coordinator, the Contract Specialist, the Purchasing Manager, the HUB Coordinator, and the General Counsel, and the Administration Director.

#### 1.3.3. Disclosure Statement for Purchasing Personnel

Prior to awarding a contract and in accordance with Government Code 2262.004, the evaluation committee and all purchasing personnel who participated in any procurement that has a value of at least \$1 million dollars during the original term of the contract, not including any renewal periods, must sign a Disclosure Statement for Purchasing Personnel. The disclosure statement is provided to the Executive Director for signature.

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### 1.3.4. Ethics Policy – Standards for Performance and Conduct

Texas Ethics Commission employees have a responsibility to the Commission and the citizens of Texas to maintain the highest standards of ethical and professional conduct. Employees are duty-bound to follow the Commission’s ethics policies and procedures.

### 1.3.5. Employment Restriction for Former State Officer or Employee

In accordance with Government Code, Section 572.069 a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person/vendor may not accept employment from that person/vendor before the second anniversary of the date the officer’s or employee’s service or employment with the state agency ceased.

## 2. Planning and Development

### 2.1. Procurement and Contract Planning Process

The Purchasing Department is responsible for the oversight and management of all Commission contracts. For each new procurement contract, a Contract Management Team may be formed during the solicitation planning phase. The team may include members from the division needing contracted services and others specializing in the administrative aspects of procurement and contracting (Computer Services, Purchasing, General Counsel, etc.). The Contract Management Team will work with the requesting division to identify the contracting need, objective, strategy, timeline, deliverables, and performance metrics. The Contract Management Team may develop a solicitation document, evaluate bidders and the proposed solutions, and award a contract in accordance with the planned goals and objectives.

During the initial planning phase, The Contract Management Team will determine the following:

- Contract approval authority including whether the proposed procurement must be presented to the Commission for informational purposes and/or approval;
- Verify that a Needs and Risk Assessment/Cost Benefit Analysis is submitted, if required;
- If the procurement must be reviewed by the Comptroller of Public Accounts Contract Advisory Team; and
- If the procurement requires a written SOW to be reviewed by the Department of Information Resources.

### 2.2. Needs and Risk Assessment / Cost Benefit Analysis

A Needs and Risk Assessment form will be prepared by the Contract Management Team specific to the project. The Needs and Risk Assessment is a decision-making tool to aid the Commission in planning its contracts, evaluating new and current goods and services, and making sound financial decisions. It is used as a benchmark to judge the ongoing effectiveness of the Commission’s expenditures and assist in determining actions that would be most beneficial for the Commission and/or provide the best value for the State of Texas. The Needs and Risk

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Assessment is a means to ensure there are clear contracting objectives, assumptions and constraints. It can help gather data, quantify objectives and outcomes, and highlight long-term effects of procurement decisions. The Needs and Risk Assessment also identifies how the goods or services will integrate into the Commission's overall goals and objectives.

### 2.3. Procurement Lead Times

The Contract Management Team will work with the Central Administration Division and Legal Services to develop a timeline for each formal procurement. The timeline will take into consideration the following procurement activities (if applicable):

1. Development and Approval of Needs and Risk Assessment / Cost Benefit Analysis: This form documents the need and identifies any risks associated with the procurement.
2. Commission Notice and/or Approval: Major procurements may require notice to and/or approval by the Commission prior to issuing a procurement.
3. Submission and Approval of Requisition: The Office of the Controller must verify the availability of funds prior to procurement initiation and contract execution.
4. Justification for Proprietary or Emergency Purchases: Written justification is required for proprietary and emergency procurements. Posting on the Electronic State Business Daily is required when the proprietary or emergency purchase exceeds \$25,000.
5. Preparation of the Solicitation Document: After the draft statement of work is developed, the Contract Management Team will finalize the solicitation document. This includes ensuring the document is complete, includes the Commission's standard terms and conditions and follows all applicable statutes, rules, and procedures.
6. Issuance of Solicitation Notice: Prior to the issuance of a formal procurement, Purchasing and Contracts will determine if a solicitation notice should be sent to the mailing list compiled from the Centralized Master Bidders List (CMBL) and additional vendors identified by the administering division, evaluation committee and HUB coordinator. A solicitation notice is generally sent out two or more weeks prior to the expected posting date.
7. HUB Review: For contracts of \$100,000 or more, the HUB Coordinator must review the draft documents to determine if subcontracting opportunities are probable and identify the applicable class and item codes for the procurement.
8. Legal Services Review: Legal must review the procurement documents for all formal procurements (over \$25,000) prior to posting.
9. Contract Advisory Team Review (CATRAD): Procurements that result in contracts with an expected value of \$10 million or more require review by the Comptroller of Public Accounts Contract Advisory Team (CAT). Solicitation documents should be sent to the CAT for review through the CAT-RAD web application. <https://portal.cpa.state.tx.us/>



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10. Approval to Post: Approval by the Executive Director (or as delegated) is required prior to posting any formal procurement.

11. Electronic State Business Daily (ESBD): All formal procurements are posted on the ESBD website. A minimum 14 to 21 day solicitation period is typical for most formal procurements, however if the procurement is complex and requires respondents to submit significant documentation or complex pricing, additional time for the solicitation period should be allowed.

12. Evaluation of Proposals: The time required to evaluate proposals will depend on the type and complexity of the procurement. Evaluations for complex procurements may include site visits and oral presentations.

13. Contract Negotiation and Formation: Timeframes will vary depending on the type and complexity of the procurement.

14. Commission Approval: Major procurements may require contract approval by the Commission prior to contract execution.

15. Contract Execution: The Contract Management Team will route the final contract for signature by the Executive Director (or as delegated) and will distribute copies to the vendor and within the Commission.

#### 2.4. Scope of Services / Specifications

A clear and concise Scope of Services (SOS), or Specifications for Invitation for Bids (IFB) is essential for effective contract management. The SOS is the detailed description of what the Commission is purchasing and what the vendor is required to provide in order to satisfactorily perform the work. A SOS needs to be clearly defined, contractually sound and unbiased. A SOS should encourage innovative solutions to the requirements described and allow for free and open competition.

The website for the Statewide Procurement Division (SPD) of the Comptroller of Public Accounts provides a number of reference guides on preparing a SOS. Commission source documentation may include:

- The approved Needs and Risk Assessment;
- The previous procurement for the goods/service (if applicable); and
- The current contract for the service (if applicable).

Common provisions to include in a SOS include, but are not limited to:

- Background: Define and describe the current business operations related to the goods/services being procured.
- Purpose: Describe the goods or service the Commission is purchasing and what the vendor must deliver under the contract. Specifications must be clear and understandable and permit competition between goods or services of equal quality.

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- Location of Work or Service Areas: Describe the locations where the work is to be performed (e.g., region, counties, cities, zip codes), if applicable.
  - Scope of Services or Specifications: List and describe what is due and when, including any reports the vendor will be required to submit.
  - Minimum Qualifications: List the minimum acceptable qualifications for the goods/services to be provided.
  - Record Keeping: Describe in detail all records the vendor will be required to keep including the format and retention period for the records.
  - Applicable Standards: Describe any regulatory, Commission, or industry specific standards that needs to be followed in fulfilling the contract.
  - Acceptance Criteria: Specify how the Commission will determine if the product or service is acceptable.
  - Payment Type and Schedule: Define the payment methodology, basis for payment, and invoicing process.
  - Transition and Turnover Planning: Identify any transition activities the vendor will be required to perform in order to be ready to effectively provide services on the contract effective date. Identify any transition activities the vendor will be required to perform at the end of its contract in order to effectively transition to a subsequent vendor.

## 2.5. Payment

The method of payment has a direct impact on how the scope of services or specifications are written and how the contract is managed. The Commission must be able to measure or verify that the goods/services have been received and determine the amount and frequency for payment.

Payments should be:

- Consistent with the type of goods/services being provided;
- Encourage efficiencies and effectiveness in the delivery of goods/service;
- Structured to fairly compensate the vendor and encourage timely delivery of goods/services;
- Approximately equal to the value of the goods/services provided;
- Specified and defined in the solicitation document (i.e. fees, costs, and price);
- Be tendered in compliance with applicable state law and regulations; and
- Provide the best value to the state.

In some cases, the best structure may include multiple payment types for different services within the same contract.

## 2.6. Contract Term

The Contract Management Team will work with the administering division to determine the initial contract term and any renewal periods. A reasonable contract term compliant with applicable law must be established prior to solicitation and must be included in the solicitation document. All contracts must have a specific ending date. Indefinite contracts are generally prohibited.

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## 2.7. Contracts Greater than \$10 Million

Major procurements/contracts are formal procurements for goods or services that directly support the Commission's core business function and have a cumulative contract value, for the initial term and any renewal periods, equal to or greater than \$10 million dollars. All major procurements/contracts must be reviewed and approved by the Commission prior to any action being taken.

Additionally, the Comptroller's Contract Advisory Team (CAT) assists state agencies in improving contract management practices by reviewing and making recommendations on solicitation and contract documents that have a value of at least \$10 million dollars during the original term of the contract, not including renewal periods. State agencies must comply with CAT recommendations or provide a written explanation for not complying with the recommendation.

The contract term and estimated value of a contract should be based on:

- Best practices;
- State fiscal standards; and
- Applicable law, procedure, and regulations.

The Commission may not artificially split any of these factors, or any contract, in order to avoid the dollar thresholds or to circumvent approval by the Commission and/or review by the Contract Advisory Team.

## 3. Procurement

### 3.1. Historically Underutilized Business Program Determination

To maximize the inclusion of minority, woman-owned, service-disabled veteran businesses in state contracting the Commission's purchasing department administers the Historically Underutilized Business (HUB) Program. The purpose of the HUB Program is to promote full and equal business opportunities in state contracting through openness, fairness, and the highest ethical standards. State agencies must determine whether subcontracting opportunities are probable. The Commission's HUB Coordinator should work closely with the Contract Management Team to review contract solicitations with an expected value of \$100,000 or more, to determine the probability of HUB subcontracting, prior to releasing solicitation documents.

Additional information regarding the HUB program that is required to be followed by state agencies is available at: <https://www.comptroller.texas.gov/purchasing/docs/procurement-manual/2-20.pdf>

### 3.2. Pre-Proposal Conference

For each formal procurement, Contract Management Team staff will determine if a pre-proposal conference will be conducted. The pre-proposal conference will include an overview of the

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procurement document and a presentation on the HUB Subcontracting Plan (HSP) requirements. A question-and-answer session will also take place regarding general, technical and HSP questions.

Benefits to conducting the pre-proposal conferences are:

- Allowing prospective proposers to address specific questions or concerns;
- Providing for on-site visits by prospective proposers before submitting responses;
- Providing information, schematics, plans, reports, or other data that is confidential and requires receipt of a non-disclosure agreement; and
- Providing opportunities for subcontracting relationships to develop through the conference.

For most procurements, attendance at the pre-proposal conference is recommended, but not mandatory. However, certain pre-proposal conferences may be mandatory if an on-site visit is required to have a full understanding of the procurement, if confidential information will be disclosed under a non-disclosure agreement, or if the solicitation is so complex that attendance is critical for respondents to fully understand it.

### 3.3. Proposal Evaluation

It is the Commission's intent to conduct fair, comprehensive and impartial evaluations of all procurements using an evaluation committee. An evaluation committee for each formal procurement will be selected by the Executive Director and will consist of Texas Ethics Commission employees in the purchasing department and TEC employees with expertise in particular areas. In addition, the Commission's General Counsel and/or other in-house legal counsel may assist by advising the evaluation committee.

Evaluation committee members may seek, obtain and consider the opinions of other committee members or subject matter experts (including Commission staff, staff from other Texas agencies and consultants retained by the Commission) when evaluating particular areas of a proposal.

The evaluation committee may request clarification of information or presentations in a proposal before completing the initial evaluation. Requests for clarification and responses to requests for clarification will be in writing and will become part of the evaluation record. Each member of the evaluation committee will meet as a group and independently score each responsive proposal.

At a minimum, the factors to be considered by the evaluation committee in evaluating a proposal shall include:

- the proposer's price to provide the goods or services;
- the probable quality of the offered goods or services;
- the Commission's evaluation of the likelihood of the proposal to produce the desired outcome for the Commission, considering, among other criteria;
- the quality of the proposer's past performance in contracting with the Commission, with other state entities, or with private sector entities;
- the qualifications of the proposer's personnel;

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- the experience of the proposer in providing the requested goods or services;
  - the financial status of the proposer; and
  - whether the proposer performed the good faith effort required by the HUB subcontracting plan, when the Commission has determined that subcontracting is probable.

The evaluation committee also may consider vendor performance reviews maintained by the Texas Comptroller of Public Accounts under Gov't Code Section 2262.055.

### 3.4. Contract Negotiations

If the Best and Final Offer process is not used, the Commission will attempt to negotiate a contract with the selected vendor. If a contract cannot be negotiated with the selected vendor terms the Commission determines reasonable, negotiations with that vendor will be terminated, and negotiations will be undertaken with the next highest scored vendor. This process will be continued until a contract is executed by a vendor and the Commission, or negotiations with all qualified proposers are terminated. If no contract is executed, the Commission may cancel the solicitation.

If the Best and Final Offer (BAFO) process is utilized, the Commission may select top vendors, which may each be given an opportunity to discuss, clarify, and negotiate with the Commission, and submit revisions to their respective proposals to the Commission through a BAFO process. During discussions between the vendors and the Commission, no information from a competing proposal may be revealed by the Commission to another competitor. Any type of auction practice or allowing the transfer of technical information is specifically prohibited. At the conclusion of the discussions, BAFOs may be formally requested from the proposers and a deadline will be set for submission. BAFOs will be submitted by supplemental pages and not a complete resubmission of the proposal. All BAFOs will be reviewed by the evaluation committee. The evaluation committee will evaluate and score the BAFO response together with the original proposal in accordance with the evaluation criteria.

Where more than one vendor or contractor is needed to meet the Commission's requirements for quantity, delivery, or service, the Commission may award a contract to two or more vendors or contractors using a single solicitation to furnish the same or similar supplies or services.

All negotiated changes must be included in writing in the final contract. Documentation of the negotiation process will be retained as part of the procurement file.

## 4. Contract Formation

A written contract must be executed before a vendor can provide goods or services. The Contracts Management Team will work with the legal staff to develop the contract and include all required contract documents and the appropriate contract terms and conditions.

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## 4.1. Contract Documents

At a minimum, the written contract must include or incorporate by reference the following documents, if applicable:

- The solicitation document (RFP/IFB);
- Any clarification or modifications to the solicitation document made in response to questions submitted by vendors;
- The vendor's proposal; and
- The vendor's cost proposal, or revised cost proposal, as may have been modified during contract negotiations, if applicable.

## 4.2. Contract Terms and Conditions

The Commission has developed standard contract terms and conditions that are applicable to contracted goods and services. The terms and conditions are included in the solicitation document and address areas such as:

- Governing laws and regulations;
- Begin and end date;
- Termination provisions;
- Extension or renewal options;
- Amendments and other contract modifications;
- Payment and invoicing;
- Performance bonds;
- Sanctions and liquidated damages;
- Background investigations.

The Contract Management Team with the purchasing department is responsible for ensuring the appropriate terms and conditions are used for each procurement.

## 5. Contract Management

### 5.1. Contract Management Overview

This handbook establishes the framework for the management of all Commission contracts. The Contract Management Team and purchasing department are responsible for ensuring all Commission contracts are managed in accordance with the Commission's governing statute and rules, this handbook and Commission procedures in an effective and efficient way. Prior to participating on a procurement or contract, a Contract Management Team may be formed during the solicitation planning phase.

### 5.2. Contract Management Responsibilities

Contract managers are responsible for carrying out contract management activities through closeout serving in a leadership role in all phases of the contract lifecycle and are the primary

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point of contact for the day-to-day management of the contract. The Contract Management Team oversees all procurement and contracting activities:

- Developing solicitation documents and evaluate proposals;
- Conducting contract negotiations and executing contracts;
- Management and oversight of all Commission procurement and contract files;
- Managing contract renewals, extensions and amendments;
- Issuing warning letters and assessing sanctions/liquidated damages;
- Management and oversight of contract closeout process and vendor reporting;
- Developing procurement and contracting policies and procedures; and
- Conducting annual procurement training for Commission staff.

Effective contract management requires that a contract administrator, from the Contracts Management team and a purchaser, from the administration division, be actively involved throughout each stage of the contract lifecycle.

### 5.3 Contract Management Framework

#### 5.3.1. Planning and Development

The Commission Executive Director, along with the assigned Contract Manager, will identify the contracting needs, objectives, strategies, timelines, deliverables, and performance metrics with the Contract Manager, Legal Services, and other persons involved with the projects.

Contract management is an essential function that involves:

- Promoting the use of best practices;
- Assessing the level of risk associated with the contract;
- Coordinating a well-defined statement of work with input from stakeholders; and
- Establishing specific, time-bound, performance measures and requirements to ensure vendor accountability.

#### 5.3.2. Procurement

The Commission Purchasing Department will follow the State of Texas Procurement Statutes and Rules to select the best value provided by the most qualified vendors with the end users, Legal Services, HUB Coordinator and other subject matter experts (SME). Procurement involves:

- Monitoring procurements for any potential conflicts of interest that may arise, and reporting any concerns; and
- Complying with statutes, rules, and policies related to Commission operations and contracts.

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### 5.3.3. Contract Execution and Oversight

Texas Ethics Commission Purchasing Department will develop contracts that provide the best value, and that contain clear measures, terms, and conditions necessary to hold the vendors accountable for performance. Contract execution includes:

- Ensuring that the statement of work clearly defines vendor responsibilities and performance outcomes and expectations; and
- Maintaining required documentation, such as required disclosure and conflict of interest forms, correct signature authority, amendments, and monitoring results.

#### Contract Oversight:

- Behaving ethically at all times and exercising informed and professional judgment;
- Establishing a contract monitoring plan;
- Communicating and coordinating with all stakeholders involved with the contract;
- Being well versed in the contract terms, including its purpose, scope, requirements, and deliverables to ensure the vendor is held accountable for performance;
- Ensuring the vendor adheres to all applicable statutes, rules and regulations, and the terms and conditions of the contract;
- Overseeing performance and receipt of quality and deliverables;
- Reviewing and approving billing and tracking budget trends;
- Conducting contract closeout/termination activities, vendor performance reporting; and
- Documenting lessons learned.

### 5.4. Certified Texas Contract Manager Training and Certification

In accordance with Section 2262.053 of the Texas Government Code, designated contract management staff must be certified through the Certified Texas Contract Manager (CTCM) process administered by the Texas Comptroller of Public Accounts (CPA).

#### Contract managers/administrators must:

- Complete three training sessions:
  1. Contract management;
  2. Project management;
  3. Negotiation skills and strategies.
- Take and pass the certification exam
- Maintain certification by:
  1. Completing 80 hours of additional training over the course of five years;
  2. No more than 36 CEH's may be applied per year;
  3. Apply for recertification.

Pursuant to Government Code 2262.053, each Texas Ethics Commissioner must complete Webinar Training for Governing Bodies and submit the acknowledgement form to the CPA. Registration for the training can be found on the CPA website.



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## 5.5. Contract Management

Texas Ethics Commission Contract Managers will develop contract monitoring plans, effectively monitor and enforce contract requirements and terms, file maintenance, record keeping, and payment approval.

### 5.5.1. Contract Management through the Lifecycle

Although each contract type may be different, understanding what information is needed throughout the contract lifecycle is critical. The contract lifecycle offers a framework in which to plan for contract management requirements, timelines, and contingencies.

Considerations and tasks throughout the lifecycle:

#### Contract and Procurement Planning

- Complete Needs and Risk Assessment;
- Identify Administering Division / Contract Sponsor;
- Define contract objective;
- Identify evaluation committee and subject matter experts, if applicable;
- Ensure conflict of interest and non-disclosure statements are complete;
- Identify level of approval needed;
- Develop statement of work;
- Develop deliverables and performance measures; and
- Develop timeline and ensure procurement requirements are met.

#### Procurement

- Prepare solicitation document;
- Develop evaluation criteria;
- Create and finalize evaluation tool prior to posting of solicitation;
- Consideration to include HUB Subcontracting Plan;
- Conduct Pre-Proposal conference, if applicable; and
- Evaluate proposals and select Apparent Successful Proposer(s).

#### Contract Formation

- Conduct contract negotiations;
- Finalize contract documents based on outcome of contract negotiations;
- Ensure required checks are completed; and
- Coordinate appropriate signature based on identified signature authority.

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## Contract Management

- Conduct post award meeting, if applicable;
- Maintain official contract record including accurate and timely updates for all required contract reporting;
- Review and approve billing and track budget trends;
- Assess risk and document any decisions, actions and progress;
- Document contract performance issues timely to ensure Purchasing and Contracts staff, legal and management have ready access to information when needed;
- Determine roles and responsibilities, including knowing who has authority for decisions, who is responsible for taking actions, and who should be consulted and informed; and
- Adhere to the Commission's delegated signature authority.

### Know the Contract

- Understanding of the base contract prevents costly mistakes when amending it such as duplicating costs for services or goods already included in original contract;
- Understanding of requirements and deliverables is essential to ensuring successful outcomes.

### Understand the Impact of Decisions

- Use all available information, data, and reports when analyzing a potential course of action;
- Continually assess contractor risk, and take into consideration how potential decisions and actions can decrease, or increase, contract risks;
- Seek input on key decisions from subject matter experts to reduce the risk of unintended consequences, foster mutual cooperation, and promote effective contract management.

## 5.6. Contact Amendments

The Contract Management Team is responsible for coordinating the review, approval and execution of all contracts as well as any modifications, amendments or renewals to a contract as authorized by the Executive Director, or a division director. All contract modifications, amendments or renewals should be referred to the Contract Management Team for review, regardless of the contract dollar amount or if the contract is delegated to the division director level by an Executive Order.

Any change, revision or modification to an original contract must be made in the form of an amendment to the contract. A new procurement is required if the proposed change is outside of the scope of the original procurement. The requesting division will submit documentation for the requested change and any supporting materials to The Contract Management Team. Purchasing will review the information, prepare an amendment, work with the requesting division to seek additional information or clarification, and send the document to Legal Services for review, if

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applicable. Depending on the nature of the amendment, a Needs and Risk Assessment may be required.

### 5.7. Contract Renewals

Approximately six months prior to the expiration of a contract, the Contract Management Team will send a Contract Recommendation Memo to the administering division to determine what action should be taken. If there are renewals remaining on a Contract, the requesting division may return the Contract Recommendation Memo requesting the renewal option be exercised and provide any supporting materials to the Contract Management Team. The Contract Management Team will review the information, prepare the renewal, work with the requesting division to seek additional information or clarification, and may send the document to Legal Services for review.

When all documentation and approvals to process the renewal have been received, Purchasing will obtain the required signatures, and route copies of the final document to all appropriate divisions and the vendor. Renewals generally require a Needs and Risk Assessment.

If no more renewals remain available under a contract, the requesting division should consult with the Contract Management Team to determine whether the services are still needed and a new solicitation must be issued.

### 5.8. 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. The purchasing department is the official repository for all contract information. Contract sponsors are responsible for ensuring that the purchasing department receives all contract related documentation and the contract record is updated throughout the lifecycle and contains accurate and complete information.

### 5.9. Contract Records Retention

Pursuant to Texas Government Code, Chapter 441.1855, effective for contracts executed September 1, 2015, and thereafter, all contract documents must be retained for a minimum of seven years after a contract is complete (expired, terminated, or otherwise closed) or the last action related to the contract is resolved, whichever is later.

### 5.10. Contract Monitoring

All Commission contracts must be monitored to verify that the contract is performing effectively and efficiently in accordance with contract terms and conditions. Contract monitoring includes planned, ongoing, periodic, or unscheduled activities that measure and ensure compliance with the terms and conditions, and delivery of the goods and/or services.

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

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- Determining compliance with the terms and conditions of the contract;
  - Providing feedback and technical assistance to prevent non-compliance;
  - Evaluating process controls to ensure reliable validation of service deliverables; and
  - Evaluating progress towards successful completion of contractual deliverables.

The Contract Management Team must complete a Risk Assessment Analysis for all applicable contracts in order to prioritize monitoring activities and establish a contract monitoring plan.

#### 5.11. Risk Assessment and Contract Monitoring

By assessing risk and allocating monitoring resources accordingly, the Commission 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.

Within 60 calendar days of the effective date of the contract, the administering division, in collaboration with the Contract Management Team, as appropriate, must conduct a risk assessment. The risk assessment includes a variety of risk factors that, in aggregate, are used to determine the overall risk level of the contract (high, medium, or low). Risk should be reassessed if a contract is amended or extended in order to account for any changes that may require an adjustment in the prioritization of the contract monitoring activities.

- A Risk Assessment Analysis is required for:
  - All contracts designated as Major, Prime and Operational.
- A Risk Assessment Analysis is not required for:
  - Interagency Agreements
  - Contracts with no Monetary Value
  - Lease Agreements
  - Software and Hardware Maintenance Agreements

#### 5.12. Contract Monitoring

Contract monitoring activities can be conducted in a variety of ways, as long as they are objective, address contract complexity, value, and risk. The Commission has established minimum contract monitoring activities for all contracts that result from a formal procurement, regardless of the size, value or risk. Enhanced contract monitoring may be appropriate for certain contracts. Minimum contract monitoring activities include:

- **Billing Validation:** Contract sponsors are responsible for reviewing each vendor invoice to determine if the rates and services are the same as allowed by the contract and all supporting documentation (e.g. cost reports and third party receipts for expenses) is provided. This includes confirmation that the goods and/or services being invoiced have been received and accepted by the Commission. Invoices that are incorrect, lacking supporting documentation or for which the goods/services have not been provided in accordance with the contract will be disputed.

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- **Contract Terms and Conditions:** The purchasing department monitors all Commission contracts for certain administrative reporting activities. These include vendor reporting of litigation, lobbyist activities, changes in ownership or financial status and changes in key personnel.
  - **Bonds and Insurance:** The Contract Management Team is responsible for ensuring vendor compliance with all contract provisions for performance bonds and insurance.
  - **Reporting Requirements:** Contract sponsors are responsible for ensuring vendor compliance with all contract reporting requirements included in the scope of work/specifications.
  - **Receipt and Acceptance of Goods/Services:** Contract sponsors are responsible for ensuring the receipt and acceptance of goods and services in accordance with contract requirements (scope of services).

Additional enhanced monitoring (meaning greater frequency or more robust monitoring tools) may be required and will be determined by the administering division. Examples of enhanced monitoring activities may include:

- **On-Site Visit:** Monitoring of vendor facilities, personnel, live operations, service delivery or other observable characteristics to objectively validate compliance with contract requirements. Site visits are often conducted as part of the procurement process. Contract sponsors are responsible for determining if subsequent site visits are required to ensure continued contract compliance.
- **Team Approach:** A team approach may be used for complex or large contracts. It may include implementation of a contract management governance framework, 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 on the same page regarding any issues and corrections, sanctions, or remedies.

Contract sponsors must ensure that documentation of monitoring activities is factual, thorough, and substantiates any findings, such as performance deficiencies or instances of non-compliance. Monitoring documentation must be provided to the purchasing department to be maintained within the official contract file.

Any issues or findings identified as a result of contract monitoring activities must be sent to The Contract Management Team for action. The Contract Management Team will work with the administering division and legal services to determine what action should be taken, such as escalation, warning letter, liquidated damages, corrective action plan or payment holdback.

The Contract Management Team is responsible for providing assistance to the administering division(s) in monitoring contract performance. Each administering division is responsible for the day-to-day management and monitoring of assigned contracts. Routine, day-to-day communications will be handled by the administering division. All official correspondence with vendors regarding contract matters on performance issues will go out under the oversight and signature of the Administration Division Director or his designee.

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## 5.13 Escalation of Contract Issues

Examples of Significant Issues for Escalation Include:

- Risk that the contract will exceed budget limitations or timeframes;
- Repeated non-compliance;
- Security or integrity concerns;
- Appearance of impropriety or potential conflict of interest; and
- Suspicion of fraud, waste, or abuse.

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

## 5.14. Contract Termination and Closeout:

Texas Ethics Commission Purchasing Department will conclude the contract, complete the contract management file, and report on the vendor's performance.

Contract closeout is the final step of the contract lifecycle and occurs once the contract has expired or terminated. Within ninety days after the expiration, termination or completion of a contract, a Contract Closeout Memo will be initiated from The Contract Management Team to the director of the administering division.

## 5.15. Vendor Performance Reporting

Purchasing is responsible for reviewing and submitting vendor performance information to the Comptroller of Public Accounts' Vendor Performance Tracking System (VPTS). Vendor performance reporting is required for the following procurement types:

- Any purchase of goods or services for which the best value standard was used as the procurement method;
- Purchases of \$25,000 or more made through Department of Information Resources (DIR);
- Purchases of \$25,000 or more administered by the Texas Ethics Commission (TEC); and
- All contracts (not including interagency).

The purpose of the Vendor Performance Tracking System (VPTS) is to:

- Reduce risk by providing information on past performance;
- Identify vendors that have exceptional performance;
- Aid purchasers in making a best value determination based on vendor past performance;
- Protect the state from vendors with unethical business practices, or repeated delivery issues;

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- Provide performance scores in four measurable categories for the Centralized Master Bidders List (CMBL) vendors; and
  - Track vendor performance for delegated and exempt purchases.

Purchasing is responsible for gathering information from the administering divisions to report vendor performance. All documentation submitted to Purchasing and Contracts for the procurement file must be factual in nature and not contain any opinion.

By statute, the Comptroller of Public Accounts must track and evaluate vendor performance based on information reported by state agencies. State agencies must consider performance information and contractor ratings contained in the VPTS when determining whether or not to award a contract to a particular contractor.