

Texas Parks & Wildlife Department
PROCUREMENT & CONTRACT
MANAGEMENT GUIDE

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CHAPTER 1. INTRODUCTION

Introduction and Purpose

The State of Texas has a longstanding interest in improving state agency procurement and contract management. To aid in this improvement, the State of Texas Procurement and Contract Management Guide (State Guide), which applies to all state agencies, was created and is maintained by the Comptroller of Public Accounts (CPA).

Procurement and contract management refers to the entire contracting process from planning to closeout. This includes tracking tasks such as developing a solicitation, awarding a contract, monitoring vendor performance, processing invoice payments, negotiating amendments, assessing penalties, and updating contract data. Texas Parks and Wildlife Department (TPWD) is committed to complying with all applicable state statutes, rules, policies, and procedures. In compliance with [Government \(Gov't\) Code §2261.256](#) and the TPWD Purchasing and Contracting Policy ([BF-07-02](#)), TPWD created this Procurement and Contract Management Guide (Guide) to be used by employees that manage purchasing and contract functions. The purpose of the TPWD Purchasing and Contracting Policy ([BF-07-02](#)) and this Guide is to establish consistent purchasing and contract management policies and procedures that must be followed by TPWD employees, to provide best practices for managing TPWD contracts, and to serve as a reference guide for TPWD procurement processes and practices.

TPWD divisions may develop additional policies and procedures for implementing contract management requirements, including requirements in this Guide, to best meet the organizational structure, program requirements, and business needs (see [Appendix 2](#)). Infrastructure (INF) Contract and Project Managers should refer to INF's internal procedures related to managing construction, professional services contracts for architectural, engineering and surveying contracts.

This Guide is designed to provide a general overview of purchasing and contract management for TPWD employees using TPWD-specific terminology. However, it is not intended to supersede or replace the State Guide, and employees should always consult the State Guide for additional information as needed. Since state agencies are required to comply with the State Guide, the State Guide will govern in the event of a conflict between the two, unless TPWD has an exemption from or is otherwise not subject to a particular requirement.

Applicability

This Guide applies to the procurement and management of contracts, including the following:

- Construction Contracts*
- Cooperative or "Piggy Back" Contracts
- Interagency Contracts
- Inter-local Contracts
- Memoranda of Agreement (MOAs)

- Memoranda of Understanding (MOUs)
- Professional Services* (including Consultant Contracts)
- Purchase of Goods or Services Contracts
- Purchase Orders
- Revenue Generating Contracts
- Sole Source, Proprietary, and Emergency Purchase Contracts
- Statewide Term Contracts
- Utility Contracts
- Other Agreements that bind TPWD in any manner

*INF staff and staff from other divisions that are involved in managing Construction Contracts and Construction-Related Professional Services Contracts should refer to INF divisional procedures for contract management for additional guidelines.

Professional Certification and Training Requirements

The term “public procurement professional” refers to any agency employee that conducts purchasing, contract development, or contract management activities. Within TPWD, many purchasing and contract management functions are performed by different individuals throughout the agency. The employees who participate in these functions can have various titles and classifications other than “purchaser” or “contract manager.”

A description of the three (3) procurement roles is summarized below:

PROCUREMENT ROLES	
Purchasing	Receipt and processing of requisitions; development of specifications; development of statement of work; issuance of purchase orders against existing statewide, cooperative or agency contracts; and verification of the inspection of merchandise or receipt of services.
Contract Development	Actions taken prior to contract execution, including the receipt and processing of requisitions; assessment of need; development and review of specifications; 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 preparation and completion of contract award documents. The term does not include invoice or audit functions.
Contract Management	Actions taken following contract execution, including assessment of risk; verification of contractor performance; monitoring compliance with deliverable and reporting requirements; enforcement of contract terms; monitoring and reporting of vendor performance; and ensuring that contract performance and practices are consistent with applicable rules, laws, and the State Guide.

CPA Statewide Procurement Division (SPD) Training Requirements

All state agency procurement and contracting personnel are required to participate in the statewide training and certification program administered by SPD ([Gov't Code §656.051\(c\)](#)). SPD offers two (2) levels of certification: Certified Texas Contract Developer (CTCD) and Certified Texas Contract Manager (CTCM). Contract developers and contract managers working in Texas state government must attend mandatory courses and pass an exam to become certified as either CTCD or CTCM. However, a licensed attorney employed by an agency is not required to be certified as a CTCD or CTCM to perform procurement or contract management functions.

An overview of the training and certification requirements for public procurement professionals is located on the CPA website. The SPD training program provides public procurement professionals with a clear understanding of statewide procurement rules and best practices. SPD also provides the continuing education required for public procurement professionals to maintain certification.

TPWD Training and Compliance Requirements

In addition to SPD training, specific training and certification requirements for staff involved in the procurement process are outlined in each employee's Functional Job Description (FJD). Failure to satisfactorily meet requirements may result in disciplinary action.

- A. PC Branch Training Requirements.** All PC staff are required to obtain certification within one (1) year from date of hire. Once certification is obtained, the employee must participate in continuing education and professional development in order to maintain procurement certifications earned from SPD. The levels of required certification are:
- **Certified Texas Contract Developer (CTCD)** – for soliciting contracts on behalf of TPWD in excess of \$25,000.
 - **Certified Texas Contract Manager (CTCM)** – for contract management duties.

All EO PC Branch staff will have the required certifications and training requirements outlined in each employee's Functional Job Description. Failure to satisfactorily meet with these requirements may result in disciplinary action.

- B. Divisional Procurement Staff Training Requirements.** Division purchasers will be required to participate in the statewide training and certification program administered by SPD. Training requirements are as follows:

Division Purchasers				
Level	Training and Certification Requirements	Purchasing Compliance	Maximum Purchasing Authority - Solicitations	Maximum Purchasing Authority - Awards
1	Basic Purchasing Training	Satisfactory	\$10,000	\$10,000
2	CTCD Certification Training but NO Certificate	Satisfactory	\$25,000	\$10,000
3	CTCD Certification	Satisfactory	\$25,000	\$25,000
4	CTCD Certification & Purchasing Experience	Satisfactory	\$50,000	\$25,000
5	Minor Construction Authority	Satisfactory	\$50,000	\$50,000

C. TPWD Level 5 - Minor Construction Solicitation Authority

Division purchasers with Level 4 purchasing authority and who have completed minor construction training with the INF Division, may be granted approval to solicit and award minor construction services where the total contract value does not exceed \$50,000, and the project does not require the seal of a licensed professional (e.g., architect, engineer, surveyor).

- These purchases should only use an Invitation for Bid (IFB) procurement method and must adhere to the requirements of this policy.
- Requests for Level 5 minor construction purchasing authority must be submitted in writing by the applicable Division Director to the PC Director and INF Contracting Branch Manager, who will verify and confirm that the employee meets the training requirements and has sufficient experience.
- Solicitation authority of minor construction services will be determined by the PC Director and INF Contracting Branch Manager based on experience and qualifications.
- Delegation may be revoked, or additional oversight required if compliance issues are identified.

D. Procurement Compliance Requirements. All TPWD staff procuring goods and services must demonstrate satisfactory compliance in order to retain purchasing authority. The PC Director has authority to determine what constitutes satisfactory purchasing compliance and may consider things like the frequency and severity of errors; whether the conduct is intentional; and the impact of errors or misconduct on the agency.

1. If a PC Branch, Infrastructure, or Information Technology (IT) division purchaser, or a Level 2-5 division purchaser fails to maintain satisfactory compliance, then that employee's purchasing authority will be reduced for a period of 90 days, subject to an appeal by the impacted Division Director to the Chief Operating Officer (COO).
 - During the 90-day reduced purchasing authority period, all purchasing-related tasks must be reviewed and approved by the PC Director or designee prior to being solicited or awarded to a vendor. If necessary, additional training may be required during the review period.
 - At the end of the 90-day period, the Division Purchasing Lead, in coordination with Division Director, should submit a recommendation to the PC Director to reinstate the employee's approval authority; extend the review period for up to another 90 days; or permanently reduce or suspend the employee's purchasing authority. The PC Director will make the final decision, though the impacted Division Director may appeal to the COO.
 - After reinstatement to the prior level of purchasing authority, if a PC Branch purchaser or a Level 2 or higher purchaser fails to maintain satisfactory compliance, the purchaser's authority will be reduced for a 6-month period, and the employee must re-attend the SPD CTCD Certification Training. The 6-month reduction is subject to an appeal by the impacted Division Director to the COO. However, the employee will be required to attend the CTCD Certification Training regardless.
 - After a second reinstatement of purchasing authority, and failure to maintain satisfactory compliance, the PC Director will request permanent suspension of all purchasing authority for that employee through the impacted Division Director to the COO.
2. Notwithstanding the above process, if a staff member with purchasing authority at any level engages in intentional misuse of authority or fraudulent conduct, the Division Purchasing Lead or PC Director may recommend a reduction or suspension of authority at any time. The recommendation must be submitted in writing with supporting documentation to the COO for approval.
3. Lapse of CTCD certification automatically returns an employee to Level 1 authority.
4. The PC Director and/or the COO will notify Human Resources (HR) Employee Relations staff of any suspension or reduction in purchasing authority.
5. TPWD may take disciplinary action against an employee for failing to maintain satisfactory purchasing compliance, independent of any reduction in or suspension of purchasing authority.

Procurement Training for TPW Commissioners

All members of the TPW Commission must complete at least one course of the CPA's abbreviated training program ([Gov't Code §656.053](#)).

CHAPTER 2. ETHICS AND STANDARDS OF CONDUCT

TPWD employees are required to abide by all state statutes and TPWD policies, and must perform in an ethical, impartial, transparent, and professional manner when carrying out official work duties. Because TPWD contracts use public funds, it is critical that all involved staff 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 purchasing and contracting process.

State law specifically prohibits employees who participate in the procurement process from having an interest in or receiving benefits from a contract or bid for a purchase of goods or services. Moreover, employees of agencies that perform purchasing functions under delegated authority must adhere to the same ethical standards as the CPA's employees and avoid all conflicts of interest in their purchasing activities. TPWD's purchasing staff and executive management annually certify compliance with these provisions on the Non-Disclosure and Conflict of Interest Certification form ([PWD-0985](#)), maintained by PC Branch staff.

To ensure the integrity of TPWD's procurement processes, TPWD employees who are involved in the development, award, and management of contracts with private vendors must disclose any known or potential conflicts of interests. An employee may not work on a contract knowing that the employee, or member of the employee's immediate family, has an actual or potential financial interest in the contract, including but not limited to current or prospective employment. The term "participate" includes but is not limited to decision making, approval, disapproval, recommendation, giving advice, investigation, or similar action.

Additionally, state law prohibits contracts with private vendors for goods and services where certain agency officials and their family members have a financial interest. Accordingly, TPWD's Commissioners, Executive Director, General Counsel, and PC Director must disclose any known financial interests with the agency's private vendors on an annual basis and/or as changes to financial interest may occur, to ensure that the agency does not contract with those vendors.

Nepotism is a form of conflict of interest that involves an explicit act of using one's position to favor a relative. Relationships between family members are classified by consanguinity or affinity.

There are different ways of computing degrees of relationship. Texas law computes degrees of relationship by the civil law method. The table below provides descriptions of the consanguinity and affinity relationships that may be referenced in the various nepotism laws that prohibit certain types of activities based on an employee's job responsibilities, employment within a particular branch of government, or employment by a particular agency.

CONSANGUINITY AND AFFINITY RELATIONSHIP CHART FOR PUBLIC OFFICIAL OR EMPLOYEE				
Consanguinity (Includes individuals related by blood to the office or employee)			Affinity (Includes an official's or employee's spouse and individuals related to the spouse)	
First Degree	Second Degree	Third Degree	First Degree	Second Degree
<ul style="list-style-type: none"> • Parents 	<ul style="list-style-type: none"> • Grandparents • Grandchildren 	<ul style="list-style-type: none"> • Great-grandparents • Great-grandchildren 	<ul style="list-style-type: none"> • Spouse • Spouse's Parents 	<ul style="list-style-type: none"> • Spouse's Grandparents • Spouse's Grandchildren
<ul style="list-style-type: none"> • Children 	<ul style="list-style-type: none"> • Brothers • Sisters 	<ul style="list-style-type: none"> • Nephews • Nieces • Uncles • Aunts 	<ul style="list-style-type: none"> • Children's Spouses • Spouse's Children 	<ul style="list-style-type: none"> • Spouse's Brothers and Sisters • Brothers and Sisters' Spouses

TPWD Ethics Policy and Employee Conduct

The purpose of the TPWD Employee Ethics Policy ([HR-08-01](#)) is to ensure that TPWD staff maintain the highest standards of conduct in the performance of their duties. All TPWD staff must be familiar with this policy and comply with it.

Ethics Rules for Agency Staff Involved in Contracting

All TPWD staff involved in procurement and contracting activities must act in the best interest of the State and avoid any activity that could potentially impair their ability to carry out their duties with independence and objectivity. Failure to abide by these requirements or to disclose a potential conflict of interest could result in disciplinary action, up to and including termination.

State Employee Conflict of Interest

TPWD staff may not accept anything, regardless of value, from contractors or prospective contractors. A contractor or potential contractor must not offer, give, or agree to give an employee anything of value. The solicitation or acceptance of a benefit from a person or entity that a state employee knows is interested in, or may become interested in, a contract, purchase, or payment, is also prohibited.

If an employee participated on behalf of the agency in a procurement or contract negotiation involving a person or entity, the employee is prohibited from accepting employment from that person or entity for two (2) years after the contract was signed or the procurement was terminated or withdrawn.

Contractor Conflict of Interest

Statute prohibits agencies from entering into employment, professional services, or consulting services contracts with former or retired employees before the first anniversary of the last date on

which the individual was employed by the agency. However, TPWD may enter into a professional services contract with a business entity that employs a former or retired agency employee within one year of the employee's departure, so long as the employee doesn't perform services on projects for the business entity that the employee worked on while employed by TPWD.

TPWD contract terms and conditions must contain provisions related to organizational conflicts of interest, restrictions on recruitment of state employees, and incentives, such as:

"Respondents must:

- disclose any current, former, or proposed employees who are current or former employees of the State;
- disclose proposed personnel who are related to current or former employees of the State;
- warrant that providing services does not constitute an actual or potential conflict of interest nor reasonably create the appearance of impropriety; and
- warrant that they have not given, nor intend to give, any gift or thing of value to employees participating in the solicitation."

TPWD and Contractor Relationship

While TPWD employees must fulfill their responsibilities, contractors must in turn fulfill their contractual obligations. Maintaining cooperative relationships with contractors is important to successful contracting outcomes. However, TPWD employees must maintain an ethical, arm's-length business relationship with contractors.

Reporting Ethical Violations

The PC Director, INF Contracting Branch Manager, and Legal Division staff are available to consult and assist with any ethical issues or concerns at any time during the procurement or management of the contract.

All TPWD staff have a duty to report any potential ethical violations in accordance with the TPWD Employee Ethics Policy ([HR-08-01](#)) and Performance, Conduct, and Disciplinary Action Process Policy ([HR-18-01](#)). Employees have an obligation to remain vigilant for signs of potential violations of ethics rules and policies. Employees must use the following options for reporting and investigating known, alleged, or suspected fraud or other illegal activities in the agency:

- TPWD employees must report any potential or known ethical violations to their appropriate in-line supervisor or HR Director. An employee who becomes aware of an alleged violation of criminal law must immediately report the matter to TPWD Internal Affairs. Contact may be verbal or written and may be made by anyone having knowledge.
- The HR Director may consult with the General Counsel, Internal Affairs Director, and any other agency staff as appropriate for advice and assistance during the review of the complaint and any investigation.

Confidential Information and Data Protection Requirements

Information TPWD deems confidential or sensitive can take many forms. TPWD contractors who have access to TPWD confidential, or sensitive information must comply with specific standards of conduct regarding the information.

Contracts that allow a contractor to have access to confidential or sensitive information may require additional risk mitigation components.

All TPWD employees have the responsibility to inform their assigned procurement professional when there is a need for contractor access to confidential or sensitive information prior to the execution of the purchase order or contract.

Suspected Fraud, Waste, and Abuse

The State Auditor's Office (SAO) investigates allegations of fraud, waste, or abuse. Administrative heads of agencies who have reasonable cause to believe that money was lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred, are required to report this information to the SAO. A *reasonable cause to believe* exists when a set of facts leads a reasonable and prudent person to believe that an offense may have been committed. Employees and vendors who become aware of a situation that involves suspicious activities or fraudulent acts may also report the allegations to SAO.

The SAO coordinates investigatory work with internal auditors, federal and state prosecutors, and law enforcement agencies at the city, county, state, and federal levels. Criminal offenses investigated by SAO include, but are not limited to, the following:

- Abuse of official capacity
- Bribery
- Conversion of funds
- Forgery
- Gift to a public servant by a person subject to his or her jurisdiction
- Misapplication of fiduciary property
- Securing execution of document by deception
- Tampering with a governmental record
- Theft

Reports of fraud, waste, or abuse involving state resources may be submitted through the SAO website, by phone at 1-800-TX-AUDIT (892-8348), or by mail to State Auditor's Office, Attn: IAS, P.O. Box 12067, Austin, TX 78711-2067. Someone who reports fraud may choose to remain anonymous.

Bribery

Bribery is a criminal offense. Bribery occurs if a person intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept any benefit as consideration for a violation of a public servant's legal duty or a public servant's decision, opinion,

recommendation, vote, or any other exercise of discretion. “Benefit” includes a salary. A state employee, therefore, is subject to criminal prosecution if the employee accepts employment as consideration for an official act. A bribery offense occurs even if the benefit is offered after the employee has acted in a manner desired or after the employee has ceased working for the State. However, bribery does not occur if the benefit is a political contribution defined by Title 15 of the Election Code or an expenditure made and reported in accordance with the lobby statute.

Gift to Public Servant

It is a criminal offense for a public servant to accept a benefit from a person subject to their jurisdiction. There are seven (7) types of conduct prohibited by this statute, and these prohibitions apply regardless whether the donor seeks or expects anything in consideration for the benefit. For example, since TPWD is a regulatory agency, an employee may not solicit, accept, or agree to accept any benefit from a person the employee knows is subject to regulation, inspection, or investigation by TPWD.

It is also an offense for a public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other governmental pecuniary transactions to solicit, accept, or agree to accept any benefit from a person who the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of the public servant’s discretion. Acceptance of a gift may also be prohibited if the donor of the gift is a registered lobbyist.

Misuse of Official Information

As a result of employment with the State of Texas, a state employee may have access to information the public does not. A state employee faces criminal liability if they use information that has not been made public and was obtained during the course of official duties for a private purpose. The term “information that has not been made public” means any information to which the public does not generally have access, and that is prohibited from disclosure under the Texas Public Information Act ([Gov’t Code Ch. 552](#)). A public servant commits an offense if, by relying on nonpublic information, they:

- Acquire or aid another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information,
- Speculate or aid another to speculate on the basis of the information, or
- As a public servant, coerce another into suppressing or failing to report that information to a law enforcement agency

A public servant also commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, they disclose or use information for a non-governmental purpose that the person has access to by means of office or employment and that has not been made public.

Misuse of Government Resources

State law prohibits the misuse of governmental resources ([Gov’t Code §2203.004](#)). Governmental resources include various forms of tangible property, including computers, copiers, supplies, and vehicles, as well as employee time. A public servant commits an offense if, with intent to obtain

a benefit or with intent to harm or defraud another, they intentionally or knowingly misuse anything of value belonging to the government that has come into their custody or possession by virtue of their office or employment ([Penal Code §39.02\(a\)\(2\)](#)). For example, a TPWD employee may face criminal prosecution for use of a state-issued credit card for a personal expenditure that is not a TPWD-authorized state business expense.

Standards of Conduct

Overview

Ethical behavior and integrity are fundamental tenets of State professionals involved in the procurement process. These tenets derive from values like “fairness,” “honesty,” and “accountability.” When an individual’s official duties clash with the individual’s personal interests, a “conflict of interest” may occur; this conflict may impair one’s judgment when trying to determine the proper course of action. Any erosion of public trust or perception of impropriety is detrimental to the integrity of the procurement process; therefore, all state employees involved in procurement activities must act in an ethical, impartial, transparent, and professional manner.

State Standards of Conduct

The Legislature has established standards of conduct for state officers and employees ([Gov’t Code §572.051\(a\)](#)). A state officer or employee should not:

- accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties, or that the officer or employee knows or should know is being offered with the intent to influence the officer or employee’s official conduct;
- accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
- accept other employment or compensation that could reasonably be expected to impair the officer or employee’s independence of judgment in the performance of the officer or employee’s official duties;
- make personal investments that could reasonably be expected to create a substantial conflict between the officer or employee’s private interest and the public interest; or
- intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer or employee’s official powers or performed the officer or employee’s official duties in favor of another.

An employee who violates the State standards of conduct or TPWD’s ethics policy is subject to disciplinary action, including termination of employment, and any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule ([Gov’t Code §572.051\(b\)](#)). Additionally, TPWD may not use appropriated funds to compensate an employee who violates the State standards of conduct.

Appearance of Impropriety

The root of ethical behavior in public procurement is the commitment of public procurement professionals to ensure that they neither gain personally from, nor unduly favor, anyone in the execution of their official duties. They are guided by a duty to serve the public for whom they are employed. Accordingly, public procurement professionals must not only comply with the minimum legal standards of ethical conduct established by statutes, agency rules and policies, and professional certifications, but they should also conduct themselves in a manner that avoids even the appearance of impropriety.

Information Fidelity

TPWD's procurement professionals, contract managers, Legal Division, and TPWD management rely on information provided by TPWD employees and existing TPWD contractors throughout the procurement cycle to make decisions in TPWD's best interest. TPWD employees and existing contractors must not:

- knowingly provide information containing a material omission or falsehood;
- intentionally delay or refuse to provide information that is reasonably likely to have a negative impact on procurement or contracting processes;
- knowingly undermine TPWD procurement or contracting processes;
- knowingly attempt to influence, either positively or negatively, vendors, evaluators, or decision makers prior to or throughout the procurement or contracting process in a manner not in TPWD's best interests; or
- attempt to manipulate the procurement or contracting process to achieve a predetermined outcome.

Every TPWD employee or existing TPWD contractor providing information prior to or during the procurement process is responsible for the information they provide. Failure to act ethically may result in disciplinary action, up to and including termination of employment, or termination of a contract.

Additional requirements regarding confidentiality may apply to TPWD employees and TPWD contractors once a contract is awarded.

Post-Employment Restrictions

Certain Employment for Former State Officer or Employee Restricted

Former TPWD officers or employees who during the period of state service or employment participated on behalf of TPWD in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the contract was signed, or the procurement was terminated or withdrawn ([Gov't Code §572.069](#)).

Contracting with Former Executive Head of State Agency

TPWD may not enter into a contract with a person who at any time during the four (4) years before the date of the contract was the executive head of TPWD, or with a person who employs a former executive head of TPWD, unless the TPW Commission (1) votes, in an open meeting, to approve

the contract, and (2) notifies the Legislative Budget Board, not later than the fifth day before the date of the vote, of the terms of the proposed contract ([Gov't Code §669.003](#)).

Contracting with Certain Former Agency Employees

TPWD may not enter into an employment contract, or a professional services contract or consulting services contract under [Gov't Code Ch. 2254](#), with a former or retired TPWD employee before the first anniversary of the last date on which the individual was employed by TPWD, if appropriated money will be used to make payments under the contract ([Gov't Code §2252.901](#)). This restriction does not prohibit TPWD from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee within one year of the employee leaving TPWD, provided that the former or retired employee does not perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by TPWD.

Representation by Former Officer or Employee of Regulatory Agency Restricted

There are two (2) general “revolving door” provisions in [Gov't Code §572.054](#) that apply to regulatory agencies (which includes TPWD).

Former Board Members and Executive Directors

A former member of the governing body or a former executive head of a regulatory agency may not make any communication to or appearance before an officer or employee of the agency in which the member or executive head served before the second anniversary of the date the member or executive head ceased to be a member of the governing body or the executive head of the agency, if the communication or appearance is made (1) with the intent to influence, and (2) on behalf of any person in connection with any matter on which the person seeks official action.

Former State Officers and Employees

A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, and was compensated at or above a certain salary level, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility. This restriction does not apply to a rulemaking proceeding that was concluded before the officer's or employee's service or employment ceased.

A former state officer or employee covered by this provision is prohibited from ever representing any person or receiving any compensation for services rendered on behalf of any person regarding a particular matter in which the individual “participated” while serving with the agency. A “particular matter” means a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding. “Participated” means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice,

investigation, or similar action. The determination of whether an individual participated in a matter is not limited to those of personal involvement. Participation can mean having supervisory authority over others who have personal involvement with a particular matter, even if such authority was never exercised.

CHAPTER 3. VENDOR COMMUNICATION

Overview

Communication between public procurement professionals and vendors is imperative and encouraged. If used effectively, communication with industry representatives is a vital resource for public procurement professionals. However, steps must be taken to avoid any appearance of favoritism and maintain a fair opportunity for all vendors to compete. TPWD personnel must be aware that one-on-one communications with vendors occurring prior to contract award are subject to enhanced scrutiny due to the importance of maintaining equal opportunities among all eligible vendors during competitive procurements. If there is any doubt about appropriate communications with vendors, consult with the TPWD PC Director and/or TPWD Legal Division staff.

Fact Gathering

Texas law authorizes the exchange of information between TPWD and a vendor, related to future solicitations ([Gov't Code §2155.090](#)). Vendors are often experts in their respective fields and can offer insight on potential purchases, such as current trends, industry practices, and available products or solutions. The purchaser should develop a plan to obtain any needed vendor input, which may include issuance of a Request for Information (RFI), attendance at industry days, or directly contacting industry leaders or vendors listed under the applicable code on the Centralized Master Bidders List (CMBL). The result of these interactions may lead to increased competition, a more detailed and up-to-date description of technical requirements or statement of work, and ultimately better value for the State. However, specifications must never be tailored to benefit a specific vendor, as this limits competition. TPWD staff should avoid the appearance of favoritism toward certain vendors in the fact-gathering process and when possible, should avoid consulting exclusively with the incumbents or a small number of vendors, which could give the appearance of favoritism.

In an effort to educate vendors on state restrictions and to avoid misunderstandings regarding TPWD-vendor communications, staff are required to supply vendors with the NOTICE TO VENDORS REGARDING DISCUSSIONS OF POTENTIAL VENDOR PRODUCTS OR SERVICES document ([PWD-1425A](#)). In addition, staff must certify they have provided this document to a particular vendor by submitting a signed version to Purchasing and Contracting: purchasing@tpwd.texas.gov.

Drafting the Solicitation

When all fact gathering is completed and the solicitation drafting process has begun, vendor communication must cease to ensure the integrity of the procurement. Purchasers may use relevant information gathered from the vendor community when drafting specifications. If a vendor is compensated by TPWD for its assistance in drafting specifications or scope of work for a solicitation, the vendor is not eligible to bid on the resulting contract ([Gov't Code §2155.004](#)).

During the Solicitation

Once the solicitation is posted, communications between procurement professionals and vendors should follow the procedure outlined in the solicitation. This could include designating specific TPWD points of contact for receipt of vendor inquiries, a public question and answer process (Q&A process), and pre-bid/offer/proposal conferences. When issuing a solicitation, it is recommended that procurement staff include a Q&A process, as that will be the only time where TPWD can benefit from potential vendors' input on the solicitation. Any necessary corrections/clarifications to the solicitation document should be processed as an addendum. Failure to allow for vendor input during a Q&A process may result in higher costs to TPWD if the specifications are unclear.

If any information relevant to the procurement (e.g., evaluation methods or projected ordering volumes) is provided to any vendor, that information should be released to the public without delay. This includes information shared at conferences attended by some but not all potential vendors.

TPWD HUB Program Staff offer assistance with HUB plans to all vendors equally throughout the posting period. However, these staff members are not part of the evaluation process. To ensure impartiality, any contact between vendors and end users or evaluators should be avoided during the advertisement period. If a vendor fails to comply with the guidelines regarding vendor communication posted in the TPWD solicitation, the vendor's proposal may be subject to disqualification.

Evaluation and Negotiation

Allowable vendor-procurement professional interactions between the response due date and contract award include:

- clarification of a respondent's ability to meet the solicitation requirements;
- negotiations, as appropriate based on the procurement method, including request for best and final offer; and,
- the exchange of information as necessary to facilitate a potential award.

Evaluation and vendor selection should be based on response documents formally submitted by each vendor, not other communications. If one vendor is provided an opportunity to clarify its response, similarly, situated vendors should receive the same opportunity.

CHAPTER 4. OVERSIGHT

Purchasing and Contracting Program

Program Mission

TPWD PC program's mission is to serve, support, and collaborate with end users to deliver innovative, timely, and accurate procurement solutions. TPWD procurement professionals are focused on maintaining fiduciary trust and committed to effective procurement services and contract oversight to maximize best value.

PC Branch

The PC Branch oversees the acquisition of goods and services in support of TPWD's business needs. The PC Branch is responsible for ensuring that TPWD is competitive to the greatest extent possible in accordance with [Gov't Code §2261.051](#). The PC Branch facilitates and guides TPWD through all stages of the procurement process to ensure compliance with State and TPWD guidelines.

Procurement roles and responsibilities may include but are not limited to the following:

- Issuing solicitations such as:
 - Invitations for Bid (IFB)
 - Request for Proposals (RFP)
 - Request for Offers (RFO)
- Working with agency staff, and the Legal Division as necessary, to create, develop and execute contracts, amendments, purchaser orders and Purchase Order Change Notices (POCNs) and all contracting documents.
- Maintaining official procurement files.
- Managing the agency credit card program.
- Managing the agency lease program.
- Training TPWD employees on procurement practices, policies, and procedures.
- Overseeing TPWD contract management practices.

In addition to providing oversight for TPWD purchasing procedures, the PC Branch oversees the two-party contract program. [Parks and Wildlife Code §11.0171](#) gives TPWD the authority to direct contract with the federal government, other state agencies political subdivisions, agencies from other states, and nonprofit organizations. The PC Branch serves as the agency coordinator for all contracts, except for state park concession contracts, land-related documents, construction contracts, and contracts for construction-related professional services (e.g., engineering, architectural services).

Land-related documents, construction contracts, and contracts for construction-related professional services are coordinated through the INF Division Contracting Branch. State Parks coordinates State Park Concession contracts.

Contracting roles and responsibilities may include but are not limited to the following:

- Working with Legal Division, as necessary, to create, develop, review, and execute two-party contracts, amendments, and all contracting documents.
- Coordinating contract review, execution, and management with Federal Grants, Revenue, and Division Contract and Project staff, as applicable.
- Maintaining official contract files.
- Ensuring all oversight compliance reports are submitted.
- Serving as the liaison between division staff, Legal Division staff, Federal Grants program staff, oversight agencies, and other contracting entities.

Historically Underutilized Business (HUB) Program

TPWD's HUB Program is administered in accordance with [Gov't Code Ch. 2161](#) and [34 Texas Administrative Code \(TAC\) §§20.281 - 20.298](#). The TPWD HUB program encourages the use of certified HUBs in procurements and contracts for commodities and services by promoting full and equal business opportunities for all businesses in Texas.

TPWD pursues initiatives designed to promote HUB opportunities, including subcontracting efforts and attending and hosting HUB Economic Opportunity Forums throughout the state. This commitment extends to assisting HUBs in understanding the State of Texas contracting process and navigating the HUB certification process.

As part of the State HUB requirements, TPWD must maintain, and compile monthly, information relating to TPWD's use of HUBs, including information regarding subcontractors and suppliers. On a monthly basis, prime contractors that are subcontracting all or a portion of the contracted work must report to the TPWD HUB Program the progress payments made to subcontractors and suppliers via a Progress Assessment Report (PAR). TPWD must review and approve the PAR forms before a payment can be made.

See TPWD HUB Policies and Procedures for additional information:

- Historically Underutilized Business (HUB) Policy ([BF-05-04](#))
- Historically Underutilized Business (HUB) Procedures ([BF-05-104](#))

INF Contracting Branch

The INF Contracting Branch provides purchasing and contracting support for public works contracts and related professional services including architecture, engineering, surveying, and appraisal services. The INF Contracting Branch is responsible for ensuring that construction and professional services procured by the agency are obtained competitively and in accordance with [Gov't Code Ch. 2254](#) and [Gov't Code Ch. 2269](#). To do so, the Branch provides oversight of agency construction contracts including those related to Capital projects and Minor Construction.

Roles and responsibilities may include but are not limited to the following:

- Serve as members of INF project teams and provide procurement and contracting support throughout the entire project.
- Identify and provide guidance in selecting a procurement method that would best achieve the agency needs and objectives.

- Review, prepare, and advertise solicitation documents in accordance with applicable rules and requirements.
- Develop, analyze, review, execute, and monitor contracts for professional services and construction.
- Obtain any required bonds and insurance.
- Maintain all official contract files.
- Ensure all oversight compliance reports are submitted.
- Serve as the liaison between division staff, Legal Division staff, agency management, contractors, architect and engineering firms, and other customers.

Information Technology (IT) Purchasing Branch

The IT Purchasing Branch serves as TPWD's liaison on technology matters with various oversight agencies such as the Legislative Budget Board (LBB) and the Department of Information Resources (DIR). IT Purchasing provides guidance on purchasing or requesting the purchase of computer peripherals, hardware, software, mobile devices, and various IT-related services for TPWD.

For additional information on IT Purchasing procedures see: [How to Submit a Request for IT Peripherals, Hardware, Software, and Services](#).

Oversight Agencies and Entities

Statewide Procurement Division (SPD)

The CPA SPD is the central authority for state agency procurement guidance, education, and statewide contract development services. The SPD director serves as the Chief Procurement Officer (CPO) for the State of Texas. Additional information can be found on CPA's [website](#).

Department of Information Resources (DIR)

The purpose of the DIR is to provide technology leadership, solutions, and value to Texas state government, education, and local government entities.

DIR develops master contracts for the procurement of IT commodity items. All master contracts established by DIR within the Cooperative Contracts Program are awarded through an open and competitive procurement process, beginning with a formal and public Request for Offers. DIR offers the following categories of contracts through its Cooperative Contracts Program: hardware, software, technology-based training, managed services, IT Staff Augmentation Contracts (ITSAC), and Deliverables-Based IT Services (DBITS).

Contract Advisory Team (CAT)

The CAT was created in 2001 to assist agencies in improving contract management practices. In addition to reviewing and making recommendations on solicitation documents for contracts that have an estimated value of at least \$5 million, the CAT also:

- reviews any findings or recommendations made by the State auditor, including those made regarding an agency's compliance with the State Guide;
- provides recommendations to SPD regarding the development of the State Guide and training;
- provides recommendations and assistance to agency employees throughout the contract management process;
- coordinates and consults with the Quality Assurance Team (QAT) on all contracts relating to major information resources projects;
- develops and recommends policies and procedures to improve agency contract management practices; and
- creates and periodically performs a risk assessment to determine the appropriate level of management and oversight of contracts by agencies.

More information on CAT can be found in the SPD's [State of Texas Procurement and Contract Management Guide \(State Guide\)](#).

Legislative Budget Board (LBB)

The LBB is a permanent joint committee of the Texas Legislature that develops budget and policy recommendations for legislative appropriations; completes fiscal analyses for proposed legislation; and conducts evaluations and reviews to improve the efficiency and performance of state and local operations.

The LBB maintains a contracts database, which is the single point of data entry for all contract information or contract documents that state entities are required to report to the LBB either by statute or the General Appropriations Act (GAA).

For more information on the LBB and its role within the contracting process, visit the [LBB website](#).

Delegation of Contracting and Signature Authority

It is the practice of TPWD to ensure that all purchases and contracts are developed, awarded, monitored, and evaluated in accordance with applicable laws, rules, and best management practices. In accordance with TPWD Purchasing and Contracting Policy ([BF-07-02](#)) and the Signature and Approval Authority Policy ([OP-03-03](#)), TPWD purchasing staff are granted signature and approval authority based on positions and level of certification.

Contracting Signature Authority

For specific contracting signature authority, refer to the TPWD Purchasing and Contracting Policy ([BF-07-02](#)) and Signature and Approval Authority Policy ([OP-03-03](#)).

- In accordance with state law, the PC Director has oversight over TPWD procurement activities, processes, and procedures. The PC Director maintains TPWD's procurement plans, has oversight over agency training, and has the authority to report contracting matters to other agencies.
- The PC Director, the Purchasing Manager, and the INF Division Director or Deputy Division Director are delegated the authority to sign:

- Proprietary purchase justifications (see [Appendix 12](#))
- Emergency purchases justification memoranda (see [Appendix 13](#))

CHAPTER 5. PROCUREMENT ROLES AND RESPONSIBILITIES

At TPWD, the PC Branch staff (including the HUB Program), INF contract managers, Legal Division staff, and other division staff work together during the planning phase for a solicitation or developing a contract. Once the contract has been awarded, it is the responsibility of each division's specific program in conjunction with the designated contract manager to administer the contract.

Roles and Responsibilities

PC and/or INF Contracting Branch

- Facilitate and provide technical assistance on state procurement laws, agency policies and procedures, and contract options for TPWD.
- Work with program staff and Legal Division to create procurement documents such as solicitations and contracts.
- Create and maintain official procurement file (e.g., hard copy, electronic copy, TPWD financial system).
- Process contract amendments and change requests.
- Review and approve change orders, work orders, and task orders and maintain documentation for construction projects.
- Ensure program staff provide vendor performance documentation on all contracts over \$25,000.
- Enter vendor performance evaluations into CPA portal.
- Coordinate Legal Division review and approval of contracts, insurance, and bonding requirements.
- Publish and report contract information to the public and state oversight agencies.
- Provide training on procurement requirements and contract management functions to TPWD staff.
- Work with Legal Division to determine risk factors during the solicitation process and appropriate methods to manage risk during the term of the contract.
- Provide guidance to program staff during the solicitation process through contract close-out.

HUB Program Staff

- Review and approve potential HUB subcontracting opportunities that have been identified for contracts before solicitation.
- Attend pre-bid conferences and/or provide information for attendees to explain the HUB Subcontracting Plan (HSP) requirements and provide additional resources to assist in the HSP process.
- Review and approve HSP and HSP amendments.
- Review and track monthly Prime Assessment Reports (PAR).

- Complete internal and external HUB reports and submit to executive management and CPA as required.

Legal Division

- Provide legal advice on procurement laws and regulations to PC, INF Contracting, and program staff.
- Assist in the review and approval of solicitations, contract and amendment templates, and contract documents as required.
- Provide support for contract negotiations.
- Provide assistance to address vendor performance concerns, including initiating remedies and defending disputes.
- Partner with PC and INF Contracting to review and approve insurance and bonding requirements.
- Partner with PC and INF Contracting to determine risk factors during the solicitation process and appropriate methods to manage risk during the term of the contract.

Division Program Staff

- **Project Manager**
 - Maintain working knowledge and full understanding of the contract(s).
 - Manage contractors.
 - Manage operational aspects of the contract.
 - Review invoices.
 - Verify cost(s) are within approved budgets.
 - Request contract and budgetary amendments as necessary.
 - Request amendments to HSP when necessary.
 - Complete vendor performance evaluations at contract completion, renewal/extension, and termination, and as otherwise required, and submit to division contract manager.
 - Notify division contract manager and PC or INF Contracting of performance issues and monitor corrective action plans.
 - Perform risk-based, routine, and enhanced monitoring as appropriate.
 - Periodically perform risk assessments throughout the life of the contract.
- **Division Purchaser/Contract Manager**
 - Maintain working knowledge and full understanding of the contract(s).
 - Review and process invoices after approval of Project Manager and/or other staff as required.

- Verify costs are within approved budgets.
- Request contract and budgetary amendments to PC or INF Contracting when applicable.
- Request amendments to HSP when necessary.
- Work with Project Manager to ensure vendor performance evaluations are completed and submitted to PC or INF Contracting within 20 days of contract completion, renewal/extension and termination, or other required reporting milestone.
- Notify PC or INF Contracting of performance issue(s) and monitor corrective action plans.
- Perform risk-based, routine, and enhanced monitoring as appropriate.
- Periodically perform risk assessments throughout the life of the contract.
- Monitor funding.
- Monitor contract budget.

CHAPTER 6. THE PROCUREMENT CYCLE

To ensure that all procurements are conducted in a transparent and efficient manner, it is important to follow each of the five (5) phases of the procurement cycle outlined below.

1. **Procurement Planning:** define the business need and establish the procurement objectives.
2. **Procurement Method Determination:** identify the appropriate procurement method and if applicable, issue a solicitation.
3. **Vendor Selection:** fairly and objectively select the vendor that provides best value to the State.
4. **Contract Formation and Award:** ensure the awarded contract complies with applicable procurement laws and contains provisions that achieve the procurement objectives.
5. **Contract Management:** administer and enforce the terms of the contract.



Procurement Planning

Overview

The procurement process begins with procurement planning, a crucial step to the successful outcome of any procurement. Proper planning allows the objectives of the procurement to be met in an efficient and timely manner. Planning activities, at a minimum, include developing a needs assessment, a cost estimate, and an acquisition plan.

Needs Assessment

The success of a procurement is often dependent upon how well the business requirements are documented during the Procurement Planning Phase. The needs assessment, therefore, must contain sufficient detail to identify the key business requirements. As part of the needs assessment, the division may conduct market research through online research, study historic spend data and trends, and/or issue an RFI to the vendor community.

TPWD may not accept a response from or award a contract to a vendor that received compensation to participate in the preparation of the specifications or solicitation. Therefore, staff must be mindful about how information is obtained to avoid the risk of disqualifying a vendor from submitting a bid. A respondent or contract participant, however, may provide free technical assistance to the agency as long as doing so does not give them insight that would provide them an advantage over another vendor.

Cost Estimate

The division must develop a cost estimate as well as make an initial determination of the funding source to be used for the procurement during the Procurement Planning Phase. Depending on the procurement, a cost estimate may be developed from a vendor's advertised price list, developed through online research, or prepared using standardized estimation methods and historical spend data. The purchaser may contact someone within the agency who has knowledge in the subject area to assist with the cost estimate. The cost estimate must be developed in good faith, as it is used not only in the selection of the appropriate procurement method, 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.

Informal Budget Quotes:

When preparing a cost estimate, the purchaser may choose to contact several vendors to obtain pricing information by means of an "informal budget quote." The purchaser 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 a vendor any competitive advantage in a future procurement initiative.

Funding Source:

As part of the procurement planning activities, the appropriate funding source should be determined early in the process. The purchaser, in coordination with the division budget coordinator, must ensure that the procurement complies with any laws, special regulations, restrictions, or limitations applicable to the funding source, including any applicable grant requirements or special conditions imposed by the underlying grant award that will fund the procurement.

Risk Assessment

All solicitations with an estimated budget over \$1 million must have a risk assessment completed prior to advertising the solicitation. See [Chapter 9, Risk Assessment and Monitoring Performance](#) for risk assessment procedures.

Procurement Method Determination/Categories

Overview

The second step of the procurement process is to determine which procurement method would best achieve the identified business requirements and procurement objectives. SPD and DIR are responsible for establishing and overseeing statewide contracts for use by state agencies. Agencies must use SPD and DIR designated procurement methods unless the procurement is subject to a statutorily specified exclusion or authorized exemption.

Public procurement professionals are expected to be knowledgeable about any exclusions or exemptions from SPD or DIR statewide procurement authority that pertain to their agencies. An exclusion or exemption occurs when:

1. the procurement is not within the general grant of statutory authority to SPD or DIR, or
2. a particular agency, procurement type, or contract value is designated to be outside of SPD or DIR's authority.

Contact the Division Purchasing Lead, IT Purchasing, and/or PC Branch for assistance in determining if an exemption applies.

Procurement Method Identification Process

When identifying the appropriate procurement method, including relevant exclusions and exemptions, procurement staff need to know the following for each purchase:

1. procurement type,
2. cost estimate, and
3. purchasing entity.

For certain procurements, SPD and DIR may delegate specific procurement authority to an agency. A delegation of authority may be provided for a preapproved class of procurements, such as particular procurement type (construction), or contract value, or it may be obtained on a case-by-case basis upon request.

Particular care must be taken to ensure that the correct procurement method is identified early in the procurement process. If the incorrect procurement method is selected, the purchase may not result in best value to the State and in the worst case, may result in a void contract that must be re-solicited.

The process for selecting the appropriate Procurement Method is outlined below:

Step 1: Is the purchase subject to a Declaration of Disaster by the Governor?

If yes, follow acquisition procedures for the Texas Disaster Act of 1975.

If no, proceed to Step 2.

Step 2: Can the purchase be completed using State or Federal surplus property?

If yes, follow acquisition procedures for the State and Federal Surplus Property Programs, as applicable.

If no, proceed to Step 3.

Step 3: Is the purchase for professional services, consulting services, or legal services?

If yes, follow the acquisition procedures for Professional Services, Consulting Services, or Legal Services, as applicable.

If no, proceed to Step 4.

Step 4: Can the purchase be completed using the Texas Correctional Industries (TCI) Program?

If yes, follow the acquisition procedures for TCI Purchases.

If no, proceed to Step 5.

Step 5: Can the purchase be completed using the State Use Program (Workquest)?

If yes, follow the acquisition procedures for the State Use Program.
If no, proceed to Step 6.

Step 6: Is the purchase for IT (NIGP Class/Item with an *)?

If yes, follow the acquisition procedures for IT purchases.

If no, proceed to Step 7.

Step 7: Can the purchase be completed by contracting with another state agency, local government, state university, or nonprofit organization?

If yes, follow the acquisition procedures for Two-Party Contracts, as applicable.

If no, proceed to Step 8.

Step 8: Can the purchase be completed using SPD Term Contracts?

If yes, follow the acquisition procedures for Term Contracts.

If no, proceed to Step 9.

Step 9: Is the purchase for printing services or equipment, or mail and messenger services?

If yes, follow the acquisition procedures for Printing Services and In-House Copy Centers or Mail and Messenger Services, as applicable.

If no, proceed to Step 10.

Step 10: Does the purchase involve used equipment or supplies?

If yes, follow the acquisition procedures for Used Equipment.

If no, proceed to Step 11.

Step 11: Can the purchase be completed using one of the following?

SPD Delegated Purchases, SPD Texas Multiple Award Schedule (TXMAS) Contracts, Contract Established by Another State Agency, Federal Government Purchases, or Interstate Compacts & Cooperative Agreements?

If yes, follow the applicable acquisition procedure.

If no, proceed to Step 12.

Step 12: Is the purchase for goods valued within your soliciting authority (level 1, 2, or 3)?

If yes, follow the procedures for competitive solicitations.

If no, send to PC Branch for processing.

Step 13: Does the purchase involve mechanical, electrical, plumbing, or structural engineering?

If yes, send to INF Contracting for review and processing.

If no, proceed to Step 14.

Step 14: Is the purchase for minor construction or maintenance services within your soliciting authority?

If yes, follow the applicable acquisition procedures.

If no, send to INF Contracting for processing.

SPD Non-Delegated Purchases

SPD Non-Delegated Purchases include set aside programs and Term Contracts as well as procurements for which SPD's purchasing authority has not been delegated to agencies by rule. For procurements and procurement methods within SPD's purview, agencies must comply with SPD's rules and procedures.

Texas SmartBuy (SmartBuy)

The State of Texas online marketplace for non-IT goods and services. As the State's central e-procurement system, agencies utilize the web-based ordering system to access hundreds of competitively awarded state contracts.

Set Aside Programs

These set aside programs do not require competitive procurement. For purposes of this Guide, set aside programs refer to Texas Correctional Industries (TCI): Prison Made Goods governed by [Gov't Code Ch. 497](#), and the State Use Program (Workquest): authorized by [Human Resources Code Ch. 122](#).

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, using primarily offender labor. The Prison Made Goods Act (Gov't Code Sec. 497, Subch. B) requires that agencies purchase goods made by and services offered by TCI. Competitive bidding is not required for items purchased from TCI under the Prison Made Goods Act. TCI offers most goods through SmartBuy. For goods not available through SmartBuy, the agency may find them in the TCI Catalog published on the TCI website. For TCI Catalog products, a quote is obtained, and the PO issued directly to TDCJ via email (tci@tdcj.texas.gov) with the following notation: "The award was made under the Prison Made Goods Act and is non-competitive."

All requests for an exemption to using TCI must be submitted to PC or INF Contracting, as appropriate, to coordinate with SPD. TPWD may decline to procure a good or service from TCI if:

1. TCI grants a waiver;
2. the item is for resale;
3. SPD determines that the good or service produced by TCI does not meet TPWD's requirements; or
4. SPD certifies that the good or service can be purchased elsewhere at a lower price after TPWD gives TCI final opportunity to negotiate on price.

Printing

Procurements for printing must comply with the [Printing Services and In-House Copy Centers Procedures](#). For competitively procured printing purchases, including those solicited using [CPA Print Services](#), TCI must be given the final opportunity to meet or beat the lowest price. Bids for printing must include a bid or no bid response (in lieu of the waiver) from TCI.

TCI Waiver Process

If TPWD desires to procure a product or service offered by TCI from another source, a waiver must be obtained from TCI prior to the purchase. The TCI waiver request form can be found in the [Procurement Forms Library](#) located on the CPA website. The waiver request can be based on substantial differences in specifications, which may include the inability for TCI to provide deliverables on the requested delivery date or price differences. An agency may not evade the intent of the Prison Made Goods Act by requesting a product that varies slightly from product standards established under [Gov't Code §497.027](#), if TCI produces a similar product that is in compliance with established standards and is reasonably suited to the actual needs of the agency.

The waiver request must be submitted by fax or email to TCI, as indicated on the form. TCI evaluates waiver requests on a case-by-case basis and replies with a written approval or a denial of each request. The procurement file must include the TCI waiver request and waiver response.

SPD Appeal and Certification Process

If TCI denies TPWD's waiver request, TPWD may send an appeal letter to SPD. To expedite processing, TPWD must provide the waiver identification number from the TCI waiver denial letter as well as any supporting documentation. SPD will provide a written notice of the approval or denial of the appeal.

All requests for appeal to SPD must be submitted by the PC Director or designee. For requests to certify a lower available price, the purchasing agency must send the appropriate bid documents to SPD. If the certification is approved, SPD will provide a written certification to the agency in a form similar to the following: "SPD has reviewed the agency's documentation and certifies that the goods or services can be purchased elsewhere at a lower price."

WorkQuest - The State Use Program

TPWD must purchase products and services offered through the State Use Program (WorkQuest) that meet its applicable specifications and that are available within the time specified. Competitive bidding is not required for purchases from WorkQuest. 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 purchasing@tpwd.texas.gov

to be submitted in the State Use Report and a Vendor Performance Report (VPR) must be filed with SPD.

State Use Program Exceptions

TPWD is not required to purchase products and services using the WorkQuest under the following circumstances:

1. under the rules of SPD, a WorkQuest-provided or -produced product or service does not meet the TPWD's reasonable requirements; or
2. the requisitions made cannot be reasonably complied with using products or services produced by persons with disabilities.

An exemption is not needed to document the purchase of a product or service that is unavailable through WorkQuest. If WorkQuest offers a product or service, TPWD is not required to use WorkQuest if the product or service doesn't meet TPWD's specifications as to quantity, quality, delivery time, or life cycle costs. If a WorkQuest-offered product or service is obtained from another source, TPWD must document which of the four (4) authorized exceptions, listed below, to the State Use Program is being utilized for the purchase. Price is not a factor.

1. Exception for Quantity

Quantity exceptions can be made when WorkQuest has a minimum order requirement that is more than TPWD needs, or when TPWD has a need for a quantity greater than WorkQuest is able to fill. For example, if TPWD requires 3 toner cartridges and the WorkQuest minimum order quantity for toner cartridges is 10, TPWD must state on the exception report that quantity is the reason for procuring from another source because TPWD's need is less than the minimum order quantity specified in SmartBuy by WorkQuest. As a best practice, quantity should not be used as an exception when the WorkQuest minimum order requirement could be met by combining the business need of several teams or divisions within the agency. Nor should orders be split to avoid a minimum quantity requirement.

2. Exception for Quality

Quality exceptions can be made when a WorkQuest good or service does not meet specific performance standards (e.g., the WorkQuest item is not functionally equivalent to commercial sources). This exception cannot be based on opinion or preference. The determination must be based on an identical and/or similar comparison of specifications and performance. For example, when purchasing self-adhesive note pads, TPWD's determination, based on employee feedback after prior WorkQuest self-adhesive note pad purchases, is that the WorkQuest product does not adhere as well as other brands. On the exception report, TPWD must state that quality is the reason for the decision to procure from another source. The procurement file must be documented with a justification as to why the WorkQuest product does not meet the specifications or performance

criteria of the agency. A VPR must be submitted to document quality issues.

3. Exception for Delivery Time

Exceptions based on delivery time may only be made after WorkQuest has been contacted and confirmed its inability to meet an essential schedule or delivery date requirement. For example, if TPWD is purchasing 50 boxes of name tag labels and the WorkQuest delivery for the goods is 10 days from the date the PO is received, but the name tags are needed within 5 calendar days, TPWD must state on the exception report that delivery time is the reason for the decision to purchase from a source other than WorkQuest. The procurement file must be documented with a justification explaining why the 10-day delivery will prevent the end user from conducting its normal business or will present a hazard to life, health, safety, welfare, or property.

4. Exception for Life Cycle Costs

Life cycle cost exceptions can be made when the purchaser determines the WorkQuest product or service is not the most cost-effective option to meet TPWD's business requirements. For example, when TPWD needs to procure a large number of folding tables and chairs for a meeting it hosts that occurs once every two (2) years, TPWD may decide to rent, rather than purchase, the tables and chairs after considering the life cycle costs (e.g., costs associated with purchasing, owning, operating, maintaining, storing, and disposing of an item). On the exception report, TPWD must state that life cycle cost is the reason for the decision to procure from a source other than WorkQuest.

Term Contracts

SPD establishes Term Contracts for the purchase or lease of goods and services used in large quantities by several agencies. Best value is achieved by using SPD established Term Contracts; therefore, competitive bidding by agencies is not required for items purchased from Term Contracts. However, TPWD is required to print or save an electronic copy of the cover page of the term contract to document the term dates of the contract and that the contract was valid at the time of award (purchase).

The Term Contracts are categorized according to the NIGP Class/Item codes which are located in the NIGP Commodity Book maintained by the CPA. Except for Managed Term Contracts (see below), agencies must order goods or services on Term Contracts through the SmartBuy online ordering system. TPWD is not allowed to use delegated authority to purchase goods or services that are available through a statewide Term Contract unless the quantity required is less than the minimum order quantity specified in the relevant Term Contract.

Note:

- Division staff are delegated authority to process SmartBuy term contract orders, except for vehicle orders.

- All orders must have an approved requisition sourced to a PO in CAPPs referencing the SPD Term Contract number in the body of the PO and a copy of the cover page from the SPD website to document the contract was valid at time of award (purchase).

Managed Term Contracts

A “Managed” Term Contract is a type of Term Contract that requires manual processing by TPWD. These contracts typically have different pricing structures or require a quote that is based on a discount percentage due to the agency’s business need or for regular scheduled deliveries or flexible delivery dates. General Contract Information listings for Managed Term Contracts are located on SmartBuy; however, the purchase cannot be made through the online ordering system. Instead, TPWD must issue a PO directly to the awarded vendor. Blanket POs can be issued to the vendors of Managed Term Contracts; however, Blanket PO terms, including date range, must not exceed the Managed Term Contract term. When the Managed Term Contract expires, orders cannot be placed against any Blanket PO issued by TPWD for that contract.

Note:

- Division staff are delegated authority to process managed contract orders.
- All orders must have an approved requisition sourced to a PO in CAPPs referencing the SPD Managed Contract number in the body of the PO and a copy of the cover page from the SPD website to document the contract was valid at time of award (purchase).

SPD – Texas Multiple Award Schedule (TXMAS) Contracts

The SPD TXMAS Program adapts existing competitively awarded government contracts to service the procurement needs of state agencies. A contract award through the TXMAS Program must be based on an existing contract that was previously awarded by the federal government or any other governmental entity in any state using a competitive process that is adaptable to the laws of the State of Texas. Consulting services and certain professional services (such as engineering and architecture) are NOT offered as part of the TXMAS program.

Unlike some other procurement methods, agencies may utilize TXMAS contracts developed by SPD for any dollar amount without obtaining delegated authority from SPD. However, prior to purchasing from a TXMAS contract, TPWD must follow applicable procedures to purchase first from TCI, the State Use Program, and the Term Contracts. For purchases that exceed \$25,000, TPWD must post the award notice on the Electronic State Business Daily (ESBD).

General Information:

TXMAS contracts are optional. TXMAS contract items will appear in SmartBuy search results, but agencies are not required to use them.

Unless otherwise approved, TXMAS purchases are processed by PC Branch due to requirements established by the SPD. TXMAS purchases must be processed through the SmartBuy system regardless of whether they are available as a SmartBuy line item or if a vendor quote is used. The PC Director may delegate authority to process TXMAS order(s) on a one-time, under certain circumstances, or ongoing basis based on a purchaser’s experience and certification.

All TXMAS purchases require a best value justification that includes bids from other TXMAS vendors to determine the vendor with the best value to the agency. If only one vendor is available, compare the pricing to a non-TXMAS vendor or provide additional information that documents how best value was determined.

TXMAS contracts allow for incidental, off-schedule items to be purchased as "best value, open market" items if they are necessary for product integration or product completeness. TPWD must ensure that the quoted price for such items is fair and reasonable. These incidental items may be added to the TXMAS purchase order if they are clearly labeled as "open market best value" items. Incidental items may not exceed \$5,000 OR 50% of the purchase order total, whichever is less.

Unless SPD has specified otherwise on specific contracts, p-card purchases using a TXMAS contract are prohibited. Contact your purchaser for guidance prior to using a p-card.

TXMAS Goods and Services available through SmartBuy:

- Vendor quote must include the TXMAS contract number. Incidental/open market items must be clearly labeled.
- Best value justification statement requires a minimum of three (3) quotes or pricing estimates to determine best value.
 - If only one vendor is available, compare the pricing to a non-TXMAS vendor or provide additional information that documents how best value was determined.
 - Pricing can be obtained from a SmartBuy search, online search, or e-mail request. A formal Request for Qualifications (RFQ) form is not required.

TXMAS Goods and Services NOT available through SmartBuy

- Best value justification statement requires a minimum of three (3) quotes or pricing estimates to determine best value.
 - If only one vendor is available, compare the pricing to a non-TXMAS vendor or provide additional information that documents how best value was determined.
 - Pricing can be obtained from a Smartbuy search, online search, or e-mail request. A formal RFQ form is not required.
- TXMAS quote must contain the TXMAS contract number and a link to the General Services Administration (GSA) website or a copy of the contract page showing the GSA/TXMAS item and price. Incidental/open market items must be clearly labeled.

Note: TXMAS Requisitions should include the following attachments:

- TXMAS Contract Detail Page
- Quote (if applicable)
- Best Value Evaluation
- System for Award Management (SAM) / Excluded Parties List System (EPLS)
- Vendor Hold Check Result
- Vendor Performance Tracking System (VPTS) Check Result
- Debarred & Divestment Lists Check Result

EXAMPLE Best Value Justification:

- Item is not available through TCI, WorkQuest, or SPD SmartBuy Term Contract or Managed Term Contract. Item is available through a TXMAS Contract. Pricing was obtained from the vendors below in order to determine best value.
 - (TXMAS Vendor 1) \$XXXXXX
 - (TXMAS Vendor 2) \$XXXXXX
 - (TXMAS Vendor 3) \$XXXXXX
- Based on pricing obtained, TPWD determines that TXMAS Contract XX-XXXX provides the best value to the State.
- Quote: If three (3) vendors are not available, you may supplement with online pricing. Other factors may also be used to determine best value such as delivery time, product availability, freight charges, etc.

EXAMPLE Best Value Justification – only one TXMAS Vendor available:

- Item is not available through TCI, WorkQuest, or SPD Smartbuy Term Contract or Managed Term Contract. Item is available through a TXMAS Contract. Per SmartBuy search results, only one vendor supplies this item. TXMAS Contract #XX-XXXX issued to (Vendor Name).
- For price comparison, an online search was performed. Online pricing is shown below.
 - (TXMAS Vendor) \$XXXXXX
 - (Vendor 1) \$XXXXXX
 - (Vendor 2) \$XXXXXX
- Based on pricing obtained, TPWD determines that TXMAS Contract XX-XXXX provides the best value to the State.
- Other factors may also be used to determine best value such as delivery time, product availability, freight charges, etc.

EXAMPLE Price Validation Statement:

- Pricing on vendor's quote validated per base contract price list reflecting TXMAS and GSA pricing. Additional price validation can be found on the [GSA e-Library](#) website.

SPD-Administered Agency Specific (Open Market) Procurements

For procurements not delegated to TPWD under the SPD Review and Delegation Process, SPD will establish and administer an agency-specific procurement. The division purchaser initiates the process by submitting the Open Market Requisition (OMR) along with current and complete specifications, estimated quantity, and costs to PC Branch staff. Providing out of date or incomplete specifications will prolong the procurement timeline. The designated PC Branch Purchaser is the main point of contact with SPD and coordinates communication with the division purchaser throughout the solicitation development, posting, evaluation, and award process.

IT Procurements

TPWD is required to use contracts established by DIR to obtain Automated Information Systems (AIS) unless the procurement is subject to an exclusion or exemption. AIS type products and services are associated with computers (automation) or telecommunications systems.

The term AIS is defined to include the following:

- computers and computer devices on which an information system is automated, including computers and computer devices that SPD identifies in guidelines developed by SPD in consultation with DIR and in accordance with [Gov't Code Ch. 2054](#) and rules adopted under that chapter;
- services related to the automation of an information system, including computer software or computers;
- telecommunications apparatus or device that serves as a component of a voice, data, or video communications network for transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on the network, and services related to telecommunications that are not covered under the bullet below; and
- for DIR, as telecommunications provider for the State, the term includes any service provided by a telecommunications provider, as that term is defined by [Utilities Code §51.002](#).

As an aid in determining the appropriate procurement method, classification codes with an AIS component are noted with an asterisk (*) on the [NIGP Commodity Book](#) maintained on the CPA website.

DIR Contracts

Under DIR's statewide procurement authority, DIR establishes and manages the following types of master contracts for use by eligible customers:

- Cooperative Contracts for IT commodity items
- the Texas.gov contract
- Data Center Services contracts
- Telecommunication Services contracts

Professional Services

Agencies are authorized to procure professional services under [Gov't Code Ch. 2254](#). Acquisition of professional services is delegated to agencies by statute and does not require a delegation of authority from SPD. The procurement of professional services is subject to ESBD posting requirements as well as requirements applicable to CAT reviews.

Professional services refer to services that are either:

- 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, professional nursing, or interior design; or
- 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.

Professional services procurements are usually advertised as either an RFQ or RFP. The award of a professional services contract is based on (1) demonstrated competence and qualifications to perform the services, and (2) a fair and reasonable price. The professional fees under the contract may not exceed any maximum provided by law. A contract entered into or an arrangement made in violation of [Gov't Code Ch. 2254](#) is not valid.

Note:

All professional services contracts are managed by INF Contracting and/or PC Branch. To procure appraisal, architectural, engineering or land surveying services, contact INF Contracting. For all other professional services requests, contact PC Branch.

Consulting

Acquisition of consulting services is delegated to agencies by statute ([Gov't Code §2254.023](#)) and does not require a delegation of authority from SPD. The procurement of consulting services is subject to ESBD posting requirements as well as requirements applicable to CAT reviews.

Consulting service refers to the service of studying or advising an agency under a contract that does not involve the traditional relationship of employer and employee. TPWD may contract with a consultant only if there is a substantial need for the consulting services and TPWD cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with a state governmental entity. Consulting services procurements are usually advertised as an RFP.

Note:

All consulting contracts must be coordinated by PC Branch, Infrastructure, or IT purchasing, as appropriate. The division purchaser initiates the process by submitting a requisition in CAPPs to PC Branch staff. The designated PC Branch Purchaser is the main point of contact and coordinates communication with the division purchaser throughout the solicitation development, posting, evaluation, and award process.

Proprietary Purchases

The term "proprietary" refers to a product or service that has a distinctive feature or characteristic that is not shared or provided by competing or similar products or services. A proprietary purchase is one where the specifications or conditions of the proposed purchaser are proprietary to one make/model or vendor and do not permit an equivalent product or service to be supplied. Proprietary purchases include products or services manufactured or offered under exclusive rights of ownership, including rights under patent, copyright, or trade secret law. Proprietary purchases, by definition, preclude competition because an attribute of the purchase limits consideration to only one product or supplier.

Proprietary purchases may be either sole source or competitive:

- **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.
- **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 Original Equipment Manufacturer (OEM)-authorized dealers and software that a software publisher makes available to the public through several resellers.

Proprietary Justification Memo

A justification for a proprietary purchase must be approved by the Division Director and PC Director when TPWD needs to purchase a non-state contract item costing \$10,000 or more and the specification limits consideration to one manufacturer or one service provider.

The Proprietary Justification Memo (see [Appendix 12](#)) must include the following information:

1. describe the product or service TPWD proposes to purchase, and the agency's business need and planned use;
2. explain why TPWD specifications for the product or service are necessary to accomplish the agency's goal for the procurement;
3. state the reason that no other competing products or services satisfy TPWD's need and provide examples of the technical, practical, or operational risks that would occur if competing products or services are selected; and
4. specify whether the purchase is sole source or competitive.

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

Proprietary Sole Source Procurements Less Than \$25,000

No competitive bidding is required if the total value of the approved proprietary sole source contract is \$25,000 or less.

Proprietary Purchase Procurements

Purchases that are approved as proprietary products or services but are available from more than one source are NOT exempt from competitive bidding requirements.

For proprietary purchases exceeding \$10,000, the solicitation must include the following statement:

"These specifications are being advertised under [Gov't Code §2155.067](#). Only bids on items conforming exactly to these specifications, which include proposing only the brand name(s), make and model number(s) specified, will be considered in determining an award."

Printing Services

Agencies are authorized to provide their own incidental copying needs by using available local and networked printers and office copy machines either purchased or leased. DIR establishes and manages statewide contracts for these purposes. Incidental copying is day-to-day production and copying of documents within a quantity limit and job specification that does not reasonably require high volume duplication equipment or services.

TPWD Internal Printing Procedures

- Digital Services Under \$2,500: TPWD has a blanket contract for digital services under \$2,500. Contact the Communications Division Creative and Interactive Services (CIS) Print Purchaser for contract information.
- Print Services Under \$2,500: TPWD purchasers must go directly to one of the seven (7) approved state print shops as listed on the [SPD Purchasing State Print Services](#) website without having to use the SPD Print Portal.
 - Texas Correctional Industries
 - Texas Department of Public Safety
 - Texas Department of State Health Services
 - Texas Department of Transportation
 - Texas Workforce Commission
 - The University of Texas at Austin
 - University of North Texas
- Print Services over \$2,500: TPWD purchasers must use SPD approved state print shops and request a bid through the SPD Print Portal.
 - Must submit bid specifications and complete the [Print Shop Job Request Form](#).
 - The most detailed way to fill out the request form is to add your own written specifications using the box marked “other,” then create a folder and use .zip format to load the specifications.
 - Save the 10-digit SPD number (e.g., 1233090202) that is needed for the State Bid Tabulation, then submit the tabulation to stateprintshops@cpa.texas.gov.
 - To access the Bid Tabulation Template and instructions, refer to the CPA’s instructions and bid tabulation template (see [example tabulation](#)).
 - If state print shops do not provide a bid, the purchaser should follow TPWD purchasing requirements.
- If preferred, Communications can handle the entire project including contract management, receipting and invoices process.
 - To initiate this request: complete the Request for Services (RFS) form ([PWD-0049A](#)) to creative.services@tpwd.texas.gov.
- Contact CIS with any questions concerning printing services procedures: creative.services@tpwd.texas.gov.

Used Equipment

Purchase of Used Equipment

As a general rule, an agency should procure new equipment. However, it is sometimes necessary or advantageous to purchase used or demonstrator equipment and supplies. The most common reasons are:

- the inability to secure new equipment,
- the lack of adequate funds for new equipment, or
- used equipment satisfies the agency's need and is available at a substantial savings.

To acquire used or demonstrator equipment, TPWD must utilize the procurement method applicable to the estimated amount for the procurement.

For procurements not delegated to TPWD under the SPD Review and Delegation Process, the procurement file must contain the following:

- a statement from authorized staff (e.g., end user, subject matter expert, supervisor) that the equipment or supplies have been personally examined,
- a description of the condition and value of the equipment or supplies, and
- the reasons for inability to secure new equipment and/or that the used equipment or supplies would provide a substantial savings.

If the value of the procurement exceeds TPWD's delegated authority, TPWD must comply with the SPD Review and Delegation Process. The OMR submitted to SPD must include the following information:

- a statement from authorized staff (e.g., end user, subject matter expert, supervisor) that the equipment or supplies have been personally examined,
- a description of the condition and value of the equipment or supplies, and
- the reasons for inability to secure new equipment and/or that the used equipment or supplies would provide a substantial savings.

Trade-In of Used Equipment

An agency may trade in agency-owned equipment for new equipment of the same or similar type if it is in the best interest of the State. An agency may not trade in property that has been declared either surplus or salvage; such property must be disposed of through the State Surplus Property Program. Trade-ins are not allowed through orders placed against Term Contracts.

Trade-In Surplus

If the State could reasonably realize greater cost savings by declaring the equipment as surplus or salvage, the equipment should be disposed of under the State Surplus Property Program. See the Asset Management Policy ([BF-20-02](#)) and the [TPWD Asset Management Manual](#).

Trade-In Through Solicitation

If TPWD determines that a trade-in provides a greater cost savings, the procurement file must contain an estimated value for that determination.

The solicitation document must include

1. Equipment Description:
 - Age of equipment
 - Condition of equipment
 - Make (Manufacturer/Brand)
 - Model Number
 - Serial Number (if applicable)
2. Trade-in Contract Clauses:
 - The acceptance of the trade-in amount is at the State's option.
 - Release of trade-in equipment will not be allowed until final delivery and acceptance of the new equipment.
 - Deadline for pickup of the equipment by awarded respondent "where is, as is"

Miscellaneous Purchases

Uniform Purchases

Before utilizing state funds to purchase uniform or staff wear items, divisions must have a written uniform policy consistent with state law, including the following:

- Policy must be approved by the Division Director and on file with the PC Branch.
- Only items listed on the Uniform Policy may be purchased.
- Division uniform policies should be reviewed and updated every biennium.

Meetings/Conferences

TPWD must use state-owned facilities for meetings or conferences, if available.

Before booking a private facility for division meetings, the Texas Facility Commission (TFC) site must be checked to confirm availability. Refer to TFC [Conference Room Reservation System](#).

Keep documentation in file stating that TFC site was checked and why options do not meet facility needs (e.g., location, size, availability).

If a state facility is not available, competitive bids are required if total costs will exceed \$10,000 (rooms, meals, a/v equipment, and meeting rooms):

- Normal purchasing rules apply (at least 3 CMBL – 2 HUB vendors).
- Supplement the CMBL with local hotels to increase competition.

All agency meetings, conferences, and seminars that require a signed agreement for hotel room blocks, meeting rooms space, and other related services must be reviewed prior to execution by PC Branch staff.

After review/approval, agreements are executed according to the Signature and Approval Authority Policy ([OP-03-03](#)).

Procurement Method - SPD Delegated Purchases

SPD is authorized to delegate its purchasing functions to agencies. A delegation of authority may be:

- provided by SPD rule for a pre-approved class of procurements, such as a particular procurement type (e.g., emergency purchases) or contract value (e.g., one-time purchases of goods that do not exceed \$50,000), or
- obtained on a case-by-case basis by the agency through the SPD Review and Delegation Process.

A delegated purchase is made by an agency under the authority of SPD and is subject to SPD's rules and procedures. Delegated purchases should, whenever possible, be accomplished through competitive bidding. TPWD may not divide a purchase into small lot purchases to match the delegation dollar thresholds. If TPWD does not comply with procurement rules or laws under delegated purchasing authority, SPD may revoke TPWD's purchasing authority and report the violations to the Governor, Lieutenant Governor, Speaker of the House of Representatives, and the LBB.

Procurements made under SPD's delegation authority are subject to ESBD posting requirements as well as requirements applicable to CAT and QAT reviews.

Determining Contract Value

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." Contract value, therefore, is not limited to just the cost for the initial term; it is determined by the total value of the contract over a contract's term as well as any modifications, renewals, or extensions of the contract.

EXAMPLE: A contract with a one-year initial term and two (2) optional one-year renewal periods that cost \$50,000 annually would have a contract value of \$150,000 and would be subject to SPD review and delegation.

Public procurement professionals must be mindful that other oversight agencies may not use the same standard for determining contract value. For example, the value of a contract is calculated differently for IT commodity purchases under DIR contracts.

SPD Delegated Purchases by Rule

SPD, by rule, delegates its purchasing authority to agencies for the following types of procurements:

- one-time purchases of goods that do not exceed \$50,000
- purchases of services that do not exceed \$100,000

- direct publications
- purchases of perishable goods
- distributor purchases
- fuel, oil, and grease purchases
- internal repair purchases
- emergency purchases

For procedures applicable to proprietary purchase, refer to [Proprietary Purchases](#) section.

Spot Purchases up to \$10,000

Except for printing services, as covered in the Printing Services section, competitive bidding is not required if the total value of the contract is \$10,000 or less. For Spot Purchases, a division may supplement the CMBL with non-CMBL vendors.

Note: Dividing purchases to avoid the competitive bidding requirement is explicitly prohibited.

Purchases of Goods up to \$50,000

SPD delegates the purchasing functions of one-time purchases of goods that do not exceed \$50,000. Goods refers to supplies, materials, equipment, and purchases for resale.

Purchases of Services up to \$100,000

SPD delegates the purchasing functions of services with estimated costs that do not exceed \$100,000. A service is defined as the furnishing of skilled or unskilled labor or professional work, including concession contracts. Delegated purchases do not include:

- Professional or consulting services as defined by [Gov't Code Ch. 2254](#)
- Services of public utilities

Direct Publications

A division may purchase publications directly from the publisher only when such publications are not available through statewide contract (e.g., TCI Purchases, State Use Program purchases, Term Contracts) or through competitive bidding, including proprietary competitive purchases. Direct publication orders are made by following guidelines established by SPD. Examples of direct publications include, but are not limited to:

- foreign publications
- out-of-print or rare publications
- back issues of magazines, journals, and newspapers
- publications produced by professional societies
- audio, visual, or audiovisual materials (e.g., films, audio presentations)
- computer software
- collections of any of the foregoing items, and microfilm or microfiche copies of any of the foregoing items

- Library of Congress cards

Direct Publication Declaration

The following statement should be placed on POs for the Direct Publication purchases: "Direct Publication - Not available from any other source."

Direct Publication Purchases Less Than \$25,000

No competitive bidding is required if the total value of the direct publication contract is \$25,000 or less. Direct Publication purchases over \$25,000 must follow competitive solicitation requirements.

Perishable Goods Purchases

Perishable goods are items that are subject to spoilage within a relatively short time. Perishable goods include but are not limited to fresh fruit, fresh vegetables, and meat. The NIGP Class 390 perishable goods category, NIGP Class 375 (bakery products, fresh), and NIGP Class 380 (dairy products, fresh) qualify for this delegation using competitive bidding processes.

Fuel, Oil, And Grease Purchases

Goods that TPWD may purchase in either bulk or packaged form include fuel, oil, and lubricants/grease purchases including gasoline, diesel fuel, kerosene, aviation fuels, transmission fluids, motor oil and other lubricants, liquefied petroleum gas (LPG), and compressed natural gas (CNG).

Lubricants

The solicitation and award of lubricants should be based on firm-fixed prices or a discount from a manufacturer's published list price.

Indexed Fuel Pricing

Because fuel prices fluctuate, TPWD should construct bulk fuel solicitations using indexed pricing based on the contractor's terminal price. The posted terminal price is the contractor's cost per gallon for the fuel from the refiner's depot. The posted terminal price for a contract may be either:

- The contractor's actual cost, as shown on fuel receipts,
- A standard industry quote such as Oil Price Information Service (OPIS),
- Data Transmission Network (DTNrgy), or
- A current index price from The Federal Department of Energy, Energy Information Administration.

The contractor's constant is the difference between the posted terminal price per gallon and the selling price per gallon. The constant includes applicable taxes, environmental fees, freight charges, load fees, operational overhead, and the contractor's profit margin. CPA recommends that TPWD include a provision in the terms and conditions prohibiting contractors from changing the constant during the term of the contract. To determine the actual cost of the fuel, add the contractor's constant price to the terminal price:

EXAMPLE:

$$\begin{aligned} & \$1.10/\text{gallon Posted Terminal Price} + \$0.24/\text{gallon Contractor's Constant} = \\ & \qquad \qquad \qquad \$1.34/\text{gallon Selling Price} \end{aligned}$$

Fuel, Oil, and Grease Purchase Procedure. If the specification and requirement is for:

1. Service station point of sale transactions (amounts of fuel, oil, or grease required for continued operation of a motor vehicle such as pump-delivered gasoline, pump-delivered diesel fuel, and less than case lots of oil or other fluids), purchase using a State of Texas Retail Fuel Card issued through SPD 946-M3 contract.
2. For bulk fuel, the contract should include the following information:
 - The term of the contract, including beginning and ending dates.
 - Estimated total quantities to be purchased during the contract term.
 - Estimated frequency and quantity for each delivery.
 - The delivery destination or destinations.
 - Storage capacity of TPWD's tank or tanks.
 - Any requirements for contractor-provided storage tanks.
 - A statement that the State is exempt from federal fuels excise tax.

Internal Repair Purchases

An internal repair is a repair to state-owned equipment where the extent of the work cannot be determined until the equipment is disassembled. An internal repair must contain labor and may also include parts. Internal repairs are usually the result of an unexpected service outage. *If an internal repair qualifies as an emergency, it must be processed as an emergency purchase.*

Procedure:

- The term “internal repair” must appear on the purchase order and a “cost not to exceed” should be agreed upon prior to authorizing work.
- Upon work authorization, a purchase order is entered into the TPWD financial system based on the cost not to exceed amount.
- After the assessment is complete, the vendor should send the formal quote to repair the equipment. A POCN should be processed approving the additional services with a new “cost not to exceed” amount.
- Awards for internal repairs exceeding \$25,000 must be posted on the Electronic State Business Daily.

For complete procedures, see CAPPS [Internal Repair Procedures](#).

Emergency Purchases

Emergencies occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat. If a situation arises in which compliance with normal procurement practice is impracticable or contrary to the public interest, an emergency purchase may be warranted to prevent a hazard to life, health, safety, welfare, property, or to

avoid undue additional cost to the State. Notwithstanding the immediate nature of an emergency, all procurements conducted as emergencies should be made as competitive as possible under the circumstances.

If an emergency exists, a written determination of the basis for the emergency and for the selection of a particular vendor must be included in the procurement file in accordance with this section (see [Appendix 13](#)). Emergency purchases of goods or services should not exceed the scope or duration of the emergency. If this type of situation arises, a justification for emergency purchase must be submitted to the appropriate Division Director and signed by the PC Director for Non-Construction Contracts or INF Division Director for Deputy Director for Construction-Related Contracts. Refer to the State Guide and the TPWD Signature and Approval Authority Policy ([OP-03-03](#)).

For an emergency purchase of goods or services exceeding \$25,000, TPWD must send to SPD a full written explanation of the emergency along with other documentation required by SPD. *Emergency purchases over \$25,000 must be posted to the ESBD.*

Disaster Declaration Purchases

The Governor may by executive order or proclamation declare a state of disaster if a disaster has occurred or if the occurrence or threat of disaster is imminent ([Gov't Code Ch. 418](#)). Additionally, the Governor may suspend the provisions of any regulatory statute 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. For example, the Governor may suspend enforcement of statutes and administrative rules regarding contracting or procurement that would impede any agency's emergency response that is necessary to protect life or property threatened by a declared disaster.

A purchase made under a disaster must clearly relate to the disaster, be made in the counties listed in the declaration, conform to the directives of the disaster declaration, and occur within the timeframe specified in the disaster declaration. The procurement file, at a minimum, must contain a copy of the disaster declaration and documentation to support the purchase, receipt of goods or services, and approval of the payment.

Two-Party/Non-Competitive Contracts

TPWD has authority to enter into direct contracts with federal agencies, other State of Texas agencies, cities, municipalities, state universities, agencies from other states, and nonprofit organizations ([Parks and Wildlife Code §11.0171](#)). See [Chapter 16, Two-Party Contract Program](#) for more information.

Blanket Contract

Blanket contracts at TPWD allow for recurring purchases of a specific service or commodity when the quantity or frequency of delivery cannot be fully determined at the time the contract is initiated. A blanket contract commits the contractor to TPWD without obligating any funds until a purchase order or amendment to add an individual project is issued. Under a blanket contract, work cannot

begin (except for development of a work plan in response to the request for quote for an individual project) until a Notice to Proceed (NTP), purchase order, or amendment to add the individual project to the contract has been issued and fully executed.

Open Market Solicitation Process

Depending on the procurement method selected, a solicitation may be required. A solicitation is a document requesting submission of bids or proposals for goods or services in accordance with the advertised specifications. When state entities have goods or services contract opportunities over \$25,000, they must advertise the solicitation on the ESBD. If the selected procurement method does not require issuance of a solicitation (e.g., term contracts), then the purchaser proceeds to the Evaluation/Vendor Selection step of the procurement cycle.

There are certain advantages and disadvantages to every procurement method, and it is necessary to consider them in the context of what is being procured. An IFB, for example, would not usually be an appropriate procurement method for procuring technical services, as the primary characteristics of an IFB are lowest price and meeting specifications with no opportunity for negotiation. Likewise, a RFQ would not be a suitable procurement method for procuring goods, as the essential feature of an RFQ is that price is not a factor until after vendor selection. When drafting the solicitation, the purchaser must be careful to ensure that the solicitation aligns with the applicable procurement method. The different types of solicitations are listed below:

Invitation for Bids (IFB)

An IFB is a formal written competitive sealed bid method used to obtain written bids. An IFB must be used for procurements with an estimated budget of \$25,000 or more and may be used for procurements of \$25,000 or less. If the total value of a solicitation is greater than \$25,000, an IFB must be posted on the ESBD and all eligible vendors within the NIGP Class and/or Class/Items designated for the procurement that are active on the CMBL must be solicited for formal bids. Negotiations are not permitted for this procurement method if there is more than one responsive bidder. However, if there is only one qualified bidder, the purchaser may negotiate with the sole bidder, including on price, provided the negotiation does not result in a material change to the advertised specifications.

This method is used when products and services are standardized or uniform, negotiations are not necessary, and price is the major determining factor for selection. Best value considerations can also be used with the IFB method. This method should be used when lots of competition exists, and the product or service is available from more than one source.

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> • Award process is simpler, and award is made to the lowest bid from responsive bidder that meets the bid qualifications. • Price and whether the goods and services meet specifications are the principal considerations for determining best value. 	<ul style="list-style-type: none"> • Defined specifications may be difficult to develop, and method does not encourage innovative solutions. • Negotiations are not allowed if there is more than one responsive bidder.

Planning/Management:

When developing the IFB solicitation document, consider the following:

- What are the minimum qualifications or criteria for the vendor, (e.g., number of years of experience or experience with this type of work in the past)?
- Are there any other best value criteria or preferences that would be used in the solicitation?
- Are there any deliverables? What is the format of the deliverable?
- What is the invoice schedule (upon receipt of goods/completion of services, or for longer more complicated projects, potentially progress payments as deliverable milestones are met)?
- How will the contract be monitored? Does solicitation need to include progress reports or inspections?
- What performance measures should be included in the contract or purchase order to monitor and gauge success?

Request for Information (RFI)

An 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 and is used primarily as a planning tool. Use this method when there is insufficient information to write specifications for any procurement method.

One of the benefits of the RFI process is that information pertinent to TPWD’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. TPWD may use the information derived from the responses to finalize the solicitation document.

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none">• Provides information to prepare a complete bid or proposal document that allows the business community to provide input based on current industry practices and market factors and informs the agency of any potential problems early in the procurement.	<ul style="list-style-type: none">• Lengthens the procurement process because a contract cannot be awarded from an RFI.

Planning/Management:

When creating an RFI, consider the following:

- What is the final result of the project?
- What information do you want to gather?
 - Pricing
 - Technical Approach
 - Interest

Request for Offers (RFO)

The RFO procurement method is a written solicitation document for IT goods and service purchases acquired by means of the competitive sealed proposals procurement method. It is intended as the primary purchasing method for procuring Automated Information Systems (AIS) outside of DIR’s IT commodity program. However, agencies may choose to use the RFO procurement method, or any other procurement method authorized by [Gov’t Code Ch. 2155](#) that will obtain the best value. When using these other methods to procure AIS, TPWD must follow the guidelines published by SPD. Use the RFO method when factors other than price are evaluated or when negotiations are desired and/or vendor is expected to provide innovative ideas.

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> • Allows factors other than price to be considered. • Allows for customized proposals suggesting different approaches to the same business need. • Allows for negotiation in order to obtain the best value to the State. 	<ul style="list-style-type: none"> • Lead times for procurement are much greater. • Evaluations are more complex and subjective.

Planning/Management:

An RFO has an inherently higher risk than most solicitations. When creating an RFO, consider the following:

- What is the final result of the project?
- What information must be used to obtain the final product?
- Can the project be done in phases?
- What are the acceptance criteria?
- What is the change management process?
- What is the communication plan?
- Are there reporting requirements?
- Are there any deliverables?
- What is the format of the deliverables?
- How do you want to be invoiced for the work?
- How are you going to monitor your contract’s performance?
- What are the performance measures to be used during the contract to know if the contract was successful?

Request for Proposal (RFP)

An RFP is a written solicitation document for non-IT goods and service purchases acquired by means of the competitive sealed proposals procurement method. Generally, an RFP is recommended when:

- Factors other than price need to be considered.
- Negotiations are desired.

- Requirements cannot be described by detailed specifications.
- The vendor is expected to provide innovative ideas and approach to successfully complete the project on behalf of the agency.

This solicitation type must be used when factors other than price are evaluated for Non-IT goods and services. One of the key differences between an IFB and an RFP is that negotiations are allowed in an RFP and not allowed in an IFB. Discussions are allowed with the respondents and best and final offers may be solicited, unless otherwise exempted. TPWD may need to submit its RFPs to CPA for review prior to solicitation, which adds additional time to the procurement process.

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> • Allows factors other than price to be considered. • Allows for customized proposals suggesting different approaches to the same business need. • Allows for negotiations in order to obtain the best value for the State. 	<ul style="list-style-type: none"> • Lead times for procurement are much greater. • Evaluations are more complex and subjective.

Planning/Management:

When creating an RFP, consider the following:

- What is your change management process?
- What is your communication plan?
- Are there reporting requirements?
- Are there any deliverables?
- What is the format of the deliverable?
- How do you want to be invoiced for the work?
- And how do you know what has been invoiced, has met acceptance and performance criteria?
- Do you need a special condition for adding like and similar work?
- How are you going to monitor your contract performance?
- What are the performance measures that are going to be used in the contract to know if the contract was a success?
- What are the risks in this contract and how can you mitigate them?

Request for Qualifications (RFQ)

An RFQ is generally used for professional services where the respondents are evaluated based solely on their qualifications and skills. This solicitation method is more like an application process, where it is very clear what is expected from the vendor. Price is negotiated after the agency selects its preferred respondent based on how well the respondents met the published qualifications.

At TPWD, this procurement method is generally used only by INF Contracting for professional services, including but not limited to architects, land surveyors, and professional engineers. Price

is not considered until after selection is made based on qualifications. Professional services are covered under [Gov't Code Ch. 2254](#).

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> • Emphasizes the competency and experience of the vendors. 	<ul style="list-style-type: none"> • Vendor is selected before a price is negotiated. Two-step process.

Planning/Management:

When creating an RFQ, think about the following:

- What documentation do you need to evaluate to know if the company is well qualified?
 - Financial statements
 - Key personnel resumes
 - Copies of licenses or certificates
 - References
 - Past performance on representative projects

Method of Solicitation

The following methods may be used except for when soliciting professional services:

1. **Informal Solicitation:** If a procurement is estimated to be \$10,000.01 - \$25,000 over the life of the contract/PO, TPWD may use an informal solicitation. An informal solicitation usually uses the IFB solicitation method with vendor selection based on price. The purchaser is required to solicit no less than three (3) vendors and two (2) of those vendors must be a HUB.
2. **Formal Solicitation:** If a procurement is estimated to be \$25,000.01 or more of the life of the contract/PO, TPWD must use a formal solicitation. The purchaser is required to solicit all the applicable vendors that can provide the goods or perform the services listed on the CMBL. Typically, the solicitation method is an RFP, RFO, or RFQ. Evaluation criteria based on best value is developed for these types of solicitations and an evaluation team is formed to score and rank the proposals received. The vendor selection is typically based on the vendor with the highest-ranking score.

Best Value Standard

For a purchase made through a competitive bidding process, TPWD must specify in the solicitation the factors other than price that will be considered in determining which bid/proposal offers the best value for the State. In determining the best value for the State, the purchase price and whether the goods or services meet specifications are the most important considerations. The agency may consider other relevant factors including but not limited to:

- Installation costs
- Life cycle costs
- Quality and reliability of the goods and services
- Delivery terms

- Indicators of probable vendor performance under the contract, including vendor’s:
 - past performance
 - financial resources and ability to perform
 - experience or demonstrated capability and responsibility
 - ability to provide reliable maintenance agreements and support
- Employee training costs associated with a purchase
- Effect of a purchase on agency productivity
- Established minimum qualifications
- Vendor’s anticipated economic impact to the State or a subdivision of the State, including potential tax revenue and employment
- Other factors relevant to determining the best value for the State as outlined in the solicitation document

Documentation stating that the vendor was selected based on best value is required for the contract file and is documented on the bid tab.

Procurement Lead Time

One of the first steps in the solicitation process is to consider the procurement lead time. Procurement lead time is the interval between a decision to purchase a product or service and when the contract is awarded. The suggested lead time is 180 days from start to completion, but this time frame will vary depending on TPWD’s specific requirements and the complexity of the procurement.

As part of the solicitation planning process, it is best practice to use the table below or similar tool to document the procurement lead time. The chart below is a guideline for documenting procurement lead time in simple procurements with minimal vendor negotiations required.

PROCUREMENT LEAD TIME		
Task	# of calendar days to complete	Due Date
Decision Made to Procure		April 10th
Drafting Solicitation	45 days	May 25th
CAT Review > \$5M SPD Delegation Review Services > \$100k SPD Delegation Review Goods > \$50k	30 days	June 24th
Finalize Solicitation for Issuance	15 days	July 9th
Solicitation Advertised		July 9th
Submission of Questions	4-5 days	July 13th
Release of Official Response to Questions	2-3 days	July 15th
Response Deadline	14 days (or longer depending complexity)	July 23rd

PROCUREMENT LEAD TIME		
Task	# of calendar days to complete	Due Date
HSP Evaluation	3 days	July 26th
Evaluation of Responses	14 days (or longer depending complexity)	August 9th
Contract Negotiation (if allowed) and Contract Formation	10 days	August 19th
Contract Execution (all signatures obtained)	12 days	August 31st
Performance Begins	Contract Effective Date	September 1st

CHAPTER 7. SOLICITATION PREPARATION

Once the purchaser has determined that a solicitation is required, the next step is to draft the solicitation. The solicitation drafting phase is a collaborative effort between the purchaser, project manager, and other internal subject matter experts.

Content of Solicitation

The solicitation must contain all information required for vendors to respond to the agency's procurement opportunity. The content of a solicitation varies depending on what is being procured, the complexity of the transaction, and the identified risks associated with the procurement. It is important to identify all TPWD's requirements in the solicitation because TPWD cannot hold a vendor accountable for performance of a requirement that is not specified in the solicitation or resulting contract. Solicitation, regardless of organizational structure, usually include the following components:

- Introduction
- Contract Term
- Minimum Vendor Qualifications
- Specifications
- Scope of Work
- Payment and Pricing Terms
- Insurance Requirements
- Terms and Conditions
- Response Submission Requirements
- Evaluation Criteria for Award

Introduction

The introduction section of the solicitation provides the vendor community with a high-level summary of the procurement. This portion of the solicitation may contain a brief narrative description of the historical events relevant to TPWD's business need and, if appropriate, TPWD's future intentions that may have bearing on the products or services to be procured. DO NOT include contractual requirements in the informational text.

It is best practice to incorporate a calendar of events in the solicitation. Ideally, the calendar of events should be located near the front of the document so vendors can quickly determine how long they have to submit questions, prepare responses, and plan for the anticipated date of award. The purchaser must ensure that timeframes provided in the solicitation calendar of events are appropriate for the complexity and cost of the solicitation. The solicitation period should allow a reasonable amount of time for interested eligible vendors to respond. Shorter response deadlines may limit the number of vendor responses or even discourage participation by vendors.

Minimum Vendor Qualifications

Vendor qualifications relate to the characteristics of the vendor. Purchasers must ensure that the minimum qualifications are tailored to the business need and not unnecessarily restrictive to limit competition. Examples of minimum vendor qualifications include:

- Specified technical skill, certification, or licensing requirement
- Minimum number of years' experience (business and/or personnel)
- Projects of similar size and scope
- Not presently debarred from participation in the State contracts
- Demonstration of adequate financial capability based on standards defined within the solicitation.

Specifications

A specification is a detailed description of the goods that reflect the needs of the customer. Good specifications ensure potential suppliers have clear guidelines when submitting quotes and carrying out their contractual agreement.

The content of the specification must not restrict competition by including bias that favors a particular make/model or a particular supplier. To ensure a clear and concise specification:

- Determine the “essential” requirements and clearly separate them from the “preferred” qualities.
- Determine at least two (2) different makes/models that will meet the end users' needs.
- Identify measurable physical, functional, and quality characteristics such as:
 - Sizes
 - Physical dimensions
 - Weights
 - Types and grades of materials
 - Required features (such as attachments)
- Determine minimum requirements by using the specification matrix or similar tool (see [Appendix 8](#)).
 - Tabulate requirements.
 - Compare between vendors.
 - Determine minimum acceptable requirements.
 - Use this information to define an acceptable range for each specification.
- Consult with end user that minimum requirements identified will meet their needs.

Scope of Work (SOW)

The SOW, generally used for service solicitations, is a section of the solicitation that describes the services to be provided by the vendor who is awarded the contract. The success or failure of a contract can usually be linked to the adequacy of the planning, analysis, and thoroughness of the SOW. Time spent planning, analyzing, and drafting the SOW results in savings of time, resources, and money, and improves the quality of products and services provided.

Since the SOW ultimately becomes the roadmap for managing the awarded contract, it is critical for the individual(s) responsible for managing the contract to be actively involved in developing a good SOW. By participating in planning, these individual(s) know and understand the contract provisions, can communicate those contract obligations to the contractor, and can maintain appropriate oversight and control over the contract performance.

The SOW should be written in a manner that gives a clear and thorough description of the products and services to be provided while at the same time fostering competition. A SOW should be logically organized and tailored to the division's business need. In certain types of procurements, it may be critical to describe the existing business processes. If the existing business process will change as a result of the procurement, then also describe what the business process will be after the procurement objectives are completed.

General Considerations

The SOW should:

- Be designed to secure the best value for the State
- Be clearly defined
- Be contractually sound
- Be unbiased and non-prejudiced toward respondents
- Encourage innovative solutions to the requirements described, if appropriate
- Allow for free and open competition to the maximum extent possible

Organization of the SOW

The SOW and all deliverables should include:

- A clear description of the work
- An unambiguous standard for performance
- A method/process to monitor progress on delivery of the good/service
- A delivery date for the work
- Explicit test conditions, method, or procedure to verify that the deliverable meets the performance standard
- A method or process to monitor and/or ensure quality in the deliverable
- An acceptance process for each deliverable
- A compensation structure that is consistent with the type and value of work performed
- A contractual remedy, if appropriate

Elements of the SOW

The following elements of a SOW will help ensure you get the most value from the SOW:

- Best value considerations
- Bonding requirements (e.g., payment bond, performance bond)
- Contract term
- Contractor qualifications
- Defining TPWD's role
- Elements of a deliverable

- Established standards
- Evaluation criteria
- Financial acceptance and required documentation
- HUB requirements
- Inspection and testing
- Monitoring
- Openness to allowing maximum competition
- Payment types
- Proposal submission requirements
- Quantity
- Quality
- Reporting

Additional Considerations

Listed below are additional issues to consider when writing the SOW:

- Agency security policies (e.g., state building admittance procedures, email encryption protocols)
- Conflict of interest disclosures and/or organizational restrictions
- Criminal background investigation requirements
- Disposal of property requirements
- Intellectual property/copyright issues
- Lease (operating/finance) conditions
- Records retention period
- Required permits
- Special conditions imposed by funding source (e.g., federal funds)
- Storage space for contractor materials/supplies
- Subcontractor responsibilities
- Texas Public Information Act obligations
- Trade-in equipment option
- Use of agency equipment

The SOW answers who, what, when, where, why, and how. If those questions are answered, it is reasonable to assume that the SOW is complete.

Payment and Pricing Terms

Payment and pricing terms are included in the solicitation to provide all competing respondents with the same information detailing how payment will be remitted or costs reimbursed under the contract. For an effective solicitation, the scope of work and pricing terms must be aligned, and TPWD's pricing terms must be consistent with industry standards. It is common practice for solicitations to include a price sheet or other TPWD-created form that describes the products and services to be procured and the unit of measure that will be the basis for payment (e.g., job, lot, month). The pricing terms selected vary depending on what is being procured. For example, in an equipment purchase, TPWD determines whether its pricing terms are (1) a lump sum price

that includes the cost for the equipment, shipping, and installation, or (2) a separate line-item price for each individual component.

An essential component to the payment terms is the timing of the payment. When and how TPWD will make payments must be clear in the solicitation. For example, will the entire amount be paid at the end of the project or will the contractor be permitted to bill for work performed monthly or quarterly in arrears? Best practice suggests that each payment should reflect the value of the work performed. For projects with a long-term implementation schedule, TPWD may control the payment process by dividing the overall contract payments into smaller amounts that each reflect an increment of work or deliverable. This is an effective technique for managing financial risk. The scope of any dispute between TPWD and contractor can be contained to a discrete deliverable rather than the entire contract.

Contract Term

The term of a contract is the period of time that the contract will remain in effect. All contracts must have a commencement date and a specific expiration date. A reasonable contract term compliant with applicable law must be included in the solicitation. Indefinite contracts are generally prohibited. As a general policy, it is recommended that the maximum duration for a contract without reissuing a competitive solicitation is three (3) to four (4) years. This includes any renewal or extension periods. Individual business needs may dictate a different period, and divisions should consult PC Branch for advice on this matter early in the planning process.

Insurance

Insurance is a common risk mitigation measure for service contracts. Insurance coverage should be sufficient to cover all claims against the contractor as well as any costs TPWD might incur. The insurance coverage must be effective from the commencement of the contract and remain in place with no lapse at any time during the life of the contract. It is recommended that the solicitation specify that all insurance policies must be obtained from insurance companies licensed in Texas with at least an "A-" rating from A M Best Company to reduce the likelihood of a vendor being represented by a financially unsound insurance carrier. Division purchasers should contact PC Branch or INF Contracting with questions regarding insurance requirements.

A list of common insurance policies is below:

- **Commercial General Liability** – A policy that protects business organizations against liability claims for bodily injury and property damage. The standard general liability policy excludes coverage for damage to the work performed by the insured or to personal property in the care, custody, and control of the insured. It is intended to address damage incurred by a third party.
- **Professional Liability** – A policy designed to protect professionals against liability in performing their professional services. Most professional liability policies only cover economic or financial losses suffered by third parties and exclude bodily injury and property damage, which is intended to be covered by the general liability policy.
- **Workers' Compensation** – An insurance program that helps people with work-related injuries and illnesses. Employees covered by workers' compensation can obtain medical

care necessary to treat their injuries and illnesses. Workers' compensation may also provide payments to replace some of an injured employee's lost income, compensation for burial expenses for employees killed on the job, and death benefits for dependents of employees killed on the job. This coverage does not apply to sole proprietors.

- **Commercial Umbrella Excess Liability Coverage** – A policy designed to provide protection against catastrophic losses. It generally is written in addition to various primary liability policies, such as the business auto policy, general liability policy, watercraft and aircraft liability policies, and employer's liability coverage. The umbrella policy serves three (3) purposes:
 1. it provides excess limits when the limits of underlying liability policies are exhausted by the payment of claims;
 2. it drops down and picks up where the underlying policy leaves off when the aggregate limit of the underlying policy in question is exhausted by the payment of claims; and
 3. it provides protection against some claims not covered by the underlying policies, subject to the assumption by the named insured of a self-insured retention.
- **Automobile** – A policy that protects the insured against financial loss because of legal liability for automobile-related injuries to others or damage to their property by an automobile. Automobile coverage may include liability coverage of bodily injury, property damage, medical payments, and physical damage.

Terms and Conditions

Clearly stated terms and conditions are the most effective means of protecting TPWD from unintended risk. It is a common practice for contracts to include standard terms and conditions that are often referred to as "boilerplate." In addition to TPWD's boilerplate terms, the solicitation should include terms tailored to the specific procurement that address change control, risk mitigation measures, and remedies.

TPWD solicitation documents include terms and conditions that have been reviewed and approved by the PC Branch or INF Contracting as well as the Legal Division. Changes to these terms and conditions cannot be made without approval of PC Branch or INF Contracting and the Legal Division.

Response Submission Requirements

The solicitation must clearly indicate the submission requirements, such as the response content, format, and delivery instructions, and include the following:

- due date and time
- delivery address
- acceptable delivery method (e.g., email, fax, USPS)
- container labeling (e.g., name and address of respondent, solicitation number)
- required number copies of the response
- format of response (e.g., electronic file type, bound, tabbed, paginated, size of paper, page number limitations)

If the solicitation requires the vendors to utilize agency-specific templates in their responses, the templates must be appropriately referenced and as applicable, attached as exhibits or appendices to the solicitation. All costs associated with the preparation of the response must be borne by the respondent.

HUB Subcontracting Plan (HSP) Requirements

Agencies are required to make a good faith effort to assist HUBs in receiving a portion of the total contract value that the agency expects to award in a fiscal year, in accordance with the following goals:

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

These goals can be achieved through contracting directly with HUBs or indirectly through subcontracting.

For any procurement with an estimated contract value of \$100,000 or more, including renewals and amendments, the HUB Director, or designee, must determine if subcontracting opportunities are probable under the contract. Subcontracting opportunities can be realized through expenditures on materials, supplies, equipment, and services. If subcontracting opportunities are probable, this determination must be stated in the solicitation and require an HSP to be submitted with the response. If an HSP is required by the solicitation, the completed HSP must be submitted by the response due date and time in order for the response to be considered responsive. A response containing an incomplete or missing HSP must be disqualified. Once accepted by TPWD, the HSP will become part of the contract. Vendors must amend their HSPs if there is a change in their planned subcontracting during the performance of a contract.

Evaluation Criteria for Award

The primary objective for every acquisition is to obtain best value for the State. To ensure fairness in TPWD's evaluation of the responses, the solicitation must notify the potential respondents of the basis for contract award. The solicitation must identify the evaluation criteria and the relative weight assigned to each criterion, if applicable. If the evaluation criteria and associated weights are not thoughtfully designed, then the procurement fails because the basis of the award does not correctly identify the response that offers best value to the State.

The evaluation criteria must reflect the essential qualities or performance requirements necessary to achieve the objectives of the contract. The weight assigned to each evaluation criterion must correlate to its importance. The purchaser must ensure not only that the evaluation criteria and the associated weights are clearly stated, but also that information submitted in the response directly relates to the criteria. The purchaser should be careful to ensure that the respondents and

the evaluation committee have no opportunity to be confused about which portion of the response applies to each criterion.

Purchase price and evidence that the goods or services meet specifications are the most important considerations when goods and services are procured through competitive bidding. As a matter of practice, SPD encourages the use of other evaluation factors in addition to price and meeting specifications. It is common for there to be at least three (3) evaluation criteria that broadly address the following:

1. respondent's proposed scope of work
2. respondent's past performance and experience
3. respondent's proposed price

It is best practice to include a general description of the evaluation process in the solicitation. The purchaser should also finalize, prior to solicitation issuance, the evaluation scoring matrix, including any objective criteria, and the composition of the evaluation committee. The scoring method used to assess the price criterion should be carefully considered and should be reviewed for each solicitation to ensure it is appropriate for the products and services to be procured.

At a minimum, the solicitation must identify the criteria and their corresponding weight. 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 may not be used to rank or select responses.

Solicitation - Reviews and Approvals

CAT – Review of Solicitation with a Value of \$5 Million or More

Prior to posting to the ESBD or publishing in the Texas Register, TPWD must submit solicitation documents for contracts that have a value of \$5 million or more to the Contract Advisory Team (CAT) for review, regardless of procurement method. For CAT submissions, the contract value means the estimated dollar amount that TPWD may be obligated to pay over the life of the contract including all executed and proposed amendments, extensions, and renewals. TPWD may not artificially split the procurement to avoid the \$5 million threshold for CAT review.

Solicitation documents include the solicitation (e.g., IFB, RFP, RFO) as well as any other documents that supplement the solicitation (e.g., Proprietary Purchase Justification) or are incorporated by reference. The solicitation documents and a completed form are submitted to CAT through the Procurement Oversight and Delegation portal maintained by SPD and located on the CPA website. As a general guideline, grant agreements where the recipients eligible for award are governmental entities or non-profit business entities are not subject to a CAT review.

CAT reviews may take up to 30 days to complete. CAT recommends that agencies incorporate a 30-day period for CAT review into the procurement schedule to avoid potential delays to the solicitation, evaluation, and award process.

QAT – Review of Major Information Resources Projects

Procurements associated with a major information resources project, regardless of the chosen procurement method, are subject to Quality Assurance Team (QAT) oversight. A “major information resources project” is any information resources technology project that is:

- specifically designated as such by the Legislature in the GAA as a major information resources project;
- identified in TPWD’s biennial operating plan as a project whose development costs exceed \$5 million and that:
 - requires one (1) or more years to reach operation status;
 - involves more than one (1) state agency; or
 - substantially alters the work methods of state agency personnel or the delivery of services to clients; and
- designated for additional monitoring under [Gov’t Code §2261.258\(a\)\(1\)](#) if the development costs for the project exceed \$5 million.

TPWD is required to notify QAT when it advertises any solicitation of a major information resources project regardless of the solicitation method (e.g., RFP, IFB, RFO).

Before issuing a solicitation for a major information resources project with a contract value of at least \$10 million, TPWD must develop a procurement plan with anticipated service levels and performance standards for each contractor and a method to monitor changes to the scope of each contract. Samples of an Acquisition Plan and Quality Assessment Plan (QAP) Tools are located in the State Guide.

QAT and LBB – Review of Non-Cloud Computing Service Option

When making purchases for an AIS or a major information resources project, TPWD must ensure that the system or project is capable of being deployed and run-on cloud computing services. TPWD may determine that, due to integration limitations with legacy systems, security risks, or costs, it is unable to purchase an AIS or major information resources project capable of being deployed and run-on cloud computing services. If TPWD makes this determination, then at least 14 days prior to solicitation issuance, TPWD must submit a report to the LBB for the purchase of an AIS or to the QAT for the purchase of a major information resources project a report that describes the purchase and the agency's reasoning for making the purchase.

Solicitation - Advertisement

Electronic State Business Daily (ESBD)

The ESBD, managed by SPD, is the State’s online directory listing procurement opportunities. TPWD is required to post procurements with a contract value of \$25,000 or more to the ESBD, regardless of the source of funds to be used for the contract. There is a minimum posting period requirement of 14 to 21 days, depending on what information is being posted. The contract value for posting to the ESBD means “the estimated dollar amount that TPWD may be obligated to pay during the life of the contract and all executed and proposed amendments, extensions and

renewals.” While a 14-day posting may satisfy the statutory minimum period for posting on the ESBD, it is best practice to advertise a solicitation for 30 days or longer. When determining the appropriate solicitation posting period, the purchaser should consider what timeframe affords interested eligible vendors the opportunity to submit quality proposals. Publishing solicitations for time periods that are not commercially reasonable may have the effect of artificially limiting the vendor pool. It is best practice to schedule realistic procurement timelines that take into account holidays, the complexity of the procurement, and the fulfillment of any statutory requirements.

For solicitations requiring delegated authority, a letter of delegation must be obtained from SPD prior to posting to the ESBD. Proof of the ESBD posting and documentation from SPD authorizing the delegated purchasing authority must be included in the procurement file. A contract award is void if the agency violates the applicable statutorily required minimum time for posting on the ESBD.

Centralized Master Bidders List (CMBL)

The CMBL, maintained by SPD, is an online directory of vendors registered to receive bidding opportunities from State of Texas purchasing entities. TPWD must use the CMBL to select bidders for competitive bids or proposals, and to the fullest extent possible for purchases exempt from SPD’s purchasing authority. For purchases between \$10,000 and \$25,000, TPWD must solicit from a minimum of three (3) active vendors on the CMBL, including two (2) current Texas-certified HUBs. For procurements exceeding \$25,000, TPWD must use the CMBL to solicit from each eligible vendor on the list that serves the agency’s geographic region. The purchaser must send a copy of the solicitation to all vendors on the CMBL bid list for the advertised commodity code(s). A copy of the bid list (with date) must be placed in the procurement file.

TPWD may supplement the CMBL with State of Texas certified HUBs at any time if the agency determines that it may enhance competition or increase the number of HUBs that submit bids. In addition, TPWD may solicit from vendors that are not on the CMBL to increase competition. The current vendor may always be added to the bidders list without additional approvals.

The request to supplement bidders prior to solicitation requires approval by the PC Director or designee.

- Purchasers should email the PC Director or designee and advise of the vendor(s) they wish to add and how additional vendor(s) will increase competition beyond those listed on the CMBL.
- The email requesting approval to supplement the CMBL must include the class-item number(s), list of supplemental vendors to include contact information, and the statement ‘to increase competition.’
- Documentation regarding the additions to the CMBL bid list, including the written approval from the PC Director or designee of the supplemented CMBL bid list, must be maintained in the procurement file.

Pre-Bid/Offer/Proposal Conferences

A pre-bid/offer/proposal conference is an optional conference that occurs after solicitation issuance and before the solicitation closing deadline. A conference provides a forum for potential

respondents to pose questions about the solicitation in a face-to-face setting or by conference call or web conference. It also provides an opportunity for vendors to develop subcontracting relationships and lets the agency gauge industry interest in the procurement.

TPWD may conduct pre-bid/offer/proposal conferences that are mandatory or non-mandatory for prospective respondents. Staff should carefully consider the use of a mandatory conference as this may limit competition. Conferences should be mandatory only if an on-site visit is required to have a full understanding of the procurement, or if the solicitation is so complex that TPWD staff believe attendance is critical for potential respondents to fully understand the procurement. Accordingly, mandatory pre-bid/offer/proposal conferences are required when TPWD determines that disqualification is appropriate for any response from a vendor that did not receive information pertaining to the solicitation at a TPWD-designated time and location.

If a pre-bid/offer/proposal conference is held, the solicitation must indicate the date, time, and location of the conference and whether respondents' attendance is mandatory or voluntary. If the conference is mandatory, the following statement must be included in the solicitation: "Failure to attend the pre-bid/offer/proposal conference will result in disqualification of the response."

A pre-bid/offer/proposal conference is usually held no earlier than 10 days after the solicitation issuance to allow sufficient time for respondents to receive and review the solicitation prior to the conference. If a mandatory conference is required, the purchaser should consider multiple conference dates if it is expected that there will be a high number of conference attendees. All conference attendees must be documented on a sign-in sheet, which is the official record used by TPWD to verify respondent attendance. For mandatory conferences, the sign-in sheet will be collected at the beginning of the conference.

Conference attendees should be advised that the verbal responses provided by the agency during the conference are not binding until confirmed by TPWD in writing. All changes to the solicitation must be in writing and published through an addendum to the solicitation. ESBID posting requirements apply.

Question and Answer (Q&A) Period

It is best practice for all solicitations to include a formal process for potential respondents to submit questions to TPWD to clarify their understanding of the solicitation. The solicitation must specify the due date when questions must be submitted to TPWD as well as the anticipated release date of TPWD's answers. The benefit of a Q&A period is that it provides the first indication to TPWD of possible ambiguities, errors, or lack of critical information in the solicitation. If there are major deficiencies to the solicitation discovered at this stage, it is advisable to cancel the solicitation and issue a revised solicitation at a future date.

Written questions submitted as directed in the solicitation must be compiled into an Addendum. Every question received, even similar questions submitted by different vendors, must be accounted for in the Addendum. The name of the entity submitting the question and other identifying information should be omitted from TPWD's published answers. The purchaser has discretion in organization of the questions (e.g., chronological by receipt date or topic).

The Addendum is published with each question listed with its corresponding response. The purchaser composes answers to each question and consults with agency subject matter experts

as needed. If two (2) or more similar questions are submitted (i.e., redundant questions), the purchaser should be mindful to not provide two (2) inconsistent answers. In this situation, it is best practice to either provide the exact same answer to both questions or answer the first question and then include a cross reference to the first answer when responding to the second question. Once the Q&A document is finalized, it is published with the solicitation documents on the ESD, if applicable. Any answer that would result in a material change to the solicitation must be identified in a solicitation addendum.

Addenda

If a change to the solicitation occurs before the response due date, TPWD must issue a written addendum identifying the addition or correction to a solicitation in the same manner as it issued the solicitation (e.g., ESD, Texas Register). A solicitation addendum is used to clarify an ambiguous provision, correct an error or oversight, extend the response due date, or alter a public opening date. A solicitation addendum may also be used to answer questions by respondents, even though the answers do not result in a modification or change to the solicitation.

For addenda that contain information other than just an extension to the response due date, it is best practice to require that the responses include an acknowledgement of each addendum to the solicitation. Respondents must be given a reasonable time to respond to a solicitation addendum. The purchaser, therefore, must consider the period of time remaining until the solicitation closing date prior to issuing an addendum. If an addendum results in substantial changes to the original solicitation, it is recommended that the response due date be extended and the revised solicitation to be issued for at least 14 calendar days following the addendum date. Each addendum is numbered. If more than one (1) addendum is issued, each subsequent addendum is sequentially numbered. Each addendum to the original solicitation must be posted to the ESD no later than the next business day following its release to the public.

Receipt and Control of Responses

Responses must be received on or before the due date and time designated in the solicitation. The terms "response/bid opening date" and "solicitation closing date" both describe the deadline for receipt of responses. A response will be considered timely only if it is received on or before the published due date and time and in conformance with the delivery instructions specified in the solicitation. To ensure fairness to all respondents, no submitted responses should be opened or reviewed before the due date and time has passed; however, TPWD may confirm that a sealed submission, faxed document or email(s) have been received.

Upon receipt by TPWD, a sealed response must be marked with a date and time stamp directly on the envelope, when possible, or on the express delivery label, and the response must remain sealed and kept in a secure place to prevent misplacement, loss, or tampering, until after the published response due date and time. When allowed by the solicitation, responses received by email, fax, or any other electronic system must be treated as sealed response documents and kept secure until after the response due date and time. A copy of the email received with the response documents attached must reflect the date and time of receipt.

Despite instructions contained in the solicitation, a respondent will occasionally submit a sealed response without properly identifying the solicitation on the packet. Agency staff may open a

sealed response solely for the purpose of identification so that the response can be properly marked as received. If staff open a sealed packet for the purpose of identification or a response was inadvertently opened, the packet must be resealed, dated, and signed by the person who opened the packet. These opened packets should be marked with “Open in Error” or “Opened to Determine Content.”

Late Responses

If a response is received after the published date and time, it is considered a late response. Late responses will not be opened, and the respondent will be notified that the response was rejected because it was not timely received. TPWD will either return the unopened response to the respondent at the respondent’s expense or dispose of the response according to the arrangements specified in the solicitation.

Cancellation of Solicitation

TPWD may cancel a solicitation at any time. If a solicitation is cancelled, TPWD must provide notice of the cancellation in the same manner as the issuance of the solicitation. The agency will post a notice of the cancellation to the ESBD if the original solicitation was posted to the ESBD. Cancellation notices must contain, at a minimum, the following information:

- TPWD’s name, business address, and contact person’s name,
- purchase requisition number or solicitation number, and
- reason for the cancellation.

Unless other delivery or disposition arrangements are specified in the solicitation, all responses should be returned unopened with a notification letter from TPWD of the solicitation cancellation.

CHAPTER 8. EVALUATION/VENDOR SELECTION

The third step of the procurement process is to select the vendor that provides best value to the State. Agencies must conduct evaluations in a fair and impartial manner consistent with Texas law and in accordance with either the evaluation procedure published in the solicitation, or for informal solicitations, established by TPWD's procedures.

Administrative Review of Responses

After the responses are opened and recorded, the purchaser must determine whether the submitted responses are responsive to the solicitation. A response is considered "responsive" if it conforms in all material respects to the solicitation requirements (e.g., timely submitted, signed response, completed forms). The purchaser will make the initial determination as to whether a response is responsive to the solicitation. The initial determination of responsiveness is subject to change during the evaluation process. Only responses that are responsive to the solicitation are evaluated. At a minimum, this administrative review includes an examination of each response to verify that the minimum vendor qualifications are satisfied, and all required forms and documents were submitted, such as the signed execution of bid/offer/proposal or similar document, price sheet, bid bond, signed HUB Subcontracting Plan, and signed non-disclosure agreement.

The administrative review is conducted on a "pass/fail" basis. Consultation with PC Director, INF Contracting Branch Manager and/or legal counsel may be necessary to determine whether a response is responsive to the solicitation requirements. It is recommended that staff use a checklist to document the results of the administrative review (see [Appendix 9](#)). A response without a signature is not responsive to the solicitation and will be disqualified. Non-responsive responses, including unsigned responses, will not be evaluated; these responses will be kept with the procurement file and not be returned to the respondent.

Bid Tabulation Process

If the responses to an IFB are to be evaluated solely on objective criteria, the evaluation may be conducted by the purchaser. Generally, bids must be tabulated when opened, but there are times when this is not practical. It is recommended that the bid tabulation (see [Appendix 10](#)) be prepared within a maximum of three (3) business days from the bid due date. The following, as applicable, must be included on the bid tabulation:

- Award column to indicate the bidder receiving the award for any given item
- Comments/Remarks – Include indicators for disqualification and non-responsive
- Confidential or proprietary declarations by respondent
- Delivery days after receipt of order
- HUB status
- Manufacturer/Brand
- NIGP Class/Item
- Package quantity information
- Price sheet line-item descriptions

- Product number
- Respondent name
- Unit price
- Vendor (payee) identification number
- Warranty

It is best practice for the bid tabulation to be reviewed by a peer prior to finalization to ensure that the evaluation was conducted in conformance with applicable purchasing procedures. Care should be taken to ensure that the raw data is accurately transcribed into the mathematical formulas and that the mathematical formulas are properly loaded into electronic spreadsheets/workbooks when such electronic aids are used. After contract award, the bid tabulation must be available for release through the Texas Public Information Act.

Evaluation Committee Process

RFPs, RFOs, and RFQs for Professional Services are evaluated by evaluation committees. The evaluation committee is composed of subject matter experts and stakeholders. The committee should have a diverse relevant disciplinary expertise and knowledge of the product or service being procured. It is common for the evaluation committee members to have been involved in the procurement planning activities. The purchaser is usually designated as the committee chair, serving as a non-scoring member of the evaluation committee. Depending on the procurement, the division contract manager may participate as either a scoring or non-scoring member.

Evaluation committee selection should occur prior to receipt of the responses. The scoring and non-scoring members of the committee must be noted in the procurement file. The recommended size of an evaluation committee is three (3) to five (5) scoring members. To avoid potential individual bias, the committee should not have fewer than three (3) scoring members. Depending on the procurement, TPWD may determine that a larger committee is necessary.

Each evaluation committee member will independently assess the content of each response using only the evaluation criteria and weights published in the solicitation and, if applicable, unpublished sub-(i.e., a smaller component of the published base criterion). Accordingly, the evaluation committee members must fully understand the solicitation, be able to critically read and evaluate the responses, and document their decisions in a clear and concise manner. The evaluation committee members must not conduct independent research; each member's evaluation must be based solely on his or her personal review of the response and other information specifically authorized by the purchaser or assigned legal counsel that is consistent with the solicitation (e.g., written clarifications received from the respondents, oral presentation material, and reference check information). The evaluation committee members must be provided with the following documents, as applicable to the specific procurement:

- the entire solicitation, including all issued addenda and Q&A documents,
- a list of responses submitted, and
- a copy of each response determined to be responsive.

Vendor Performance Tracking System (VPTS) Check

Contractor performance information is in the [VPTS](#) on the CPA website. Purchasers are required to use the VPTS to determine whether to award a contract to a vendor. A copy of the VPR must be kept in the contract file. If a vendor is not found in VPTS, a copy of the unsuccessful search result should be kept for documentation.

Competitive Range Determination

After the initial scoring, the purchaser will determine the competitive range. The competitive range refers to those responses determined to be reasonably considered for award selection and is an objective means of narrowing the field of respondents that will participate in subsequent evaluation activities such as oral presentations. Purchasers should look for a “natural break” in the scores that will determine the competitive range. The rationale for the competitive range determination should be documented in the procurement file.

Oral Presentations

If expressly permitted by the solicitation, TPWD may elect, after reviewing the responses, to conduct oral presentations. Oral presentations, including reviews conducted during site visits, provide an opportunity for respondents to highlight the strengths and unique aspects of their responses and to provide answers to clarification questions the agency may have regarding the responses. Presentations that include demonstrations of product functionality are recommended when appropriate, such as IT or solution-based purchases.

Oral presentations may be scheduled for all respondents or limited to the top ranked vendors in the competitive range. TPWD must follow the process outlined in the solicitation to notify the respondents of the time and place for the oral presentations. Before the oral presentation, the evaluation committee should prepare its list of clarification questions for the presenting respondents.

Oral presentations and demonstrations must be fair to all parties. The time allowed and the agenda format should be the same for all presenters. Because some presenters may believe that there is an advantage to the order in which they present, it is best practice to draw names for the presentation order to ensure impartiality of the process.

Following the oral presentation, it is best practice for TPWD to submit written questions to the respondent to document in writing the verbal clarifications provided by the respondent during the presentation. The answers to these clarification questions should be signed by an authorized representative of the respondent. Following all oral presentations, the evaluation committee will complete a scoring matrix using the evaluation criteria and weights published in the solicitation. To protect the integrity of the evaluation process, the evaluation committee that evaluated the written responses should also evaluate the clarifying information obtained from the respondents during the oral presentations

Best and Final Offers

After any oral presentations or demonstrations are completed, TPWD may hold discussions. If discussions are held, respondents must be given equal opportunity to discuss and submit revisions to proposals. Revisions of proposals are normally accomplished by formally requesting Best and Final Offers (BAFOs) at the conclusion of discussions, with a set deadline for receipt of BAFOs and instructions as to exactly what should be submitted in response to the BAFO request. After consideration of all BAFO responses, TPWD may choose to select to a smaller number of respondents with which to commence negotiations.

Evaluation Committee Recommendation

Once the evaluation process is completed, the committee chair will prepare, sign and date the master scoring matrix, and proceed with a recommendation to either 1) award the contract to the highest ranked respondent without discussion, 2) tentatively award the contract to the highest ranked respondent subject to successful completion of negotiations, or 3) cancel the solicitation. It is recommended that each committee member review the master score sheet to verify the accuracy of the scoring. Care should be taken to ensure that the raw data is accurately transcribed into the mathematical formulas and that the mathematical formulas are properly loaded into electronic spreadsheets/workbooks when such electronic aids are used. If the solicitation allows, the evaluation committee may recommend a contract award to more than one (1) respondent; provided, however, that the awarded respondents are the highest ranked in the evaluation.

Vendor Protest Procedures

In accordance with [31 TAC §51.350](#), an actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the PC Director. A formal protest must be in writing and received by the PC office within 10 working days after the protesting party knows, or should have known, of the occurrence of the action which is protested.

A formal protest must be in writing, sworn, and contain:

- A specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;
- A specific description of each act alleged to have violated the statutory or regulatory provision(s) identified;
- A precise statement of the relevant facts;
- An identification of the issue(s) to be resolved;
- Argument and authorities in support of the protest; and
- A statement that copies of the protest have been mailed or delivered to all respondents who submitted bids, proposals, or offers for the contract involved. Upon written request, TPWD will furnish the requestor a list of interested parties, as reflected in the records.

Upon receipt of a timely protest when an award has not been made, TPWD will not proceed further with the solicitation or award of the contract unless the PC Director, after consultation with the

appropriate Division Director, makes a written determination that the award of contract without delay is necessary to protect substantial interests of the state.

The PC Director, in consultation with the Legal Division, will issue a written determination of the protest within three (3) business days.

- If the PC Director determines no violation of rules or statutes occurred, they will inform the protesting party and each respondent who submitted a bid, proposal, or offer by letter. The letter will set forth the reasons for the determination.
- In instances where the contract has not been awarded and the PC Director determines that a violation of the rules or statutes has occurred, they will inform the protesting party and each respondent by letter. The letter will set forth the reasons for the determination and the appropriate remedial action.
- In instances where the contract has been awarded and the PC Director determines that a violation of the rules or statutes has occurred, they will inform the protesting party and each respondent who submitted a bid, proposal or offer letter. The letter will set forth the reasons for the determination and may conclude that the contract awarded is void.

Appeal

The PC Director's determination on a protest may be appealed by the protesting party to the TPWD Executive Director or designee. An appeal of the determination must be in writing and received in the Executive Director's office no later than 10 working days after the date of the determination. The appeal will be limited to review of the determination. A copy of the appeal must be mailed or delivered by the appealing party to TPWD and each respondent who submitted a bid, proposal or offer for the contract, and it must contain a certification statement that such copies have been provided. Failure of the protesting party to appeal the determination of the PC Director within 10 working days after the date of determination renders the determination the final administrative action of TPWD on the protest.

The General Counsel or other agency attorney must review the protest, the PC Director's determination, and the appeal and prepare a written opinion with recommendations to the Executive Director.

The Executive Director will review the appealed protest; any requests for and written responses to the appealed protest from any respondent who submitted a bid, proposal or offer for the contract, or from other interested parties; the PC Director's determination; and the appeal. The Executive Director will issue a written opinion on the appeal.

CHAPTER 9. CONTRACT FORMATION AND AWARD

The fourth step of the procurement process is to enter into a legally enforceable contract that not only meets TPWD's business need but is also compliant with Texas procurement law. The contract between the TPWD and the selected vendor may be in the form of either a PO or a formal signed agreement. If a formal signed agreement is used, the PO documents the encumbrance of funds by TPWD for the transaction.

Negotiations

TPWD may negotiate terms and conditions during the procurement process; however, not all procurement methods allow for negotiation. Prior to commencing negotiations, the purchaser must verify that negotiations are permitted under the applicable procurement method. Negotiations are permitted for the following:

- purchases using competitive sealed proposals (RFPs)
- purchases using requests for offers (RFOs)
- purchases under DIR cooperative contracts
- purchases of consulting services
- purchases of professional services
- purchases using TXMAS
- purchases using State Use Program (when procuring services, not goods)
- purchases that are sole source and competitive proprietary
- emergency purchases when there is insufficient time to solicit bids

Negotiation is not permitted under the IFB procurement method except when only one (1) qualified bid is received. This exception is the only circumstance for TPWD to negotiate contract terms, including price. The negotiation may not result in a material change to the advertised specifications.

Procurement staff should be mindful that negotiations involving public sector entities like TPWD are different than negotiations between private sector entities. For example, negotiations between TPWD and a respondent must not materially alter requirements of the published solicitation. Care must be taken to avoid inadvertently changing the advertised procurement objectives. If the procurement objectives are changed through the negotiation process, the process becomes unfair. If respondents were aware of the changed procurement objectives, they could have bid differently. An unlevel playing field also results when the composition of the eligible vendor pool would have been different (e.g., the vendor pool may have been larger) if the changed objectives had been incorporated into the original solicitation. Whenever it appears that the procurement objectives may have been changed, Legal Division staff should be consulted before proceeding further.

The key to successful contract negotiations is through TPWD personnel preparedness. Preparedness represents the degree to which the purchaser or contract manager, prior to the commencement of negotiations, has obtained negotiation-relevant information and has engaged in formal planning activities with the negotiation team. Depending on the particular transaction, negotiation-relevant information may include data on prevailing prices, supply conditions, and production costs.

To develop an effective negotiation strategy, the negotiation team must be familiar with the documentation submitted by the vendor and be well-versed in the respective division's business requirements, constraints, and any applicable overarching agency objectives. The negotiation strategy should be tailored to suit the particular facts and circumstances of each procurement. Formal planning activities include:

- identifying contract terms that are crucial to the agreement (i.e., terms upon which TPWD is either unable or unwilling to compromise, as well as contract terms that TPWD is willing to compromise or relinquish)
- understanding and prioritizing the acceptable trade-offs between the various negotiation goals
- establishing TPWD's settlement range on the items to be negotiated
- anticipating the positions taken by the vendor during negotiations

Contract Formation

When negotiations are complete, a contract documenting the parties' negotiation and the terms and conditions of the performance must be finalized. Texas law defines a contract as a promise or a set of promises to which the law attaches legal obligation. The law regards the performance of these promises as a duty and provides a remedy for the breach of this duty. Contracts that deviate substantially from requirements defined in the solicitation are open to challenge from unsuccessful respondents. Awarding a different project from the one (1) solicited undercuts competition and the contract could be considered void due to a violation of ESBD posting requirements.

Fundamentally, the purpose of a written contract is to serve as a reference document that records the terms of an agreement to prevent misunderstanding or conflict, and creates a legal, binding, and enforceable obligation. Most often, conflicts over contracts arise well into a contract period when memories may be unreliable, and representatives of the agency or vendor may have changed. Clarity of the terms and completeness of the issues addressed are of primary importance. The individual drafting the contract must know the subject matter and concerns of the parties thoroughly enough to anticipate potential areas of disagreement and specifically address them in the contract.

The essential elements necessary to form a binding contract are usually described as follows:

- Offer
- Acceptance
- Legal Purpose
- Consideration
- Certainty of Subject Matter
- Competent Parties

Contract Award

Once the contract has been finalized, the purchaser must determine whether review by an oversight agency is required and, if applicable, obtain the requisite approval(s) prior to contract

award. To ensure compliance with applicable procurement law, pre-award due diligence checks should also be conducted. Pre-award contract compliance checks include confirmation that certain internal reviews and approvals have been performed, required disclosure statements have been completed, and the award to the selected vendor is not prohibited by law. Required reviews and approvals are documented throughout the procurement process on the Solicitation/Contract Checklist (see [Appendix 3](#)). The Contract Checklist should be included in the contract file and a copy saved to the CAPPS PO.

Pre-Award Contract Reviews and Approvals by Oversight Agencies

Quality Assurance Team (QAT) – Major Information Resource Project

A contract for development of a major IT project with a value expected to exceed \$10 million is not valid unless TPWD:

1. submit the proposed terms of the contract to the QAT before the start of negotiations; and
2. submit the final negotiated unsigned contract to the QAT for review

DIR – Statement of Work

Agencies are required to prepare and submit to DIR certain DIR SOWs for contracts that exceed \$50,000. A DIR SOW executed by an agency under a contract for an IT commodity item is not valid and money may not be paid to the contractor under the terms of the DIR SOW unless DIR first signs the DIR SOW. Following execution of the final DIR SOW by TPWD and the vendor, TPWD must submit it to DIR for signature. DIR reviews the signed DIR SOW and determines whether it is approved or rejected by DIR. If DIR rejects the DIR SOW, DIR notifies TPWD of the reason(s) for rejection. DIR must sign the DIR SOW before it becomes valid, and any money is paid to a vendor.

Pre-Award Contract Compliance Checks

At the time of award, the contract file must contain printouts of the results for the following vendor compliance checks:

- Debarment check
- Divestment List, which includes:
 - Energy company boycott check
 - Boycott Israel check
 - Iran, Sudan, and foreign terrorist organization check
- SAM.gov check (printout dated no more than 7 calendar days prior to contract award)
- VPTS check
- Warrant hold check

Verification of Use of Best Value Standard

The PC Director or INF Contracting Branch Manager must:

1. approve each contract for which TPWD is required to purchase goods or services using the best value standard;
2. ensure that, for each contract, the purchaser documents the best value standard used for the contract;
3. acknowledge in writing that the purchaser complied with the State Guide in the purchase; and
4. ensure that TPWD evaluates the contractor's performance based on:
 - information prepared by TPWD in planning the procurement that assessed the need for the purchase together with the specifications for the good or service and the criteria to evaluate the responses resulting in an award and contract;
 - compliance with the material terms of the contract;
 - ability to correct instances of contractual non-compliance; and
 - other evaluation criteria presented in the online VPTS.

Director Review and Certification of Complete File and Vendor Assessment Process

Prior to contract award, the PC Director or INF Contracting Branch Manager must review the solicitation evaluation process and all documents used to assess the vendor responses. They must also review the contract file to ensure all required documents are completed and present. The PC Director or INF Contracting Branch Manager must then certify in writing that all purchasing requirements were followed, appropriate documentation is in the contract file, and vendor assessments were conducted properly and accurately. This includes certifying that all formulas used in the evaluation matrix were accurate and that the best value determination is documented appropriately ([Gov't Code §§2261.0525; 2262.053](#)).

The certification requirement does not apply to contracts for goods under \$50,000 and services under \$100,000. Also excluded are term contract, TXMAS, spot purchases, direct publications, perishable goods, fuel, internal repair, and emergency purchases. Construction contracts are NOT excluded.

TPWD Signature Authority - Contracts with a Value of \$1 Million or More

The approval and signature authority for contracts with a value \$1 million or more is delegated by the TPW Commission to the Executive Director of TPWD. TPWD may enter into a contract for the purchase of goods or services that has a value exceeding \$1 million only if the Executive Director approves and signs the contract ([Gov't Code §2261.254](#)). This includes competitive solicitations as well as two-party contracts.

The purchaser or INF contract manager is responsible for completing the *Major Contract Approval Form* and submitting it, along with a copy of the contract and the *Nepotism/Disclosure Statement*, for review and signature by appropriate Division Directors, COO, and Legal Division staff before forwarding for the Executive Director's review and approval. By signing the *Major Contract Approval Form*, all parties involved in the contracting process certify that they have completed the *Nepotism/Disclosure Statement* and have no financial interest in the contracting entity.

The contracting division (PC or INF) is responsible for ensuring that the *Major Contract Approval Form* and supporting documentation is attached to the PO in the agency financial system and a copy is kept in the contract file.

Agency Verification - Contracts with a Value Exceeding \$5 Million

The PC Director and/or INF Contracting Branch Manager are required to (1) verify in writing that the solicitation and purchasing methods and contractor selection process comply with state law and agency policy; and (2) submit to the TPW Commission information on any potential issue that may arise in the solicitation, purchasing, or contractor solicitation process ([Gov't Code §2261.255](#)).

The *Major Contract Solicitation Form* and a memo from the contracting division's Procurement Director (PC or INF) outlining potential issues are forwarded to the General Counsel and EO for approval. Either the Executive Director or General Counsel electronically notifies the Commission of the upcoming projects and potential risks.

The contracting division (PC or INF) is responsible for ensuring that the *Major Contract Solicitation Form* and documentation regarding potential risks are submitted to the Commissioners prior to advertising the solicitation. This documentation should be attached to the PO in the agency financial system and a copy kept in the contract file.

Depending on the transaction, TPWD may be required to provide one (1) or more notifications of the contract award. These notifications may be in the form of a notice of award published to the ESBD or Texas Register, a report to an oversight agency, or a website posting. TPWD must timely comply with all notification requirements.

ESBD Notice of Award

After the contract is awarded, a notification of award must be posted to the ESBD if the contract is expected to exceed \$25,000. The ESBD notice of award includes the following information:

- Agency name
- Class/Item code
- Dollar amount awarded
- HUB certification status
- Requisition number (as listed on the ESBD solicitation posting)
- Response status (e.g., full award, partial award, multiple awards, canceled)
- Response title (as listed on the ESBD solicitation posting)
- Vendor name and address

Depending on the procurement, TPWD may also choose to notify each respondent in writing of the non-selection. The purchaser or contract manager must maintain proof of the ESBD posting in the procurement file.

Texas Register Notice of Award

Solicitations using certain procurement methods must be advertised in the Texas Register. A copy of the Texas Register notice must be placed in the procurement file. Texas Register posting requirements are in addition to ESBD posting requirements

LBB Reporting

Contracts that have a value that exceeds certain thresholds must be reported to the LBB. The submission must include any required documentation such as the solicitation documents, contract documents, and attestation letters. These reporting requirements are fulfilled through the LBB Contracts Database located on the LBB website. The LBB Contract Reporting Guide provides details on the types of contracts that must be reported to the LBB via the contracts database.

Agency Website Posting

For contracts not posted to the LBB Contracts Database, TPWD must post the following information about each private vendor contract to the agency's website:

1. the contract until the contract expires or is completed;
2. the statutory or other authority under which a contract that is not competitively bid is entered into without compliance with competitive bidding procedures; and
3. the RFP related to a competitively bid contract until the contract expires or is completed.

The purchaser must redact the following from the posted contract:

1. information that is confidential under law,
2. information that the OAG has determined can be excepted from public disclosure under [Gov't Code Ch. 552](#), commonly known as the Texas Public Information Act, and
3. the social security number of any individual.

Risk Assessment and Monitoring Performance

Each state agency is required to develop and comply with a purchasing accountability and risk analysis procedure ([Gov't Code §2261.256](#)).

Risk Assessment

TPWD must evaluate contracts for the level of risk they present to the State. The purpose of risk assessment is to:

- Strengthen contract management activities to mitigate risk;
- Help identify the potential for fraud and abuse;
- Prioritize contract monitoring; and
- Determine TPWD's highest risk contracts.

TPWD Contract Risk Assessment Tool

The *TPWD Contract Risk Assessment Tool* (see [Appendix 6](#)) is required for all contracts, including Interagency and Interlocal, with a value of \$1 million or more. The contract manager may also

determine that a lower dollar contract may be rated as “high risk” due to unique circumstances of a particular solicitation. For example, a contract that includes health and safety risks to the contractor, TPWD employees, and/or general public, and/or environmental risks, may be considered “high risk.”

Contract risk assessments are NOT required for:

- Contracts that have a value less than \$1 million;
- State Term and TXMAS contracts;
- MOUs or MOAs that have no monetary value; or
- Emergency contracts when time does not allow for an initial contract risk assessment. However, a contract risk assessment and a contract risk management plan (if necessary) must be established after contract award.

A contract risk assessment using the *TPWD Contract Risk Assessment Tool* should be conducted before a solicitation is advertised to decide the level, type, and amount of management, oversight, and resources required to plan and implement the contract from beginning to end. As the risk associated with a particular procurement increases, the level and degree of executive management’s sponsorship, participation, and oversight should increase by a corresponding level. A high-risk contract, such as an outsourcing project or a software development procurement, should involve significant executive management sponsorship, participation, and oversight. A low-risk contract, such as a routine purchase of goods or services, does not typically require the participation or sponsorship of agency executive management.

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

Contract Risk Management Plan

Upon award of a contract for a solicitation that was identified as high risk using the *TPWD Contract Risk Assessment Tool*, the contract manager working with the Core Project Team and project sponsors establishes a Contract Risk Management Plan (see [Appendix 7](#)).

This Contract Risk Management Plan defines how risks associated with the contract will be identified, analyzed, and managed. It outlines how contract risk management activities will be performed, recorded, and monitored throughout the lifecycle of the contract and provides templates and practices for recording and prioritizing risks by the Risk Manager and/or Risk Management Team.

Throughout the term of the contract, risk must be assessed on an ongoing basis to identify and account for changes that require an adjustment in the prioritization of contract monitoring activities.

Roles and Responsibilities

Role	Responsibilities
Core Project Team	The Core Project Team is responsible for identifying the contract risks, the dependencies of the risks within the project, and the context and consequences of the risks. They are also responsible for determining the impact, timing, and priority of the risks as well as formulating the contract risk statements.
Risk Manager or Project Manager (PM)	The Risk Manager or PM is a member of the Core Project Team. They determine if the contract risk is unique; identify risk interdependencies across contracts; and verify if risk is internal or external to project. During the life of the contract, they continually monitor the project for potential risks.
Contract Manager	The contract manager coordinates contract risk management and reporting requirements with the Risk Manager/PM, Core Project Team, procurement staff, and Legal Division staff, as appropriate. They are responsible for ensuring all relevant parties are kept apprised of contract risks and notified immediately if additional monitoring or intervention is needed to reduce or eliminate a risk.
Risk Owner(s)	The risk owner determines which contract risks require mitigation and contingency plans, and they generate the risk mitigation and contingency strategies. They are responsible for monitoring and controlling risk and providing updates to the contract manager concerning the status of the risk throughout the contract lifecycle. They can be a member of the project team.
Other Key Stakeholders	The other key stakeholders assist in identifying and determining the context, consequence, impact, timing, and priority of the risk.

Post-Award Conference or Discussion

Once the contract has been awarded, it is recommended that the contract manager schedule a post-award conference. A post-award conference is a meeting scheduled by the contract manager that includes the contractor and agency stakeholders. The conference is an orientation for the contractor to ensure a clear and mutual understanding of all contract terms and conditions and the respective responsibilities of all parties. Although the contractor and TPWD personnel should already be fully aware of the contract requirements, the post-award conference ensures that anyone involved directly in the contract administration process understands all contract performance requirements. The conference serves as an excellent tool to review expectations, affirm communication plans, and resolve any potential misunderstandings early on.

Not every contract requires a formal post-award conference, but there should be some form of discussion between the contracting parties after award to ensure that all parties are aware of the performance requirements and administrative procedures as agreed in the contract. Care should be taken to ensure discussions that occur during the post-award conference do not result in performance expectations that do not align with the terms of the contract.

For less complex, low-risk, low-dollar value contracts, a telephone call to the contractor may be sufficient. During the telephone conversation, TPWD should review the major points of the contract with the contractor (e.g., contract amount, major performance milestones, deliverables, reports, meetings) and time and place of delivery.

Factors used to determine whether a post-award conference is appropriate include:

- Any special or unusual contract requirements
- Any special or unusual payment requirements
- Contract value and complexity
- Length of contract, period of performance, and/or delivery requirements
- Level of risk associated with the contract
- Procurement history of the supplies or services required and expertise of the contractor
- TPWD's prior experience with the contractor
- Type of contract
- Urgency of delivery schedule

Post-Award Conference Agenda

The purpose of this meeting is to review and explain contract requirements and confirm deliverables, dates, and other important details for successful performance under the contract. The post-award conference is not an opportunity to renegotiate the contract. A typical post-award conference agenda may include the following:

- **Introduction:** Introduce all participants and identify TPWD and contractor key personnel.
- **Scope:** Discuss the scope of the contract (i.e., what TPWD is buying). Although this may seem overly simplistic, a total and complete meeting of the minds on this point will avoid problems during the life of the contract.
- **Terms:** Summarize contract terms and conditions, particularly any special contract provisions. This can avoid any misunderstandings later and allows the contractor to gain a better understanding of the terms prior to beginning work.
- **Requirements and Deliverables:** Discuss the expected deliverables and schedule, the quality and acceptance standards, and reporting requirements of the contract.
- **Administration:** Discuss applicable contract management procedures, including contract monitoring and progress measurement.
- **Rights:** Review the rights and duties of both parties and the contractor performance evaluation procedures. TPWD should explain that the contractor will be evaluated on their performance both during and at the conclusion of the contract and that such information may be considered in the selection of future contracts.

- **Potential Obstacles:** Address potential contract problem areas and possible solutions. Discuss any issues or contract areas that TPWD believes may lead to a problem later or may be subject to differing interpretations.
- **Payment:** Review and clarify invoicing requirements and payment procedures, especially if the payment will be made according to milestones achieved by the contractor.
- **Authority:** Identify the roles and responsibilities of the parties' contract managers, contract administrators, project managers, key personnel leads, and any other key staff. TPWD personnel should explain the limits of their authority and obtain the same information regarding contractor personnel.

After the conference, the TPWD contract manager or designee prepares a summary of the meeting for the contract file that details the topics covered. The summary should include areas requiring resolution, a list of participants, and in particular, those individuals assigned responsibilities for further action and the due dates for those actions. Copies of the meeting summary should be distributed to all conference participants.

CHAPTER 10. OVERVIEW OF CONTRACT MANAGEMENT

Contract Management Responsibilities

- Participate in developing the solicitation and writing the draft statement of work, identifying specifications and deliverables to be required and needs unique to the contract that may require special terms and conditions and other contract documents.
- Determine during the solicitation development if the contractor's compensation structure is appropriate for the work.
- Serve as the point of contact for disseminating instructions regarding the work to the contractor.
- Receive and respond to communication between TPWD and the contractor.
- Manage, document, and ensure appropriate approval of changes to the contract.
- Manage state property used in contract performance (e.g., computers, capital equipment, supplies, telephones).
- Identify and resolve disputes with contractor(s) in a timely manner.
- Implement a quality control/assurance process.
- Maintain appropriate records.
- Document significant events.
- Monitor the contractor's progress and performance to ensure goods and services conform to the contract requirements.
- Exercise state remedies, as appropriate, when a contractor's performance is deficient.
- Monitor the budgeting and accounting process to ensure sufficient funds are available.
- Verify accuracy of invoices and authorize payments consistent with the contract terms.
- Perform the contract closeout process, ensuring the contract file contains all necessary contract documentation, including documentation of formal acceptance and lessons learned.

Contract Management and Oversight Processes

- Planning
- Monitoring Performance
- Change Management
- Payment Approval
- Dispute Resolution
- Records Management
- Contract Closeout

Contract Monitoring

Monitoring the contractor's performance is a key function of proper contract administration. The purpose is to ensure that the contractor is performing all contract obligations and for the agency to be aware of and address any developing problems or issues. All TPWD contracts must be monitored to verify that the contractor 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, of a contract.

The goal of contract monitoring is to ensure delivery of quality goods and/or services and to protect the financial interest of the State by:

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

Contract monitoring activities can be conducted in a variety of ways, if they are objective, address contract complexity, value, and risk, and are documented in the contract record.

Some common monitoring areas are:

- Contractor Performance
- Deliverables
- Invoices
- Close-out Documentation

Contractor Performance

An established communication plan will help ensure a successful contract. Following the communication plan allows both parties to maintain current awareness of whether the contractor is on schedule with meeting the deliverables. The contractor's ability to follow that plan is part of their performance.

Do not wait until the end of a contract term before addressing any unresolved issues. PC Branch, INF Contracting Branch, and Legal Division staff are available to assist when the contractor's performance is not meeting expectations. Each program is required to submit a VPR to the appropriate contracting branch (PC, IT, or INF Contracting) to report contractor performance issues.

Deliverables

For the deliverables identified in the contract, the contract manager should monitor the deliverable due dates, the configuration or formatting of the deliverable, and the established frequency, quantity, and quality of the deliverable. The contract manager must confirm deliverables are complete and meet established acceptance criteria.

Invoices

After goods and services have been inspected and accepted, invoices must be reviewed to verify that (1) the description of goods and services has sufficient detail to identify the order relating to the invoice, and that the quantities and unit measures correspond with the referenced PO, and (2) the invoice conforms to state invoicing standards. In addition to agency standard forms, each

program should develop an invoice review and approval procedure that includes the solicitation and/or contract document. Samples of program-specific procedures are included in [Appendix 4](#).

Monitoring Methods

Desk Review

Typically, these are reviews of reports submitted by the contractor to TPWD. Examples of this type of review are as follows:

- Compare the actual performance against the contract requirements. Is the contractor performing in accordance with the contract requirements?
- Compare actual expenditures to the approved budget. Is the contractor following their approved budget plan?
- Compare the current period to prior periods. Are there any unexplained trends? Is the contractor performing work significantly different from the last period or the last year?
- Compare what the current contractor is doing in comparison with other contractors performing similar work.
- Compare the relationships between key components of the report, such as:
 - The cost per unit of service compared to the percentage of the fees charged to the program.
 - The change in variable costs compared to the units of service provided.
 - Reported salaries compared to the staffing plan.

Documentation of these findings is maintained in the program's contract or project files. Where needed, the contract manager must address corrective actions with program management and the contractor.

Site Visit

Site visits are typically scheduled visits to the contractor's place of business and/or location where services are being performed. They are based on risk assessment and can cover a broad range of contract compliance or specific performance issues.

Examples of some typical reasons for considering a site visit include but are not limited to:

- Contractor is responsible for administering funds from two (2) sources, and one (1) source has noted serious problems with the way the contractor used the funds.
- Other contractors have experienced problems in a specific area, and there is an indication that this contractor might be experiencing the same problem.
- Inconsistencies in the expenditure draw requests are identified and clarification from source documents is necessary.
- Contractor has provided a corrective action plan for a problem, but TPWD is not certain that the proposed solution is being adhered to or will resolve the problem.
- A contractor's employee files a complaint about wages.

Documentation of the findings and site visit report should be maintained in the program's contract/project files and reported in accordance with internal procedures.

Using Monitoring Review Results

Measures that may follow monitoring reviews and site visits may include:

- Developing and implementing corrective action plans.
- Identifying common problem areas that might require a revised communication plan or training.
- Actions to improve future contracts.

The goal of these measures is to bring the contractor back into compliance with the contract requirements. Follow-up is essential, as the problem will not correct itself simply by identifying it and including it in the monitoring report.

Monitoring results should also be used to improve the contract requirements for future contracts. If there are unnecessary restrictions or insufficient controls, this is the time to make a note of the recommended changes so future contracts can incorporate the changes.

Enhanced Monitoring

Enhanced monitoring is an increased level of monitoring, which may include but is not limited to scheduled or more frequent contractor meetings, increased reviews or site visits, and specific documentation requirements. Enhanced monitoring is designed to better assess the contractor's progress and ability to successfully complete the contract.

Criteria for Enhanced Monitoring

Some contracts inherently call for enhanced monitoring due to the type of work that is being performed. These types of contracts could include but are not limited to:

- Emergency response contracts
- Federally funded contracts
- IT contracts
- Time and material contracts
- Umbrella contracts where the risk lies within each of the work orders associated with the contract

Enhanced monitoring may be required from the outset when there are high risk factors, such as:

- The contract's initial value is \$1 million or more, or the contract is otherwise defined as a "major contract"
- Risk factors such as inexperienced contract or project managers within TPWD or the contractor
- New work that TPWD has not purchased via a contract before
- The contractor is new to the industry and/or to TPWD
- TPWD is outsourcing a program or function to a contractor
- A contractor's past performance history under a similar contract

Enhanced monitoring may be triggered during a contract by:

- Budget issues, such as a progress payment invoice was higher than expected

- Recurring performance issues with contractor
- Requests to modify the work, schedule, or costs
- Wage compliance issues

Different Ways to Perform Enhanced Monitoring

Enhanced contract monitoring may include:

- A more detailed communication plan with the contractor with a formal escalation procedure to address issues
- Additional invoice documentation requirements, such as labor costs or specifying certain receipts for expenses like equipment or travel
- Review of the contractor's procedures for complying with HUB requirements
- More frequent reporting of work initiated, progress, and work completed
- More frequent desk reviews or site visits
- Detailed training or refresher training on procedures
- Real time reporting of work initiated and completed to assist with verifying later submitted invoices
- Sending the contract or project manager to be onsite while work is being performed to observe adherence to contract terms and contractor's procedures

Vendor/Contractor Performance Evaluations

Refer to TPWD's Vendor Performance Reporting Policy ([BF-21-01](#)).

Vendor performance information is in the Vendor Performance Tracking System (VPTS) on the [CPA website](#). Prior to award, purchasers are required to use the VPTS to confirm vendor performance on previous contracts with the State.

Additionally, TPWD must report a vendor's performance to VPTS in connection with a contract for the purchase of goods and services, including construction, with a value greater than \$25,000 that has been renewed, completed, or otherwise terminated. If the value of the contract exceeds \$5 million, TPWD must also review the vendor's performance at least once each year during the term of the contract and at each key milestone identified for the contract. Interagency contracts, interlocal agreements, and MOUs are not subject to the VPTS reporting requirements.

Accurately reporting vendor performance allows agencies to share vendor information and facilitates better oversight of state contracts by helping to identify vendors that have exceptional performance and preventing the State from contracting with vendors that perform poorly. Tracking vendor performance enables all state agencies to gauge a vendor's ability to handle awarded contracts and POs.

VPRs

The PC, IT Purchasing, and INF Contracting Branches are responsible for reviewing and submitting vendor performance information to the VPTS on behalf of TPWD.

PC, IT Purchasing, or INF Contracting are required to enter the VPR into the VPTS system within 30 days of the contract completion or termination date (including renewals/extensions),

and annually and at key milestone points for contracts over \$5 million. Therefore, the division project manager/contract manager should submit the VPR to the appropriate contracting branch that awarded the contract within 20 days of completion (acceptance) and/or contract termination, whichever comes first, to allow time for the report to be entered into the VPTS. The VPR and supporting documentation must be maintained in the contract file.

Reviewing VPTS Before Award

Before awarding any contract, a division purchaser/contract manager must check VPTS and review previous reports, if any, to determine whether to award the contract to a vendor.

Documentation

A contract file must include evidence that the purchaser checked the VPTS prior to an award, and that TPWD staff submitted a VPR in accordance with state policies and procedures. The file should also include documentation to support the VPR.

Roles and Responsibilities

- **PC, IT Purchasing, and/or INF Contracting Branches**
 - Check VPTS prior to processing contract awards.
 - Ensure program staff provide vendor performance documentation, as applicable.
 - Enter VPRs into CPA VPTS.
 - Retain supporting documentation in the contract file.
- **Project Manager**
 - Completes VPR when required and submits to the appropriate division purchaser/contract manager.
 - Notifies division purchaser/contract manager, PC/IT/INF Contracting Branch, and Legal Division of performance issues and monitors corrective action plans.
- **Division Purchaser/Contract Manager**
 - Checks VPTS prior to processing contract awards within their delegated authority.
 - Works with Project Manager to complete VPR form.
 - Submits the completed VPR form to the PC, IT Purchasing, or INF Contracting Branch within 20 days of contract completion or termination to allow for timely entry in VPTS.
 - Ensures annual and milestone VPRs are submitted for contracts over \$5 million.
- **Legal Division**
 - Provides legal assistance for vendor performance concerns, including initiating remedies and defending disputes.

Exemptions

The following contracts are exempt from vendor performance reporting requirements:

- Grant-funded pass-through contracts that are determined to be subrecipient or recipient by the respective state agency
- Interagency contracts
- Interlocal agreements
- Memorandums of understanding
- Sub-contracts issued by a company with which the State has a contract

CHAPTER 11. CHANGE MANAGEMENT

Throughout the term of the contract, it may become necessary to make changes. These changes can be minor administrative changes (e.g., change of address), or they can be substantial changes that affect the price and delivery. The terms and conditions in the original contract set forth the criteria under which a contract manager may exercise the right to modify the contract.

Failure to manage and control changes can result in an unintentional modification to the scope of work, extension of the schedule, increase in the contract cost, circumvention of management controls, and diminished contractor accountability.

An effective change management process includes but is not limited to:

- Formal, written approval of all changes prior to the change taking place. The vendor should not begin working on a change with only verbal authorization but must wait until the formal process is fully analyzed, documented, and approved in writing in conformance with contract requirements.
- Documentation of a single point of contact to recommend or authorize any change. This is usually a contract manager or project manager.
- This process should be discussed and documented at any post-award conference or discussion.
- Evaluation of the impact each change has to the following:
 - contracting objective
 - corresponding product and/or service
 - schedule
 - cost
 - program budget (e.g., cost increase resulting from the change)
 - work in progress/completed work
 - standards
 - acceptance criteria
- Documentation of all changes, no matter how small. No informal, undocumented change should be implemented.
- Documentation of approval or disapproval for all requested changes. For approved changes, this should include documentation of impact to the scope of work through a contract amendment or PO change notice, whichever is applicable.

Types of Changes

Extensions and Renewals

If the contract has an option to extend or renew, the contract manager must assess whether the option will be exercised prior to the expiration of the current contract term. The number and length of and process for exercising renewals and extensions should be specified in the contract/PO terms.

Administrative Changes

These are changes that are within the scope of the contract and do not affect or alter the rights of the parties. These may also include notices of contract interpretations or clarifications. These changes may be executed through a unilateral amendment (i.e., a change that does not require the contractor's consent), if authorized by the original contract.

Examples of administrative changes include:

- changes as permitted by the specific contract language
- changes in agency personnel assigned to the contract
- changes in billing instructions or address
- corrections of typographical errors not affecting the substance of the contract

Substantive Changes

These are contractual changes that affect the rights of both parties. Such changes generally require bilateral amendments (i.e., agreement by both parties).

Examples of substantive changes include:

- change in the delivery schedule
- change in the nature of deliverables (i.e., the specifications)
- change in the price of the contract
- change in the quantity
- change of any terms and conditions
- change of key personnel

Contract Changes and Solicitations

Whether or not a contract may be changed depends upon certain principles. State law requires a competitive process in most situations. The specific method of competition depends upon the type of goods or services needed. If competitively solicited, the resulting contract must be consistent with what was asked for during the solicitation process. Inconsistency in the solicitation document can violate the competitive process requirements and possibly render the solicitation and/or any awarded contracts null and void.

If a change is needed to a contract, the change must be within the scope or range of what was in the solicitation. A significant change in the scope of the solicitation specifications after receipt of responses is not allowed because the change was not originally subject to fair competition and it denies an opportunity for others to participate in the solicitation. Therefore, any contract amendments are required to be within the scope of the original contract and the competitive process underlying the original contract.

Required Due Diligence Activities During the Change Process

When processing an amendment or POCN, staff are required to perform certain due diligence activities.

Vendor Performance Verification

The PC Branch requires a VPR from the contract manager before an amendment can be executed. If there are issues with the vendor's performance, there must be written justification in the contract file to continue the contract with the vendor. If a vendor is not performing well or has a low grade in the VPTS, purchaser should consult with PC Branch before processing an extension.

Material Changes to Contracts Report

The performance of a contract for goods or services awarded by TPWD must substantially comply with the terms contained in the written solicitation for the contract and the terms considered in awarding the contract, including terms regarding cost of materials or labor, duration, price, schedule, and scope. In accordance with [Gov't Code §2155.088](#), after a contract for goods or services is awarded, the TPW Commission must meet to consider a material change to the contract and why that change is necessary. For purposes of this section, a material change includes:

1. extending the length of or postponing the completion of a contract for six (6) months or more; or
2. increasing the total consideration to be paid under a contract by at least 10 percent, including by substituting certain goods, materials, products, or services.

This requirement does not apply to certain contracts for professional services, consulting services, services provided by a state agency employee, or services of a public utility, or interagency contracts, concession contracts, grants, or contracts where the original contract anticipated the extension or increase (e.g., service contract with renewal options and/or clause that allowed for increase of scope).

To ensure compliance with this requirement, a list of contracts that must be considered is provided to the TPW Commissioners for acknowledgement. This report is developed by the PC Branch and is sent to Division Directors before each Commission meeting for review and awareness.

GAA LBB Contract Notification – Increase of 10% or more

Additionally, as required by the [GAA Article IX, Section 7.04\(g\)-\(h\)](#), for contracts with an initial award value greater than \$1 million, TPWD must provide notice to the LBB when the expected total contract value subsequent to amendment or renewal exceeds the initial award amount by 10% or more. TPWD reports these contracts to the LBB on a quarterly basis. The report includes the amount of the cost increase; the reason for the cost increase; and any opportunity TPWD had to lessen the cost or to purchase the service from another vendor after the first dollar of the increased cost was discovered or disclosed to TPWD.

CHAPTER 12. RECEIPT OF GOODS/SERVICES AND APPROVAL OF PAYMENT

Verification of Receipt of Goods

The costs incurred by the contractor should be in accordance with the contract rate schedule. Invoices should be reviewed to ensure that the contractor's billing coincides with the contract's progress. This requires that the contractor's progress be measurable. Just because the contractor incurred a cost and/or submitted an invoice is not a sufficient indicator of the contractor's progress or that the charges should be paid.

Invoices must be approved by program staff prior to payment. Payments must be made in accordance with the Texas Prompt Payment Act, [Gov't Code Ch. 2251](#), which requires that correct invoices be paid within 30 days from the date the correct invoice was received or the date the services/goods were received, whichever is later. When monitoring invoices, make sure the invoice is in the format described in the contract. Also, verify the invoices are received by the due dates outlined in the contract.

The invoice must be reviewed to ensure:

- The contractor is billing only for goods or services received by TPWD.
- The goods or services have been inspected and accepted.
- The invoice is correct and complies with the pricing, terms, and conditions of the contract.
- The total payments do not exceed the contract limits.

Understanding Payment Terms and Rates

To track, approve, or process invoices for a contract, it is important to read the contract to understand how to answer the following questions:

- What is the invoicing frequency from the contractor to TPWD?
- What format should the invoice be submitted in?
- What supporting documents are required?
- What are the pay rates?
- What are the pay items and deliverables?
- What are the acceptance criteria for pay items and deliverables?
- Who is responsible for approving pay items and deliverables?
- What is the policy on changes to the contract terms?
- Is there a process for disputing an invoice outlined in the contract?

Reading the Invoice

When an invoice is received, it is important to compare what TPWD is being invoiced for to the deliverables and tasks that are outlined in the contract. If the invoice is for a deliverable or a report, was the deliverable or report approved and accepted? Is there documentation stating that the deliverable or report was approved and accepted? Do the charges on the invoice match the pay rates listed in the contract?

Points of contact for clarification should be identified in the event there is an issue with a invoice or questions about a line item. TPWD and the contractor must understand the procedure for disputing an invoice. This should be a topic at any post-award conference or discussion where TPWD and the contractor both confirm the invoicing process.

Budget

In addition to monitoring invoice pay items and pay rates, it is important to monitor the contract budget when approving an invoice. This is especially important when processing progress payments.

If the contract or project manager believes that the requested payment exceeds the contractor's progress, an explanation should be requested from the contractor prior to approval of the invoice. Payment should be withheld pending TPWD's contract or project manager's satisfaction with the contractor's progress. TPWD must notify a vendor of an error or disputed amount in an invoice within 21 days of receipt of the invoice. The notice must include a detailed statement about the disputed amount ([Gov't Code §2251.042](#)).

EXAMPLE:

If the contractor is invoicing on 50% of the total project, verify that 50% of the deliverables are received. Does the project timeline and project budget match to the amount that is being invoiced? Are appropriate retainages being withheld?

CHAPTER 13. DISPUTE RESOLUTION

Understanding Dispute Resolution

Effective dispute resolution is essential to successful contract management. The goal of any dispute resolution process is to resolve problems at the lowest level and as promptly as possible to keep the contract on a successful path. Many concerns can be resolved with good communication and informal tools. Formal contract remedies may be enforced when disputes cannot be resolved informally. Termination is the last resort in resolving contract disputes. A contract termination is a failure by **both** parties to a contract. If there is a need or desire to terminate, staff should notify PC Director or INF Contracting Branch Manager and TPWD Legal Division staff.

Dispute Resolution Process

The following steps should be taken when there is a concern that needs resolution:

- Identify the concern.
- Gather information to clarify the issues.
- Specify the contract requirement or term that supports the concern.
- Notify the contractor of the issues in accordance with the established communication plan.
- Request a response from the contractor. Be specific about the type of response that may be needed (i.e., either action or correspondence) and set a reasonable deadline.

Communication may be needed several times or by using different methods to fully identify the issue and fully inform the contractor. Escalation of both attention and importance of the issue may progress through phone calls, emails, formal demand letters, and in-person meetings. It is important to note as an issue escalates with the contractor, that escalation must also occur through the management chain of both TPWD and the contractor's company. In addition, it is important to notify TPWD Legal Division staff and the PC Director or INF Contracting Branch Manager of the unresolved issues.

CHAPTER 14. CONTRACT CLOSE-OUT

The contract close-out process is usually a simple but detailed administrative procedure. The purpose is to verify that both parties to the contract have fulfilled their contractual obligations and that there are no responsibilities remaining. In addition, contract close-out is the time to assess the success of the contract and determine if there are any lessons learned for future contracting. For the Contract Close-out Checklist, see [Appendix 14](#).

A contract is ready for close-out when:

- All deliverables, including reports, have been delivered and accepted by TPWD. Individuals engaged in contract management activities should compare actual performance against performance measures, goals, and objectives to determine whether all required work has been completed.
- All monitoring issues have been resolved.
- All property inventory and ownership issues are resolved, including disposition of any equipment or licenses purchased under the contract.
- Final acceptance from the project/contract manager has been received (if applicable).

Contract Close-out Process

Step 1: Issuing Close-out Letter

When a contract ends, the program staff initiates the close-out process by issuing a *Close-out Letter* to the contractor (See [Appendix 15](#) for a sample letter). However, an email from the TPWD project/contract manager is sufficient. The Close-out Letter or email notifies the vendor that the contract is complete, all deliverables have been received, and requests the final invoice.

Step 2: Vendor Performance Report (VPR)

Tracking good and bad vendor performance enables all state agencies to gauge a vendor's ability to handle contracts/POs being awarded. TPWD is required to use the VPTS for all contracts and purchase orders over \$25,000 ([34 TAC §20.509](#)). Agencies are also encouraged to submit reports for contracts under \$25,000 if there were issues with the contract or if a vendor provides exceptional service.

It is the TPWD project/contract manager's responsibility to complete the VPR and send it to the PC Branch or the appropriate division for entry (see [Vendor/Contractor Performance Evaluations](#) section). The form must include the date of acceptance. This date is the date the goods/services were inspected and formally accepted. TPWD must have the VPR entered in the VPTS within 30 days of such event (See [Appendix 11](#)).

Step 3: Unencumber Balance of Funds

Program staff and Accounts Payable (AP) receive and process the final invoice from the vendor. The program unencumbers the remaining budget.

CHAPTER 15. CONTRACT RECORDS RETENTION

All awarded contract documents must be retained for a minimum of seven (7) years after a contract is complete (i.e., expired or terminated) or the last action related to the contract is resolved, whichever is later ([Gov't Code §441.1855](#)).

The State Guide specifies certain records to be maintained as procurement records. PC and/or INF Contracting Branches are responsible for creating and maintaining official procurement files for TPWD. The program staff are also responsible for maintaining certain records for contracts managed by that program.

The following procurement records are located in the files of the PC or INF Contracting Branches:

- All notices to proceed, stop work, or correct deficiencies
- Best and final offer correspondence and responses
- Contractor responses and evaluation determinations
- Ethics-related forms such as the Conflict of Interest or State Agency Uniform Nepotism Disclosure Form
- Executed contract and all amendments and change requests
- Solicitation document and list of contractor submittal requirements
- Vendor performance evaluations, along with any correspondence and corrective action plans that were issued to the vendor

The following must be included in the division contract manager's contract file:

- All contractor invoices, including backup documentation required to be submitted for contractor payment or progress payment, and any other supporting documentation
 - Some invoices will be maintained in AP and are not kept in the contract file.
- Copies of all general correspondence related to the contract
- Copies of all routine reports required by the contract, such as progress reports, pricing schedules, approval requests, and inspection reports
- Copies of all specifications, drawings, or manuals incorporated into the contract by reference
- Hard copies or electronic originals of all contractor data or report submittals
- List of all information furnished to the contractor, or copies thereof
- Schedule of compliance review, if applicable

TPWD Divisions can develop additional procedures for managing contracts, reviewing, and approving invoices, and monitoring contractor performance to best meet their organizational structure, program requirements, and business needs. These procedures should also include how the division will retain its contract files in accordance with the agency's [Records Retention Schedule \(RRS\)](#).

Consult with TPWD Records Management Branch staff for detailed retention requirements.

CHAPTER 16. TPWD TWO-PARTY CONTRACT PROGRAM

Authority to Contract

PC Branch oversees the two-party contract program, which refers to contracts entered into pursuant to [Gov't Code Ch. 771](#) (Interagency Cooperation Act), [Gov't Code Ch. 791](#) (Interlocal Cooperation Act), and [Parks and Wildlife Code §11.0171](#), which give TPWD the authority to directly contract with the federal government, another state agency or political subdivision, or a nonprofit organization. This list is not all-inclusive, as TPWD programs may also contract with other entities in accordance with state law. Many of these contracts take the form of MOAs and MOUs and despite the “two-party contract” name, may involve multiple parties.

These contracts may be for \$0 or up to any dollar amount. They may also include revenue or grant funds that are brought into TPWD. Contracts can be with one other party or multiple parties. The specifics of each contract will determine who reviews, what documentation is required, and who will execute the contract.

PC Branch

PC Branch serves as the agency’s coordinator for all contracts, except for land-related documents, state park concession contracts, construction contracts, and contracts for construction-related professional services (e.g., engineering or architectural services). Land-related documents, construction contracts, and contracts for construction-related professional services are coordinated through the INF Contracting Branch. State park concession contracts are coordinated through the State Parks Division.

Programs that Manage Contracts Outside of PC Branch

TPWD has authorized certain programs to manage contracts outside of the PC Branch. These include:

PROGRAM	CONTRACTS
INF Contracting Branch	Professional Services, Construction Contracts, and related Interagency/Interlocal Agreements
INF Land Conservation Program (LCP) Branch	Land Acquisitions, Land Related Contracts involving TPWD-owned land (e.g., Surface Use Agreement, User Access, Coastal Leases)
State Park Concession Program	Concessionaire Contracts/Leases on TPWD State Park property.

The above referenced programs are responsible for the oversight and management of these contracts. All contracts must remain in compliance with oversight reporting, contract management, and contract closeout procedures as outlined by agency, state, and federal guidelines.

Division Contract Manager

Each division that manages contracts must assign at least one (1) point-of-contact or administrator to work with the PC Branch for contract documents. The person to whom signature/approval authority is delegated pursuant to the Signature and Approval Authority Policy ([OP-03-03](#)) and the divisional point-of-contact for contract documents are responsible for ensuring that appropriate review, coordination, routing, and reporting take place.

Each division that manages contracts that exceed \$1 million must have at least one (1) employee designated as a contract manager with a Certified Texas Contract Manager (CTCM) certification.

Two-Party Contract Roles and Responsibilities

PC Contract Manager

- Coordinates evaluation of draft contract, Legal Division review, and execution.
- Serves as the point of contact for divisions on contractual matters.
- Ensures contract is entered in the TPWD financial system within 7 days of execution.
- Issues request for changes/amendments with other party's contract manager.
- Maintains contractual records and documentation and control of contract correspondence, contractual changes, and other documentation for project.
- Responsible for oversight reporting as required.
- Works in collaboration with program and Legal Division staff to resolve major issues and risks related to the contract or relationship with other party (e.g., dispute resolution).
- Maintains TPWD's contract database.
- Communicates ongoing issues and change management with other party's contract staff.
- Ensures contract close-out, extension, or renewal.

Program-Managed Contracts Outside of PC Branch – Division Contract Manager

- Coordinates evaluation of draft contract, Legal Division review, and execution.
- Serves as the point of contact for divisions on contractual matters.
- Issues request for changes/amendments with other party's contract manager.
- Maintains contractual records and documentation and control of contract correspondence, contractual changes, and other documentation for project.
- Responsible for oversight reporting as required.
- Manages major issues and risks related to the contract or relationship with other party (e.g., dispute resolution).
- Ensures encumbrance purchase order contract is entered in the TPWD financial system in a timely manner each Fiscal Year, as applicable.
- Communicates with other party's contract staff of ongoing issues and change management.
- Ensures contract close-out, extension, or renewal.

Division Contract Staff

- Act as division points of contact for contract documents and ensure appropriate review, coordination, signature, and routing on such documents takes place.
- Serve as the points of contact for division staff on contractual matters.
- Act as liaison between division employees and agency contract staff.
- If funds are involved, ensure that funds are encumbered for the given fiscal year.
- Monitor compliance by division employees with established procedures.
- Provide guidance on contract matters to division project coordinators, as needed.
- Ensure that signed contracts and amendments are communicated to all relevant parties.
- Communicate with agency contract staff regarding ongoing issues and change management.
- Handle inquiries and resolve issues raised by contractor when possible.
- Escalate unresolved issues to TPWD Contract Manager promptly.
- Monitor transaction compliance (e.g., milestones, deliverables, invoices).
- Verify contractor's invoice has been certified by project coordinator and match requirements are documented, as applicable.
- Coordinate receipt and payment through AP.

TPWD Project Coordinator

- Develops draft contract from approved proposal, if applicable, and submit through division contract staff to begin review process.
 - Note: Depending on the project, and if TPWD is performing the services, there are times when the contract is on the other party's contract template. In those cases, they will submit a draft contract that should be routed through division contract staff for review.
- Serves on graduate committee as official or unofficial member, if applicable.
- Serves as a co-author on all publications resulting from the project, at TPWD's discretion.
 - If the Project Coordinator does not agree with the interpretation of data or resulting publication, the Project Coordinator reserves the right to remove their name from the publication.
- Provides contractor with guidance and technical assistance, as needed, to promote effective contract performance.
- Monitors progress of the project to ensure it is meeting the scope of work and budget.
 - If scope or budget adjustments are needed, coordinate amendment through division contract staff.
- Invoice processing procedures (see [Appendix 5](#)):
 - Invoices are sent to the Project Coordinator.
 - Project Coordinator reviews the invoice and accompanying documentation to ensure the information is complete and accurate, including whether expenditures are appropriate for the project and work was completed within the contract term.
 - If there are problems or questions about the invoice or documentation the Project Coordinator will contact the performing party to resolve.

- Once the invoice is determined to be acceptable, the Project Coordinator signs it and forwards through the payment process.
- Communicates with agency contract staff regarding ongoing issues and change management.
- Ensures contract close-out and property disposition.

Legal Division

- Provides legal advice and assistance to TPWD staff regarding contract matters and relevant laws.
- Reviews and drafts agreements involving TPWD.
- Assists in the review and approval of contract and amendment templates and documents.
- Provides legal support for contract negotiations and disputes.
- Provides legal assistance for vendor performance concerns, including initiating remedies and defending disputes.

Federal Grants Staff

See Federal Aid Monitoring and Reporting Policy ([BF-19-01](#)) and [TPWD Federal Grants Guidance Manual](#).

- Oversee the fiscal elements of all grants awarded to TPWD and two-party, pass-through contracts funded by federal grants.
- Prepare, review, and/or approve each stage of grants from application submittal through the final close-out, in collaboration with division staff.
- Responsible for tracking, monitoring, reporting, and seeking reimbursement for a wide variety of federal grants and two-party federal pass-through contracts.

Two-Party Contract Initiation/Execution Procedures

For two-party Contracts that involve research or services to be performed, including pass through contracts:

- Project proposal is approved.
- TPWD Project Manager is assigned.
- Project Manager writes draft contract using template when possible (templates located at [O:\TPW Contract Database\Contract Forms Templates](#)).
- Project Manager submits contract electronically along with *Proposal*, *Budget*, *Contract Initiation Form*, and *Notice of Award grant letter (if federally funded)* to Division Contract Staff.
- Division Contract staff ensures all required forms are complete (e.g., State Agency Uniform Nepotism Disclosure Form) and submits to Federal Aid and Division Budget Coordinator (DBC) for budget approval.
- Once DBC and Federal Aid staff approve, the contract packet is sent electronically to PC Branch at tpwdcontracting@tpwd.texas.gov. The draft contract should be submitted in Microsoft Word format, and the budget should be submitted using Microsoft Excel.

- PC Branch coordinates internal review as required (i.e., Legal, Revenue, Federal Grants) as well as external review with other contracting party.
- If there are questions or clarifications needed, PC Branch coordinates with Division Contract Lead, Legal Division, and other contracting party, as necessary, to resolve.
- After all issues are resolved and the contract is approved by all parties, PC Branch coordinates contract execution externally with the other party and internally according to the Signature Authority and Approval Policy ([OP-03-03](#)).
- PC Branch sends an electronic copy of executed contract to the other party, Division Contract Lead, DBC, Federal Grants, and Revenue, if necessary.
- **Unless there is an approved Pre-Award clause in grant-funded contracts, services cannot begin until after contract execution. This includes reimbursable contract expenses as well as match.**

Two-Party Contract Report Requirements

Report Name	Dollar Amount	Applicable to	Process	Website Link
Contract Transparency Report	\$0 & over	All Contracts	Post contract to TPWD website through ePortal. Contracts are loaded each night so post to website should be done the day following CAPPS PO approval.	https://tpwd.texas.gov/business/bidops/contracts/
SB 1487 (\$25K Club)	\$25,000 & over	State Grants	Enter data in report on network drive.	http://tpwd.texas.gov/publications/pwdpubs/media/25K_Contracts.pdf
Federal Funding Accountability and Transparency Act (FFATA)	\$25,000 & over	Federal Grants Pass-through Contracts	Send an email to FR.Grants@tpwd.texas.gov and request they add the contract to FFATA.	Email to: FR.Grants@tpwd.texas.gov
LBB	\$50,000 & over	All Contracts	Enter contract information in LBB database.	https://lbb.texas.gov/Contract_Reporting.aspx
SB 3430 (\$100K Club)	\$100,000 & over	All Contracts	This is an automated report.	https://tpwd.texas.gov/publications/pwdpubs/media/

				100K transparency report.pdf
Attestation Letter	\$1 million for non-competitive, an emergency contract of \$10 million & over for competitive contracts	All Contracts	Drafted by Division Contract Staff/project coordinator and submitted on latest Attestation template available on network drive.	Also see Appendix 16 for template, which lists the requirements
Major Contract Approval Form and Non-disclosure Statement	\$1 million & over	All Contracts	Non-disclosure form must be signed by everyone involved in the contract, plus Division Directors, Legal, PC Director, COO, and Executive Director.	O:\TPW Contract Database\Contract Forms Template

Additional contract templates can be found at: [O:\TPW Contract Database\Contract Forms Templates.](#)

APPENDICIES

Appendix 1: Definitions

Appendix 2: Standard Operating Procedures for Contract Management Within Each Program

Appendix 3: Solicitation/Contract Checklists

Appendix 4: Checklist for Monitoring Contracts

Appendix 5: Examples of Invoice Processing Procedures

Appendix 6: TPWD Risk Assessment Tool

Appendix 7: TPWD Risk Management Plan

Appendix 8: Specification Writing Matrix

Appendix 9: Administrative Review Checklist

Appendix 10: Bid Tabulation Template

Appendix 11: Vendor Performance Report (VPR)

Appendix 12: Proprietary Justification Memo Template

Appendix 13: Emergency Justification Form

Appendix 14: Contract Close-out Checklist

Appendix 15: Two-Party Contract Close-out Memo

Appendix 16: LBB Attestation Letter Template

Appendix 1 - Definitions

Addendum: An addition, change, or supplement to a solicitation document issued prior to the opening date.

Advertise: To make a public announcement of the intention to purchase goods or services.

Acceptance Date: Occurs when goods/services have been fully inspected and formally accepted. This is the date that approval to process receipt is received. For Vendor Performance Tracking System requirements, the Acceptance Date will initiate the 30-day report requirement.

Amendment: Written addition or change to a contract. (See Change Order and Modification)

Appropriation: Legislative authorization to expend public funds for a specific purpose.

Assignment: Transfer of contractual rights from one (1) party to another party. This will require an amendment to the contract.

Attestation Letter: Letter required for contracts valued at \$10 million or more, \$1 million or more if not competitively awarded, or \$1 million emergency contract.

Best Value: Factors to be considered in determining lowest overall cost and highest overall value to the State when making certain purchases. Refer to Gov't Code §2155.074 (non-IT-related) and Gov't Code §2157.003 (IT-related).

Bid: An offer to contract with the State, submitted in response to a bid invitation. Bids are usually non-negotiable.

Bid Opening: The public opening of bids, in which the names and prices of the bidders responding to a bid solicitation are publicly read and recorded. (See Proposal Opening)

Bid Tabulation: The recording of bids and bid data that are submitted in response to a solicitation. The bid tabulation is used for comparison, analysis, and recordkeeping.

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

Bidders List: A list of potential contractors who have expressed an interest in doing business with the State of Texas. (See Centralized Master Bidders List)

Biennium (State of Texas): A period of 24 consecutive months, beginning on September 1 of each odd numbered year, in which the Texas Legislature appropriates funds. Example: September 1, 2019 through August 31, 2021.

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

Centralized Accounting Payroll Personnel System (CAPPS) Financials: The statewide automated financial system that is used to manage requisitions, purchase orders, receiving information, asset information, payables, budget, and general ledger.

Centralized Master Bidders List (CMBL): A list maintained by the Texas Comptroller of Public Accounts (CPA) containing the names and addresses of prospective bidders.

Change Order: A written addition or change to a contract.

Class and Item: The classification system from the NIGP Commodity Book that identifies items and services.

Consultant: A person that provides or proposes to provide a consulting service.

Consulting Services: Practice of studying and advising a state agency in a manner not involving the traditional employer/employee relationship (Gov't Code §2254.021) (See Major Consulting Services Contract).

Contract: Any written agreement between TPWD and any other party in which TPWD or another party commits to taking any action or disbursing or receiving anything of value. This includes but is not limited to purchasing contracts, memoranda of agreement, memoranda of understanding, letters of agreement, surface use agreements, easements, leases, State Parks concession contracts, construction contracts, land contracts, and recreational grants.

Contract Advisory Team (CAT): A team created to assist agencies in improving contract management practices. CAT reviews contracts of \$5 million or more. CAT consists of members from each of the following agencies: CPA, Department of Information Resources (DIR), Health and Human Services Commission (HHSC), Office of the Governor, Texas Facilities Commission (TFC), and Department of Public Safety (DPS).

Contract Manager: A person who is: 1) employed by a state agency, 2) has significant contract management duties for the state agency as determined by the agency in consultation with the State Auditor's Office (Gov't Code §2262.001).

Contract Period: 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 has been terminated. The contract period includes any exercised renewal and extension periods.

Contract Record: The complete set of information for a contract, any hard-copy or electronic files, and any contract information contained in other systems. The terms "contract record" and "contract file" are used interchangeably throughout this Guide.

Contract Value: The contract amount to be expended or received by TPWD, in any form, including but not limited to money, land, rights, materials, goods, or services, throughout the contract term, to include any value that is donated or is a match requirement per the terms of the contract.

Contractor: An entity or individual that has a contract with the State of Texas. This term is often

used interchangeably with the term “vendor,” but a contractor can also refer to a contracting party for a non-purchasing contract.

Corrective Action Plan: Specific steps to be taken by a contractor to resolve identified deficiencies and to address TPWD’s concerns about 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 (1) or more than one (1) 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.

Desk Review: A review of a contractor’s service delivery or business operations that takes place away from the contractor’s administrative or service delivery sites, using materials collected by or submitted by the contractor. The scope of the review is at the discretion of TPWD.

Electronic State Business Daily (ESBD): The electronic marketplace where State of Texas bid opportunities over \$25,000 are posted.

Emergency: A purchase made when an unforeseen and/or sudden unexpected occurrence creates a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

Extension: The continuation of the contract beyond the initial contract period specified in the procurement or contract document. An extension is processed as an amendment.

Federal Award: Federal financial assistance that a non-federal entity receives directly from a federal awarding agency (2 CFR §200.1).

Financial Audit: An independent audit to establish the reliability of an entity’s financial information by determining whether the information is presented fairly in accordance with recognized criteria and performed in accordance with applicable auditing standards. Financial audits performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) also provide users information regarding the entity’s internal controls and compliance with laws, regulations, and provisions of contracts and grant agreements as they relate to financial transactions, systems, and processes.

Fiscal Monitoring: A review of a contractor’s financial operations, which may include a 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. This activity is typically conducted by staff involved in program operations.

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.

Grant: An award of assistance, including cooperative agreements, in the form of money, equipment, supplies, or other resources paid or furnished by the state or federal government to an eligible grantee to carry out a program in accordance with the terms of the grant award and all applicable state and federal laws, rules, and requirements.

Historically Underutilized Business (HUB): A business with its principal place of business in this state and in which the owner has a proportionate interest and demonstrates active participation in the control, operation, and management of the business and is a member of a recognized economically disadvantaged group such as Black Americans, Hispanic Americans, women, Asian Pacific Americans, Native Americans, and veterans (Gov't Code §2161.001).

Indirect Cost: A cost incurred for a common or joint purpose benefiting more than one (1) cost objective, and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. Indirect cost allocation is one (1) method of cost allocation.

Invitation for Bids (IFB): A procurement process with a written solicitation requesting submission of competitive sealed bids. The IFB is used when the requirements are clearly defined, negotiations are not necessary, and price is the major determining factor for selection.

Life Cycle Costing: A procurement technique that considers operating costs, maintenance costs, acquisition price, and other costs of ownership in the award of contracts to ensure that the item acquired will result in the lowest total ownership cost during the time the item's function is required.

Liquidated Damages: A specified contract provision that entitles the State to demand a set monetary amount determined to be a fair and equitable repayment to the State for the loss of service due to the vendor's failure to meet the contract requirements.

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

Major Consulting Services Contract: A consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000.

Major Contract: A contract that has a value of at least \$1 million during the original term of the contract, not including any renewal periods.

Memorandum of Agreement (MOA) and Memorandum of Understanding (MOU): Forms of written agreements that are generally used when contracting with other governmental entities or some non-profits. While the terms are sometimes used interchangeably, MOAs are generally used to document a more formal agreement between the parties and may involve the transfer of funds. MOUs are generally used to document a mutual understanding between the parties and generally do not involve an exchange of funds. Whether an MOA or MOU is legally enforceable depends on the presence or absence of certain legal elements within the documents.

Modification: Written addition or change to a contract.

Monitoring: A systematic review of a contractor's records, business processes, deliverables, and activities to ensure compliance with the terms and conditions of the contract. Monitoring includes planned, ongoing, periodic, or unscheduled activities. The goal of contract monitoring is to protect the health and safety of clients that receive services, ensure delivery of quality goods and services, and protect the financial interest of the State.

Monitoring Plan: Documents the monitoring activities required for individual contracts and tracks the status and progress of monitoring requirements.

Negotiations: A consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. In a contractual sense, negotiation means the "dealings conducted between two (2) or more parties for the purpose of reaching an understanding."

Offeror: An entity submitting a proposal in response to a solicitation. (See Bidder or Respondent)

Opening Date: The day and time, after submission of proposals, when sealed bid responses are opened.

Payment Bond: A deposit, pledge, or contract of guaranty supplied by a contractor to protect the State against loss due to the contractor's failure to pay subcontractors and material suppliers.

Performance Bond: A deposit, pledge, or contract of guaranty supplied by a contractor to protect the State against loss due to the contractor's inability to complete the contract as agreed.

Posted Date: The date a procurement document is made available online to the public.

Professional Services: Services directly related to the professional practices specified by the Professional Services Procurement Act (Gov't Code Ch. 2254).

Proposal: An executed offer submitted by a respondent in response to a Request for Proposals (RFP) and intended to be used as a basis to negotiate a contract award.

Proposal Opening: The public opening of proposals, in which the names of the respondents to a solicitation are publicly read and recorded. No prices are divulged at a proposal opening as these types of solicitations are subject to negotiation.

Proprietary: Products or services manufactured or offered under exclusive rights of ownership, including rights under patent, copyright, or trade secret law. A product or service is proprietary if it has a distinctive feature or characteristic which is not shared or provided by competing or similar products or services (34 TAC §20.25(45)).

Purchase Order (PO): A purchase contract issued to a vendor that indicates types, quantities, and agreed-to prices for products or services the vendor will provide to TPWD and references the terms and conditions that govern the purchase.

Recipient: A non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program. The term recipient does not include sub-recipients (2 CFR §200.1).

Renewal: When an existing contract is renewed for an additional time period in accordance with the terms and conditions of the original contract.

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.

Request for Information (RFI): A general invitation to the vendor community requesting information for a potential future solicitation. The RFI is typically used as a research and information gathering tool for preparation of a solicitation.

Request for Offers (RFO): A solicitation for automated information systems (which may include a request for hardware, software and other IT goods and services) requesting the submittal of an offer in response to the required scope of services, including a cost proposal. Negotiations are allowed between a proposer and the issuing agency.

Request for Proposals (RFP): A solicitation requesting submittal of proposals in response to the required scope of services. It usually includes some form of a cost proposal. The RFP process allows for negotiations between a proposer and TPWD.

Request for Qualifications (RFQ): A solicitation requesting submission of qualifications or specialized expertise in response to the scope of services required. An RFQ is typically used to procure professional services, and no pricing is solicited.

Request for Quotes: An informal solicitation document requesting pricing on small dollar purchases.

Responsive: When a bid response complies with all material aspects of the solicitation document, including submission of all required documents.

Respondent: An entity submitting a proposal in response to a solicitation. (See Bidder or Offeror)

Responsible: When the respondent has the capability to fully perform and deliver in accordance with the contract requirements. TPWD may include past performance, financial capabilities, and business management as criteria for determining if a bidder or proposer can satisfy the contract requirements. For purposes of the reciprocal preference law, a governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident bidder underbids the lowest bid submitted by a responsible resident bidder by the amount authorized by statute.

Requisition: A purchase request entered into the TPWD financial system that uses an electronic workflow process to approve the amount and budget to encumber the funds and route for purchase order processing and issuance.

Risk Assessment: The ongoing process of identifying and determining the risk that a contract poses to the State. TPWD uses the Risk Assessment Tool to assess a variety of factors that indicate potential risk to TPWD contracts and prioritizes contract monitoring activities accordingly to prevent and mitigate risk.

Scope of Work: See Statement of Work.

Service: The furnishing of labor by a contractor that may not include the delivery of a tangible end product. In some cases, services and goods may be combined, such as film processing. In these instances, TPWD determines whether labor or goods is the primary factor. In the case of film processing, the labor to process the film is the primary factor; therefore, film processing is considered a service.

Solicitation: A document requesting submission of bids or proposals for goods or services in accordance with the advertised specifications.

Specification: Any description of the physical or functional characteristics or of the nature of supplies or service to be purchased. It may include a description of any requirements for inspecting, testing, or preparing supplies or services for delivery.

Statement of Work (SOW): The detailed description of what TPWD is purchasing and what the contractor is required to provide in order to satisfactorily perform the work.

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

Subrecipient: A non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.

Surety: A person or entity providing a bond to a contractor to indemnify the State against all direct and consequential damages suffered by failure of the contractor to perform the contract and to pay all lawful claims of subcontractors, materials suppliers, and laborers as applicable.

Term Contract: A contract that addresses the estimated requirements for several agencies for supplies or services that are used repeatedly or in significant quantities over a period of time. TPWD places orders directly with term contract vendors for the quantity needed.

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 (e.g., price per ton, per labor hour, or per foot).

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

Vendor Performance Tracking System (VPTS): A system maintained by the CPA that provides the State procurement community with a comprehensive tool for evaluating vendor performance to reduce risk in the contract awarding process. State agencies are required to submit VPRs in connection with certain contracts and check the VPTS prior to awarding contracts.

Appendix 2 - Recommended Standard Operating Procedures for Contract Management Within the Each Program

- Routing Process
- Invoice Review Process
- Recordkeeping Requirements
- Auditing of Contract Deliverables and Performance Measures
- How to Perform Desk Reviews and/or Site Visits
- Fiscal Monitoring
- Training on State and Agency Procurement and Contract Management Policies and Procedures
- Basic Procurement Process Outline
- Authority and Responsibility Designations
- Cost/Price Analysis
- Funding Change/Approval – (e.g., the grant manager and contract manager may want to sign for any funding changes internally that do not require an amendment)

Appendix 3 - [Solicitation/Contract Checklists](#)

Appendix 4 - Checklist for the Monitoring Contracts

This check list has been created to help contract/project managers ensure they have included all the necessary monitoring criteria in their solicitation and/or contract.

Have you included or outlined the following?

1. A communication plan, including an escalation plan for disputes
2. An invoice procedure that includes the following information:
 - Format
 - Frequency
 - Necessary supporting documents
3. The roles and responsibilities for both TPWD and the contractor
4. The performance measures
5. A deliverable/reporting process that includes the following:
 - Format
 - Due dates
 - Frequency
 - Acceptance criteria
6. Standards for monitoring practices
7. Enhanced monitoring practices (if necessary) and why they would be necessary
8. A close-out process
9. The final acceptance criteria of all contractual obligations
10. A contractor evaluation process

Appendix 5 - Example of Invoice Processing Procedures

Invoice Review Process

The Texas Prompt Payment Act (Gov't Code Ch. 2251) establishes when payments are due. The law states that payments for goods and services are due within 30 days after the goods are provided, the services completed, or a correct invoice is received, whichever is later (with limited exceptions). As such, it is imperative that invoices are processed in a timely manner to avoid interest being accrued.

Project Manager:

1. Receive invoice package (hard copy or electronically)
 - Invoice may be sent to the project manager by the contract manager or the Vendor
2. Record date received
3. Review the invoice and supporting documentation
 - Project Manager must complete the review within 10 calendar days after receipt
 - Verify expenses add up correctly and are within the approved budget
 - Ensure expenses are allowable
 - Personnel/Salary
 - Travel: use of state rates; expense information should include costs for meals, lodging, transportation, purpose, location of travel
 - Supplies: list out items purchased, and number purchased when applicable
 - Equipment and Subcontracts: receipts attached, updated equipment inventory
 - Fringe and Indirect charges are considered
 - Verify deliverables are received and approved for the applicable period
 - Confirm if this is the final invoice to be submitted for Fiscal Year and/or Contract period
4. Sign invoice and send invoice to the division contract manager or appropriate division staff for entry into TPWD financial system

Contract Manager:

1. Receive invoice
 - Verify contract or agreement requirements
 - Verify invoice approved by Project Manager,
 - Review cumulative invoices and contract balance for accuracy.
2. Review all invoice documents
 - Ensure invoice documentation is complete and numbers add up
 - Supporting documents match invoice
 - Contract budget matches
 - Receipts for equipment and contractual expenses are included
 - If deficiencies are found, see *Invoice Deficiencies* below

3. Once invoice review is complete and no deficiencies are found, process the invoice in the TPWD financial system
4. Send invoice to Federal Grants to document match, if applicable

Invoice Deficiencies

1. Project Manager

When the Project Manager identifies deficiencies, the following should occur:

- Communicate the issue(s) identified for correction by email to the contract manager
- Provide necessary language for the contract manager to include in the rejection notice
- Itemize the information needed (for example: the deliverables for scope of work, task 2, have not been received)

2. Contract Manager

When the contract manager identifies deficiencies, the following should occur:

- Before contacting the contractor to address deficiencies or request additional information or documentation, coordinate with the Project Manager to discuss the invoice review and possible rejection
- The invoice review should be complete before contacting the contractor to avoid multiple calls or emails.

3. Invoice Rejection

After coordinated review by contract manager and Project Manager, the invoice will be rejected as follows:

- Contract Manager will:
 - consolidate all review comments;
 - contact contractor to address the deficiencies or request additional information;
 - follow up the conversation with an email to reiterate requested items
 - The email should be sent to the contractor and a copy to the Project Manager.
 - The contract manager should request the contractor provide a complete response by required due date;
 - place rejected invoice in the contract file along with a copy of the correct invoice when completed; and
 - coordinate with Project Manager for final updates and approval.

Appendix 6 - [TPWD Contract Risk Assessment Tool](#)

TPWD CONTRACT RISK MANAGEMENT PLAN

<PROJECT NAME>

Version Number: 1.0

Version Date: [<mm/dd/yyyy>](#)

Notes to the Author

[This document is a template of a Risk Management Plan document for a contract. The template includes instructions to the author, boilerplate text, and fields that should be replaced with the values specific to the contract.]

- *Blue italicized text enclosed in square brackets ([text]) provides instructions to the document author, or describes the intent, assumptions and context for content included in this document.*
- *Blue italicized text enclosed in angle brackets (<text>) indicates a field that should be replaced with information specific to a particular contract.*
- *Text and tables in black are provided as boilerplate examples of wording and formats that may be used or modified as appropriate to a specific contract. These are offered only as suggestions to assist in developing contract documents; they are not mandatory formats.*

When using this template, the following steps are recommended:

1. *Replace all text enclosed in angle brackets (e.g., <Project Name>) with the correct field document values. These angle brackets appear in both the body of the document and in headers and footers.*
2. *Modify boilerplate text as appropriate for the specific contract.*
3. *To add any new sections to the document, ensure that the appropriate header and body text styles are maintained. Styles used for the Section Headings are Heading 1, Heading 2 and Heading 3. Style used for boilerplate text is Body Text.*
4. *To update the Table of Contents, right-click on it and select "Update field" and choose the option - "Update entire table".*
5. *Before submission of the first draft of this document, delete this instruction section "Notes to the Author" and all instructions to the author throughout the entire document.*

VERSION HISTORY

[Provide information on how the development and distribution of the Contract Risk Management Plan will be controlled and tracked. Use the table below to provide the version number, the author implementing the version, the date of the version, the name of the person approving the version, the date that particular version was approved, and a brief description of the reason for creating the revised version.]

Version Number	Implemented By	Revision Date	Approved By	Approval Date	Description of Change
1.0	<Author name>	<mm/dd/yyyy>	<name>	<mm/dd/yy>	<description of change>

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INTRODUCTION

1.1 PURPOSE OF THE CONTRACT RISK MANAGEMENT PLAN

A risk is an event or condition that, if it occurs, could have a positive or negative effect on a project's objectives. Contract Risk Management is the process of identifying, assessing, responding to, monitoring and controlling, and reporting risks. This Contract Risk Management Plan defines how risks associated with the <Project Name> contract will be identified, analyzed, and managed. It outlines how contract risk management activities will be performed, recorded, and monitored throughout the lifecycle of the contract and provides templates and practices for recording and prioritizing risks by the Risk Manager and/or Risk Management Team. Contract Risk Management Procedure

CONTRACT RISK MANAGEMENT PROCEDURE

2.1 PROCESS

The contract manager working with the project team and project sponsors will ensure that contract risks are actively identified, analyzed, and managed throughout the life of the contract. Risks will be identified as early as possible so as to minimize their impact. The steps for accomplishing this are outlined in the following sections. The contract manager will serve as the Contract Risk Manager for this project.

2.2 ROLES AND RESPONSIBILITIES

Role	Responsibilities
Core Project Team	The Core Project Team is responsible for identifying the contract risks, the dependencies of the risk within the project, the context and consequence of the risk. They are also responsible for determining the impact, timing, and priority of the risk as well as formulating the contract risk statements.
Risk Manager or Project Manager (PM)	The Risk Manager or PM is a member of the Core Project Team. The Risk Manager or PM determines if the Contract Risk is unique, identifies risk interdependencies across contracts, and verifies if risk is internal or external to project. During the life of the contract, they continually monitor the project for potential risks.

Contract Manager	Coordinates Contract Risk Management and Reporting requirements with the Project Manager, Core Project Team, Procurement Staff, and Legal, as appropriate. The contract manager is responsible for ensuring all relevant parties are kept apprised of contract risks and notified immediately if additional monitoring or intervention is needed to reduce or eliminate a risk.
Risk Owner(s)	The risk owner determines which contract risks require mitigation and contingency plans; he/she generates the risk mitigation and contingency strategies. The risk owner is responsible for monitoring and controlling and providing updates to the Contract Manger concerning the status of the risk throughout the contract lifecycle. The risk owner can be a member of the project team.
Other Key Stakeholders	The other stakeholders assist in identifying and determining the context, consequence, impact, timing, and priority of the risk.

2.3 CONTRACT RISK IDENTIFICATION

Contract Risk identification will involve the project team, appropriate stakeholders, and will include an evaluation of environmental factors, organizational culture and the project management plan including the project scope, schedule, cost, or quality. Careful attention will be given to the project deliverables, assumptions, constraints, cost/effort estimates, resource plan, and other key project documents.

Methods for Contract Risk Identification

The following methods will be used to assist in the identification of risks:

- Brainstorming
- Interviewing
- SWOT (Strengths, Weaknesses, Opportunities and Threats)
- Diagramming
- Etc.

2.4 CONTRACT RISK ANALYSIS

All contract risks identified will be assessed to identify the range of possible outcomes. Contract risks will be prioritized by their level of potential impact to the project.

Qualitative Contract Risk Analysis

The impact of occurrence for each identified risk will be assessed by the contract manager, with input from the project team using the following approach:

Impact

- High – Risk that has the potential to greatly impact project cost, project schedule or performance
- Medium – Risk that has the potential to slightly impact project cost, project schedule or performance
- Low – Risk that has relatively little impact on cost, schedule or performance

2.5 CONTRACT RISK RESPONSE PLANNING

Each major contract risk (those determined to be a High or Medium Impact) will be assigned to a risk owner for monitoring and controlling purposes to ensure that the risk will be appropriately monitored.

For each major contract risk, one of the following approaches will be selected to address it:

Avoid – Eliminate the threat or condition or to protect the project objectives from its impact by eliminating the cause

Mitigate – Identify ways to reduce the probability or the impact of the risk

Accept – Nothing will be done

Contingency – Define actions to be taken in response to risks

Transfer – Shift the consequence of a risk to a third party together with ownership of the response by making another party responsible for the risk (buy insurance, outsourcing, etc.)

For each risk that will be mitigated, the project team will identify ways to prevent the risk from occurring or reduce its impact or probability of occurring. This may include prototyping, adding tasks to the project schedule, adding resources, etc. Any secondary risks that result from risk mitigation response will be documented and follow the risk management protocol as the primary risks.

For each major risk that is to be mitigated or that is accepted, a course of action will be outlined in the event that the risk does materialize in order to minimize its impact.

2.6 CONTRACT RISK MONITORING, CONTROLLING, AND REPORTING

The level of risk on a contract will be tracked, monitored and controlled and reported throughout the contract lifecycle.

Contact Risks will be assigned a risk owner(s) who will track, monitor and control and report on the status and effectiveness of each risk response action to the Risk Management Team.

All project change requests will be analyzed for their possible impact to the project risks.

As Contract Risk Events occur, the list will be re-prioritized during reviews and the contract risk management plan will reflect any and all changes to the risk lists including secondary and residual risks.

For all contracts determined to be high risk an Executive Contract Board will be established. The board will consist of executive representatives from the appropriate divisions and legal. The Executive Contract Board will be notified of important changes to contract risk status as they are identified and summarized at regular board meetings.

The Contract Manager will:

- Review, reevaluate, and modify the probability and impact for each contract risk item as needed and no less than quarterly.
- Analyze any new contract risks that are identified and add these items to the risk list (or risk database).
- Ensure contract risks that have been identified are assigned a Risk Owner and are monitored and controlled.
- Ensure Contract Risk activities are recorded on the Contract Risk Management Log [<full network path location>](#).
- Escalate issues/ problems to management

The Risk Owner will:

- Help develop the contract risk response and risk trigger and carry out the execution of the contract risk response, if a risk event occurs.
- Participate in the review, re-evaluation, and modification of the probability and impact for each contract risk item.
- Identify and participate in the analysis of any new contract risks that occur.
- Escalate issues/problems to the contract manager that,
 - Significantly impact the contract or trigger another risk event to occur.
 - Require action prior to the next review
 - Contract Risk strategy is not effective or productive causing the need to execute the contingency plan.

2.7 RISK MONITORING PLAN – ENHANCED MONITORING DETERMINATION

If at any time during the contract risk assessment process or during each phase of the contract, enhanced monitoring may need to occur for those contracts considered High dollar value and High risk. An enhanced monitoring determination will be made using the following criteria:

- Past performance
- Number of violations of provisions and escalations
- Type of Contract
- Value of Contract
- Subject matter – New area vs historical experience
- Number of constituents served
- Key staff turnover (contractor)
- Audit findings
- Results of Site Visits, Desk Reviews or 3rd party reviews
- Vendor experience and history
- Time schedules

- Complexity
- Amendments and/or change orders
- Other factors

Enhanced monitoring techniques or actions may include:

- Monitoring more frequently or more in-depth reviews
- Increased Communication between TPWD & Vendor
- Invoke termination or penalty clauses
- Require independent or 3rd party reviews
- Reporting to Executive Contract Board

2.8 CONTRACT RISK MANAGEMENT LOG

A Contract Risk Management Log will be generated, incorporated into this Contract Risk Management Plan as an attachment and will be stored electronically in the contract file located at [<file location>](#).

The Contract Risk Management Log shall track the following:

- Current Status of Risk
 - Open – This risk is currently open but is not yet an issue
 - Closed – The Risk is no longer considered an active contract or project threat and can be closed with or without resolution
- Risk Impact – The potential impact of the risk if it did become an issue.
 - High: Risk that has the potential to greatly impact project cost, project schedule or performance.
 - Medium: Risk that has the potential to slightly impact project cost, project schedule or performance.
 - Low: Risk that has relatively little impact on cost, schedule or performance.
- Probability of Occurrence – The estimated probability that the risk will at some point become an issue.
- Risk Description
- Project Impact – Description of the potential project impact as a result of the risk
- Trigger – The triggers that would indicate the requirement to execute contingency plan.
- Risk Response Strategy – Preferred Risk Response Strategy
 - Acceptance
 - Avoidance
 - Contingency
 - Mitigation
 - Transfer
- Response Strategy – An appropriate response strategy to prevent the risk from becoming an issue.
- Contingency Plan – Description of the risk contingency plan.

CLOSING A CONTRACT RISK

A contract risk will be considered closed when it meets the following criteria:

- Risk is no longer valid
- Risk event has occurred
- Risk is no longer considered a risk
- Risk closure at the direction of the contract manager, project manager, and/or risk owner and approved by the Executive Contract Board.

CONTRACT RISK MANAGEMENT PLAN APPROVAL

The undersigned acknowledge that they have reviewed the *<Project Name>* Contract Risk Management Plan and agree with the information presented within this document. Changes to this Contract Risk Management Plan will be coordinated with, and approved by, the undersigned, or their designated representatives.

[List the individuals whose signatures are desired. Examples of such individuals are Division Director, Project Manager, Contract Manager, and any appropriate stakeholders. Add additional lines for signature as necessary.]

Signature: _____ Date: _____
Print Name: _____
Title: _____

Signature: _____ Date: _____
Print Name: _____
Title: _____

Signature: _____ Date: _____
Print Name: _____
Title: _____

ATTACHMENT A - RISK MONITORING PLAN

Based on Identified High Risk Areas Contract Administration Efforts will be focused in the following areas:

Risk Owner	Contract Risk to be Monitored	Enhanced Monitoring Plan

ATTACHMENT A - RISK MONITORING PLAN – example TPWD State Park Business System

Based on Identified High Risk Areas Contract Administration Efforts will be focused in the following areas:

Risk Owner	Contract Risk to be Monitored	Enhanced Monitoring Plan
Project Manager (PM) – John Smith	Vendor Performance	Enhanced Project Monitoring: Quarterly progress reports required from Contractor and PM will perform site visits to monitor status of project.
PM – John Smith Contract Manager (CM) – Jenn Jones	Compliance with financial provisions and delivery schedules	PM will sign off on all invoices before payment to ensure services being billed were completed in accordance with terms of the contract.
PM – John Smith CM – Jenn Jones	Project Schedule – New System must be live no later than 1/1/2017	Enhanced Project Monitoring; Liquidated Damages – assessment of daily penalties if vendor is unable to meet project schedule
IT Project Manager – Lori Williams	Technology Integrity and Reliability	Monitoring – Site Visits, Desk Reviews, System Testing before implementation, 3 rd party reviews

Appendix 8 – Specification Writing Matrix

Specification Matrix			
Item Description: OUTBOARD MOTOR FOR 25 FT FIBERGLASS BOAT			
Make	General Specs	Mercury	Yamaha
Model #		300 Pro XS	F300
Links		https://www.mercurymarine.com/en/us/engines/outboard/pro-xs/175-300hp/	https://yamahaoutboards.com/en-us/home/outboards/350-150-hp/v6-4-2l
HP	300 HP	300	300
Engine type	V6 or V8	V8	V6
Shaft length	Approx. 20-25"	20, 25	25, 30, 35
Displacement (liter)	Approx. 4L to 4.6L	4.6L	4.2L
CARB Rating*	3-Star	3-Star	3-Star
Gear shift	Forward, neutral, reverse (F-N-R)	F-N-R	F-N-R
Rotation	Standard (Left Hand)	Both LH and RH (counter rotation) available	Both LH and RH (counter rotation) available
RPM	Full throttle range, between 5000 & 6300	5600-6200	5000-6000
Fuel induction	EFI	EFI with advanced range optimization	EFI
Starting	Electric	Electric Start with SmartStart Protection	Electric
Steering	Power, integrated, electric actuation, or remote	Hydraulic (standard) Power (optional)	Integrated, Electric Actuation
Dry weight (lbs.)	Between 505 and 660	505	562
Color	Black or gray	Phantom Black	Gray
Warranty	Standard mfr	3 year limited (gov't)	3 year limited


Appendix 9 - [Administrative Review Checklist](#)

Appendix 10 – [Bid Tabulation Template](#)

Appendix 11 - [Vendor Performance Report Form](#)

Use the Vendor Performance Report Form as referenced in the Vendor Performance Reporting Policy ([BF-21-01](#)).

Appendix 12 - [Proprietary Justification Memo Template](#)

	OFFICE MEMORANDUM				
	Date:	COORDINATION — ROUTING			
		Div.	Name	Initial	Date
To: Purchasing Director From: Subject: Proprietary Purchase Justification					
	Return To:				
<p>Attached is a purchase order to Vendor Name in the amount of \$_____ for Description of Item or Service. As the specifications are proprietary to one manufacturer/provider, Manufacturer/Provider Name, the following information is submitted in accordance with Government Code, Title 10, Subtitle D, and Section 2155.067.</p> <p>In this Paragraph provide the following information:</p> <ol style="list-style-type: none"> 1. Describe the product or service being proposed for purchase, and provide a statement regarding the business need and planned use; 2. Explain why the specifications for the product or service are written as they are, and why those specifications are necessary to accomplish the goal for the procurement; 3. State the reason that no other competing products or services will satisfy TPWD’s need and provide examples of the technical, practical, or operational risks that would occur if competing products or services are selected; and 4. Specify whether the purchase is sole source or competitive. <p>Approved: _____</p> <p style="text-align: center;">Purchasing Director, CTCD CTCM Date</p>					
4200 Smith School Road Austin, TX 78744-3291 512-389-4800 www.tpwd.state.tx.us		TPWD MISSION: To manage and conserve the natural and cultural resources of Texas and to provide hunting, fishing and outdoor recreation opportunities for the use and enjoyment of present and future generations.			

Appendix 13 – [Emergency Justification Form](#)



EMERGENCY PURCHASE JUSTIFICATION

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.

All emergency purchases shall be made in accordance with applicable laws, the **Texas Procurement and Contract Management Guide** requirements, and the **TPWD Purchasing & Contracting Policy (BF-07-02)**.

I REQUEST THAT THE REFERENCED PURCHASE BE DECLARED AN EMERGENCY PURCHASE.

Emergency Date:

Location of Emergency:

Is Facility Insured: Yes No Unknown - if Unknown, contact the agency Risk Manager.

If yes, contact the agency Risk Manager to determine next steps regarding submitting an insurance claim.

Proposed supplier name and address, if applicable:

Estimated cost of goods or services:
\$

Describe the emergency.

What caused the emergency situation to arise?	
Describe the response to situation. For example, what did staff and/or supplier do?	
Explain your process for identifying the selected supplier. For example, provide names of suppliers contacted, names of individuals who provided quotes, and amounts quoted.	
If selected supplier was not the low bidder, explain why the decision was made to utilize other than low bidder.	
List any other facts supporting the use of a non-competitive process.	

STATEMENT OF NEED AND CERTIFICATION:

My recommendation for an emergency purchase is based upon an objective review of the situation and appears to meet legal criteria and to be in the best interest of the agency. I know of no conflict of interest on my part or personal involvement in any way with this request. No gratuities, favors, or compromising action have taken place.

I hereby certify that this justification for an emergency purchase is accurate and complete to the best of my knowledge and belief.

Signature (Requestor) Date

Printed Name: _____ Title: _____

DIVISION DIRECTOR

Signature Date

Printed Name: _____

AUTHORIZED APPROVER

Based upon the above, I authorize the emergency purchase of the goods or services specified.

Signature Date

Printed Name: _____

Appendix 14 – [Contract Close-out Checklist](#)

Appendix 15 - Two-Party Contract Close-out Memo

Appendix 16 - LBB Attestation Letter Template

Remove this after reading: Attestation letter required by Article IX, Section 7.12, General Appropriations Act (2022-23 biennium) for contracts valued at \$10 million or more, or \$1 million or more, if not competitively awarded. Please use this template with TPWD letterhead and provide contract documents, including all appendices and attachments; the solicitation; and, if applicable, a finding of fact for major consulting contracts from the Governor's Office in accordance with Government Code, Section 2254.028(a)(3).

Month Day, 2021

Mr. Jerry McGinty
Director, Legislative Budget Board
Robert E. Johnson Building, 5th Floor
1501 North Congress Avenue
Austin, Texas 78701-1200

Dear Mr. McGinty:

Pursuant to Article IX, Section 7.12 of the General Appropriations Act (2022-2023 Biennium), the Texas Parks and Wildlife Department (TPWD) hereby notifies the Legislative Budget Board (LBB) that TPWD intends to or has entered into the following contract.

A. Contract Information

Attached is a summary of the purpose of and major deliverables for the following contract, along with the following information:

1. Vendor's name, address, and phone number;
2. Contract Identification number;
3. Maximum amount of the contract;
4. Scheduled payment date(s); and
5. Term of the contract.

B. TPWD's Certification

1. I certify that the process used to award this contract complies with or is consistent with the following:
 - a. State of Texas Procurement and Contract Management Guide
 - 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.

2. I also certify that TPWD has an effective process and adequate management controls to:
 - a. Verify vendor performance and deliverables for this contract;
 - b. Only pay for goods and services that are within the scope of the contract or procurement;
 - c. Calculate and collect any liquidated damages associated with vendor performance; and
 - d. Determine when, why, or how to apply corrective action plans for continuing poor vendor performance.

3. I certify that TPWD will comply with the requirement to provide information to the Vendor Performance Tracking System in accordance with Section 2155.089 of the Government Code.

C. Risk Statement

I believe that the goods or services being procured via this contract are necessary to provide mission critical functions of this agency. The attached describes the importance of the goods and services and risk to TPWD if the parameters of the contract are not met within the specified time frames.

D. Continuing Duty to Report

I acknowledge a continuing duty to provide any information or documentation regarding this contract upon request by the LBB and to report any changes to the information provided as well as any later discovered errors or inconsistencies to the LBB.

Carter Smith
Executive Director

Date

Attachment

ATTACHMENT

A. Contract Information: Description of the purpose of the contract and summary of major deliverables.

B. Executive Director Certification: If the process to award the contract, contract extension, or procurement did not comply with the requirements of Subsections 1.a and b, provide an explanation for the alternative process utilized and legal justification for the alternative process.

C. Risk Statement: Statement of the importance of the contract to the agency, and risk to the agency if the parameters of the solicitation or contract are not met within the specified time frames.

HISTORY

Original publication date and subsequent revisions:

- 2022 February 25: revised to update items as required for legislative requirements and renamed from “Contract Management Guide.”
- 2018 July: original effective date



TPWD receives funds from the USFWS. TPWD prohibits discrimination on the basis of race, color, religion, national origin, disability, age, and gender, pursuant to state and federal law. To request an accommodation or obtain information in an alternative format, please contact TPWD on a Text Telephone (TTY) at (512) 389-8915 or by Relay Texas at 7-1-1 or (800) 735-2989 or by email at accessibility@tpwd.texas.gov. If you believe you have been discriminated against by TPWD, please contact TPWD, 4200 Smith School Road, Austin, TX 78744, or the U.S. Fish and Wildlife Service, Office for Diversity and Workforce Management, 5275 Leesburg Pike, Falls Church, VA 22041.

BF-18-01 (rev 2/2022)