

**Health and Human Services (HHS) System**

# Procurement and Contract Management Handbook

*The HHS System and Procurement and Contracting Services Division (PCS) are committed to making PCS electronic and information resources (EIR)—including all forms, documents, webpages, and software—comply with state, federal and EIR accessibility requirements so that PCS information is accessible to everyone, including people with visual, hearing, mobility, cognitive, and other disabilities.*

**Version 1.0 – October 1, 2020**

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



**TEXAS**  
Health and Human  
Services

# Preface

Within the past decade, Texas has experienced a significant increase in population. This increase has led to more services being needed to meet the challenges of the expanding population, which in turn has led to the Health and Human Services Commission (HHSC) engaging in more procurements and contracting opportunities. So, it follows, that proper procedures, policies, and guidelines must be in place to provide efficiency and proper oversight to the procurement and contracting process, while simultaneously protecting the taxpayer's dollar; therefore, it is imperative that the HHSC Procurement and Contracting Services division (PCS) create a handbook to address various issues in the procurement and contracting process.

This HHS Procurement and Contract Management Handbook (Handbook) is designed to be a dynamic document; one that will evolve with legislative changes, best practices, and with feedback from program areas. As you read the Handbook and you find that minor changes need to be made, for example, typographical errors, please email [PCS\\_DEC@hhsc.state.tx.us](mailto:PCS_DEC@hhsc.state.tx.us) with those suggested changes. Minor, non-substantive changes will be made to the Handbook upon receipt.

If any division wants PCS to consider an amendment to any provision of the Handbook, such recommendations should be submitted to PCS at [PCS\\_DEC@hhsc.state.tx.us](mailto:PCS_DEC@hhsc.state.tx.us). All recommendations will be considered; however, the final content of the Handbook is subject to the approval of the Deputy Executive Commissioner of PCS and/or the Chief Operating Officer or HHS Executive Commissioner, if escalation is necessary.

Further, in considering substantive amendments and/or recommendations to the Handbook that could affect process and/or procedural changes to HHS divisions other than PCS, PCS will seek stakeholder input prior to approving and implementing such amendments and will provide messaging of proposed changes throughout the process and at resolution, allowing sufficient time to plan for such change. More specifically, when substantive amendments and/or recommendations are submitted, within one week of receiving the proposed change, a member of PCS will contact the person who submitted the recommended change to gather more information. If, based on the information gathered, PCS determines that the proposed amendment or recommendation would benefit the Handbook, a member of the PCS team will arrange a meeting with identified stakeholders to review the proposed amendment or recommendation and review a draft of the proposed change. The identified stakeholders will then provide written feedback on the proposed change. The PCS member assigned to the change will review the written feedback and incorporate what is necessary to achieve the goal of the proposed recommendation. If necessary and pending the complexity and outcome of the proposed changes, PCS will also complete any research necessary with third-party agencies, consult with the Compliance and Quality Control division, the Office of Chief Counsel, HHS executive management, and complete any other due diligence necessary to support the recommendation. Thereafter, PCS will meet with the stakeholders one more time to ensure that the proposed change accurately reflects the goal and intended purpose of the amendment or recommendation. Once the amendment or recommendation is approved by the stakeholders, the amendment/recommendation will be submitted to the Deputy Executive Commissioner of PCS and/or the Chief Operating Officer or HHS Executive Commissioner for final approval. Once approved and properly messaged, the changes will be made to the Handbook and documented on the [Revision History Log](#).

PCS will complete a review of the entire Handbook biennially to reflect substantive amendments not previously made and to conform with laws enacted by the Texas State Legislature. It is the goal of PCS to make appropriate changes to the Handbook in a timely fashion so that the Handbook remains useful and relevant. Any questions concerning the Handbook should be sent to [PCS\\_DEC@hhsc.state.tx.us](mailto:PCS_DEC@hhsc.state.tx.us).

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# General Information

## 1. PURPOSE

The purpose of the Procurement and Contract Management Handbook (Handbook) is to establish consistent procurement and contract management policies and procedures that must be followed by the Health and Human Services (HHS) System agencies: the Health and Human Services Commission (HHSC)<sup>1</sup> and the Department of State Health Services (DSHS).<sup>2</sup> Additionally, HHSC provides procurement services to the Department of Family and Protective Services (DFPS)<sup>3</sup> and the Texas Civil Commitment Office (TCCO).<sup>4</sup> The Handbook aligns with the vision and governing principals defined in the [Health and Human Services Procurement and Contracting System Strategic Plan for Fiscal Years 2020-2023](#).

Additionally, this Handbook includes best practices to provide guidance for solicitations and managing HHS contracts.

### 1.1 The Three Lines of Defense Model Relating to Risk

Each HHS agency shall have an internal structure to identify and mitigate procurement and contracting risks that align with the Three Lines of Defense Model (TLDM). TLDM is designed to provide clarity and coordination to specific roles and responsibilities for risk management.

HHS agency Executive Management and the Procurement and Contracting Improvement Plan Executive Steering Committee are responsible for setting objectives to manage risks and defining strategies to achieve them, as well as establishing governance structures and processes. Under the TLDM, staff will share information and coordinate efforts across related customer organizations.

#### 1.1.1 First Line of Defense

The first line of defense is the day-to-day ownership of identifying risks and developing, implementing, and managing controls and risk management processes. These include, but are not limited to:

- a. Procurement Planning: Program, HHS Procurement and Contracting Services (PCS);
- b. Procurement Processing: Program, PCS;
- c. Evaluation: HHS Compliance and Quality Control (CQC), Program, PCS;
- d. Negotiation: Program, PCS;
- e. Contract Formation: Program, PCS;
- f. Contract Management: Program, Contract Manager; and
- g. Contract Close-out/Termination: Program, Contract Manager.

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<sup>1</sup> See, e.g., Tex. Gov't Code [§ 2155.144\(j\), \(l\)](#).

<sup>2</sup> See, e.g., Tex. Gov't Code §§ [531.001\(4\)\(B\)](#), [2155.144\(p\)](#).

<sup>3</sup> Tex. Hum. Res. Code [§ 40.058\(i\)](#).

<sup>4</sup> Tex. Gov't Code [§ 420A.011](#).

### 1.1.2 Second Line of Defense

The second line of defense is to facilitate and monitor the implementation of effective risk management practices and to ensure they are operating as intended. It also provides for a compliance function to monitor risks associated with applicable policies, procedures, regulations, and statutes. The second line of defense includes the following, grouped by HHS procurement and contracting phase:

- a. Procurement Planning: Program, PCS management, Budget;
- b. Procurement Processing: Program, PCS management, CQC, System Contracting in the Office of Chief Counsel;
- c. Evaluation: CQC, Program, PCS management;
- d. Negotiation: Program, System Contracting;
- e. Contract Formation: Program, PCS management, PCS Contract Management Support (CMS), Budget, System Contracting;
- f. Contract Management: Program, CMS; and
- g. Contract Close-out/Termination: Program, CMS, Budget, System Contracting.

### 1.1.3 Third Line of Defense

The third line of defense is performed by Internal Audit. Internal Audit provides review of processes to assess governance, risk management, and internal controls with an objective and disciplined approach.

## 1.2 Standards and Authority

This Handbook provides a baseline for policies and procedures that support:

- a. Ethics and standards of conduct;
- b. Vendor interaction;
- c. Procurement methods;
- d. Procurement process;
- e. Solicitation advertisement;
- f. Respondent evaluation;
- g. Negotiations;
- h. Contract award and notice;
- i. Contracting activities through the contract lifecycle;
- j. Contract management;

- k. Grant performance oversight; escalation and reporting of contract performance issues;
- l. Contract termination and closeout; and
- m. HHS contract reporting requirements.

HHS agencies can develop additional, consistent, contract management policies and procedures to best meet their organizational structure, program requirements, and business needs. HHS agencies must ensure their respective rules, policies, and procedures do not conflict with the requirements in this Handbook. As a result of the [Procurement and Contract Improvement Plan \(PCIP\)](#), HHS consolidated the HHS Procurement Manual and the HHS Contract Management Handbook into this Handbook to provide the HHS System standard procurement and contracting procedures, as did the Texas Comptroller of Public Accounts with the [State of Texas Procurement and Contract Management Guide](#), published by the Texas Comptroller of Public Accounts<sup>5</sup> (Comptroller’s Guide).

This Handbook has been established through the authority of the HHS Executive Commissioner and the Deputy Executive Commissioner of PCS. PCS administers the policies and develops processes and guidelines for implementing them. PCS will regularly update the Handbook as needed, to address changes in procurement and/or contracting laws, regulations, and policies. Additionally, PCS may incorporate changes due to audits, recommendations of state oversight agencies, and to incorporate evolving best practices.

To receive notice of updates to the Handbook, subscribe to the GovDelivery Topic: “[HHS Contract Management Handbook Updates](#).” Submit questions or recommendations about the materials or requirements in the Handbook to PCS at [PCS\\_DEC@hpsc.state.tx.us](mailto:PCS_DEC@hpsc.state.tx.us). See Preface at the front of this Handbook for more information.

This Handbook is intended to be used as HHS internal policies and procedures only. It does not create any rights or responsibilities for vendors or contractors, nor does it alter any HHS contract. If a rule, statute, or other legal authority conflicts with any portion of this Handbook, the rule, statute, or legal authority prevails to the extent of the conflict. In addition, although every attempt has been made to use the words and terms in the same context as they are used in the underlying statutory authority or rule, a word or term may have different meanings depending on the statutory context. This Handbook is intended to follow the rules, statutes, or other legal authorities that govern state procurement and contracting. In the event of a conflict, applicable law controls.

### 1.3 Applicability

HHSC has express statutory authority to create and administer policies and rules related to the procurement and contracting duties of HHS and the administrative procurement functions provided to DFPS and TCCO. The Handbook has been developed as a resource for HHS agency staff on procurement and contracting processes. HHS PCS performs purchasing functions for multiple entities, including:

- a. HHSC;<sup>6</sup>
- b. DSHS;<sup>7</sup>
- c. DFPS;<sup>8</sup> and

<sup>5</sup> Tex. Gov’t Code [§ 2262.051](#).

<sup>6</sup> Tex. Gov’t Code, Chapter 531; Tex. Gov’t Code [§ 531.0055\(c\), \(e\), \(f\)\(4\)](#).

<sup>7</sup> Tex. Gov’t Code, Chapter 531; Tex. Gov’t Code §§ [531.001\(4\)\(B\)](#), [531.0055\(c\), \(e\), \(f\)\(4\)](#); Tex. Health & Safety Code [§ 12.0001](#).

<sup>8</sup> Tex. Hum. Res. Code [§ 40.058\(i\)](#).

d. TCCO.<sup>9</sup>

## 2. INTRODUCTION

The HHS System delivers services to Texans through a vast number of contracts expending a significant amount of public funds.

HHS agencies must have authority to make desired purchases and, in many cases, must have delegated authority to make those purchases independently. Certain state agencies are vested with legislative authority to purchase for the state (e.g., Texas Comptroller of Public Accounts, Department of Information Resources, and Texas Facilities Commission). Such agencies sometimes delegate purchasing authority and other times delegation is provided by statute. Under Section 2155.144, authority is delegated for purchases of certain goods or services acquired for the benefit or on behalf of clients for programs operated by the agency.<sup>10</sup> In addition, HHS has delegated authority for certain construction procurements.<sup>11</sup>

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

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

In addition, many HHS contracts present significant areas of business and service delivery risk to the HHS System and Texas. Effective procurement and contract management is a critical part of quality contracting. This helps to ensure that the state receives the best value.

The CPA Statewide Procurement Division (SPD) is the central authority for state agency procurement guidance, education, and statewide contract development services. SPD established and published the Comptroller's Guide to provide state agencies guidance and a framework for the continued development of public procurement processes and best practices. State agencies are required by statute to comply with the Comptroller's Guide.<sup>12</sup>

SPD is also responsible for state-funded grant management and serves as the contact for state-administered, local government grant management related issues. SPD is responsible for uniform grant and contract management pursuant to Texas Government Code, Chapter 783.

Each state agency is required to publish a contract management handbook<sup>13</sup> that establishes contracting policies and practices that must be consistent with the Comptroller's Guide. This Handbook fulfills this requirement as well as HHSC's specific requirements to publish a contract management handbook and to coordinate the procurement practices of all HHS agencies.<sup>14</sup>

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<sup>9</sup> Tex. Gov't Code [§ 420A.011](#).

<sup>10</sup> Tex. Gov't Code [§ 2155.144\(b-1\)\(2\)](#).

<sup>11</sup> Tex. Gov't Code [§ 2155.144\(b-2\)](#).

<sup>12</sup> Tex. Gov't Code [§ 2262.052\(a\)](#).

<sup>13</sup> Tex. Gov't Code [§ 2261.256\(b\)](#).

<sup>14</sup> Tex. Gov't Code [§ 2155.144\(i\), \(l\)](#).

## 2.1 Procurement and Contracting Authority

### 2.1.1 Overview

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

### 2.1.2 CPA Delegation by Rule<sup>15</sup>

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

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

### 2.1.3 CPA Delegation by Review

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

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

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

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<sup>15</sup> *Comptroller's Guide, SPD Delegation by Rule.*

## 2.2 Ethics and Professional Standards

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

It is the policy of the State of Texas that a state officer or state employee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur an obligation of any nature that is in conflict with the proper discharge of the officer or employee's duties in the public interest.<sup>16</sup>

### 2.2.1 Statutory Prohibitions

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

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

### 2.2.2 Employee Conflict of Interest and Standards of Conduct

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

All contract and procurement personnel must disclose any actual or potential conflict of interest and any situation that could create an appearance of impropriety. Such disclosure must be timely, complete and in compliance with agency procedures for notifying management of circumstances that could compromise the impartiality of the contract management and procurement process. See [Form PCS 117](#) Health and Human Services Procurement-Specific Non-Disclosure and Conflict of Interest Certification and [Form PCS 130](#) Health and Human Services Employee Non-Disclosure and Conflict of Interest Certification addressed further in Section 2.3.

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<sup>16</sup> Tex. Gov't Code [§ 572.001](#).

If a conflict of interest is identified at any point in the procurement or contract management process, HHS management with oversight over that point must take immediate action to ensure that management of any particular matter or contract does not benefit or create an appearance of a benefit to any employee or employee's family member.<sup>17</sup>

In accordance with the HHS Ethics Policy, all HHS agency staff have a duty to report any potential ethics or standard of conduct violations. Any HHS employee or contractor who has reasonable cause to believe that fraud, waste, or abuse has occurred must report the questioned activity to the HHS Office of the Inspector General (OIG). See [Circular 027](#).

### 2.2.3 Ethics and Conduct: HHS Procurement and Contracting Staff

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

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

#### 2.2.3.1 HHS Staff Responsibilities

All HHS staff must:

- a. Adhere to ethics requirements adopted in rule, ethics policies, and any code of ethics approved by the Executive Commissioner; and
- b. Disclose, in writing, any potential or actual conflict of interest concerning any contract or procurement in which they are or may become engaged.<sup>18</sup>

#### 2.2.3.2 HHS Staff Prohibitions

To avoid conflicts of interest, HHS staff must not:

- a. Participate in any work on a contract knowing that they, or a member of their immediate family, have an actual or potential financial interest in the contract, including, but not limited to, prospective employment;
- b. Solicit or accept a benefit from a vendor;
- c. Be employed by, or agree to work for a vendor;
- d. Disclose confidential information; or
- e. Be employed at a pay classification of B9, or higher, as determined by HHSC, if the employee's spouse is an officer, manager, or paid consultant of a Texas trade association or business that contracts with the HHS System.<sup>19</sup>

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<sup>17</sup> [HHS Ethics Policy](#), p. 20.

<sup>18</sup> See 1 Tex. Admin. Code [§ 391.503\(a\), \(b\)](#).

<sup>19</sup> See 1 Tex. Admin. Code [§ 391.503\(c\)](#).

## 2.3 Nondisclosure, Conflict of Interest, Nepotism Certification

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

HHS PCS ensures compliance with legal requirements for procurement and contracting-related nondisclosure, conflict of interest,<sup>20</sup> and nepotism<sup>21</sup> certifications.

The PCS Purchaser assigned to the procurement must ensure all purchasing personnel who participate in the procurement, including attorneys, complete the State Auditor’s Office (SAO) nepotism disclosure form before the agency may award a major contract (a contract that has a value of at least \$1 million) for the purchase of goods or services to a business entity.<sup>22</sup> Pursuant to Texas Government Code, Section 2262.004, “‘Purchasing personnel’ means an employee of a state agency who makes decisions on behalf of the state agency or recommendations regarding: (A) contract terms or conditions on a major contract; (B) who is to be awarded a major contract; (C) preparation of a solicitation for a major contract; or (D) evaluation of a bid or proposal.”<sup>23</sup>

### 2.3.1 Purchasing Personnel

In accordance with [PCS Policy 403](#), Nondisclosure, Conflict of Interest, and Nepotism Certification, agency “purchasing personnel” that meet the statutory definition may include, but are not limited to, the following positions:

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

### 2.3.2 Required Documentation

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

- a. Health and Human Services Employee Non-Disclosure and Conflict of Interest Certification ([Form PCS 130](#)): HHS employees and HHS contract employees, as applicable, must complete Form PCS 130 no later than 30 days from their start date and at least once every fiscal year.

A completed Form PCS 130 is required before a person can participate in an HHS procurement, or in a procurement that HHS administers, or prior to accessing HHS’s System of Contract Operation and Reporting (SCOR). The only exceptions are attorneys, evaluation committee

<sup>20</sup> Tex. Gov’t Code [§ 2155.003](#); 34 Tex. Admin. Code §§ [20.157](#), [20.158](#).

<sup>21</sup> Tex. Gov’t Code [§ 2262.004](#).

<sup>22</sup> Tex. Gov’t Code [§ 2262.004\(b\)](#).

<sup>23</sup> Tex. Gov’t Code [§ 2262.004\(b\)](#).

members, and technical advisors who do not work for HHS PCS, HHS CQC, DFPS, or TCCO and do not access SCOR.

- b. Health and Human Services Procurement – Specific Non-Disclosure and Conflict of Interest Certification ([Form PCS 117](#)): Evaluation committee members and technical advisors must complete Form PCS 117 for each procurement.
- c. State Auditor’s Office Disclosure Statement for Purchasing Personnel (SAO [Nepotism Disclosure Form](#)): Purchasing personnel must complete the SAO’s Disclosure Statement for Purchasing Personnel for major contracts (with a value of at least \$1 million) for the purchase of goods or services from a business entity. A new SAO Nepotism Disclosure Form must be completed for each applicable procurement.

#### 2.3.3 Disclosure of Actual or Potential Conflict

- a. If an evaluation committee member or technical advisor, purchasing personnel, or any person required to sign a Form PCS 130, Form PCS 117, or SAO Nepotism Form discloses an actual or potential conflict of interest or relationship with a business entity, or if one arises, they must immediately:
  - i. Notify the PCS Purchaser assigned to the procurement; and
  - ii. If they are an HHS employee or contracted staff, notify their manager.
- b. When notified of an actual or potential conflict of interest or relationship with a business entity, the PCS Purchaser assigned to the procurement must immediately notify their manager and deputy associate commissioner. The deputy associate commissioner must:
  - i. Direct the purchaser or the purchaser’s manager to request a determination from the HHS Ethics Office in writing; or
  - ii. Direct an alternative to requesting a determination from the HHS Ethics Office in writing, such as assigning a different HHS employee or contracted employee to minimize disruption to the procurement schedule.

#### 2.3.4 Completed Documentation

The PCS Purchaser must place all required documentation for each evaluation committee member or technical advisor, purchasing personnel or any person required to sign a [Form PCS 130](#), [Form PCS 117](#), or Nepotism Disclosure Form in the official procurement file. The PCS Purchaser must also save in the official procurement file written documentation about any reported actual or potential conflict of interest and how it was resolved.

HHS staff may get copies of completed PCS 130, PCS 117 and Nepotism Forms by:

- a. Emailing [PCS\\_Records\\_Management@hpsc.state.tx.us](mailto:PCS_Records_Management@hpsc.state.tx.us) to request a copy; or
- b. Finding the form in the [completed forms library](#) on the PCS SharePoint site.

### 3. VENDOR COMMUNICATIONS

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. Steps must be taken, however, to maintain a fair opportunity to compete for all vendors and to avoid any appearance

of favoritism. Agency personnel must be mindful that one-on-one communications with vendors occurring prior to contract award are subject to enhanced scrutiny due to the importance of maintaining a “level playing field” among all eligible vendors during competitive procurements. The [HHS Vendor Interaction Policy](#) must be followed, including requirements to consult with PCS, supervisors, or the HHS Chief Ethics Officer for guidance. Contact personnel identified in the HHS Vendor Interaction Policy and, if and when necessary, consult with System Contracting.<sup>24</sup>

Each employee is expected to use their best judgment when interacting with vendor representatives. Employees should be familiar with their agency’s Ethics Policy and the specific Ethics Policy for Contracting and Procurement Personnel to ensure that all training and disclosure requirements related to ethics issues are up to date prior to meeting with any vendor representative. If at any point an employee is faced with an ethical dilemma that is not addressed in their agency’s ethics policies, the employee should immediately cease all communications with the vendor representative and consult with the agency’s procurement office, their supervisor, or the HHS Chief Ethics Officer for guidance. For more information, review the HHS Vendor Interaction Policy.

For any questions and/or assistance with vendor communications or facilitating a vendor meeting, please contact the Deputy Executive Commissioner of PCS at [PCS\\_DEC@hhsc.state.tx.us](mailto:PCS_DEC@hhsc.state.tx.us).

#### 4. REQUIRED TRAINING

An HHSC employee must complete the Basic Texas Purchaser Course to engage in purchasing functions on behalf of HHSC if the employee has the job title of “purchaser;” performs purchasing activities as 15% or more of their job functions; or makes a purchase in excess of \$5,000.<sup>25</sup>

Purchasing is defined as the receipt and processing of requisitions, development of specifications, development of statement of work, the issuance of purchase orders against existing statewide, cooperative or agency contracts, and the verification of the inspection of merchandise or receipt of services by the agency. The term does not include the development of solicitations and contract awards that must be posted to the Electronic State Business Daily (ESBD)<sup>26</sup> (found on the Texas SmartBuy website) or in the *Texas Register*.<sup>27</sup>

Contract development applies to actions taken prior to contract execution, including the receipt and processing of requisitions, assessment of need, development and review of specifications, development and review of scopes of work, identification and selection of procurement methods, identification and preparation of evaluation criteria, preparation and advertising of solicitation documents, tabulation of respondent bids, evaluation of respondent proposals, negotiation of proposals, and the preparation and completion of contract award documents. The term does not include invoice or audit functions.<sup>28</sup>

##### 4.1 Certified Texas Contract Developer (CTCD)

An HHSC employee who is not already a Certified Texas Contract Developer (CTCD) or Certified Texas Procurement Manager (CTPM) through the CPA must be certified as a CTCD (formerly CTPM) to engage in contract development functions on behalf of HHSC if the employee develops, evaluates, negotiates, or awards a contract posted to the ESBD or in the Texas Register on behalf of a state agency.<sup>29</sup> To become certified, the employee must take the Certified Texas Contract Developer Course through the CPA, achieve an 80 percent or higher on the Certified Texas Contract Developer exam, have completed payment for the course and examination, and apply for certification.<sup>30</sup>

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<sup>24</sup> See HHS Vendor Interaction Policy; see also, *Comptroller’s Guide, Vendor Communication*.

<sup>25</sup> 34 Tex. Admin. Code [§ 20.133\(c\)](#).

<sup>26</sup> Located at <http://www.txsmartbuy.com/>.

<sup>27</sup> 34 Tex. Admin. Code [§ 20.133\(b\)\(1\)](#).

<sup>28</sup> 34 Tex. Admin. Code [§ 20.133\(b\)\(2\)](#).

<sup>29</sup> 34 Tex. Admin. Code [§ 20.133\(c\)\(2\)](#).

<sup>30</sup> 34 Tex. Admin. Code [§ 20.133\(e\)](#).

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

#### 4.2 Certified Texas Contract Manager (CTCM)

An HHS employee must be certified as a Certified Texas Contract Manager (CTCM) to engage in contract management functions on behalf of HHS if the employee has the job title of “contract manager,” “contract administration manager,” or “contract technician,” performs contract management activities as 50% or more of their job activities; or manages any contract in excess of \$5,000,000.<sup>31</sup> HHS agencies must comply with the CPA requirement; however, an HHS employee must be certified as a CTCM if they manage any contract in excess of \$1,000,000. HHS management staff has the discretion to assign a CTCM to any contract.

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

#### 4.3 Licensed Attorney

A licensed attorney employed by an agency is not required to be certified CTCD or CTCM to perform the functions described above.<sup>32</sup>

#### 4.4 Continuing Education and Certification Renewal

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

#### 4.5 Required Cybersecurity Training for HHS and Contracted Staff

HHS information and information resources (IR) are valuable assets that must be protected from unauthorized disclosure, modification, use, or destruction. HHS must ensure information and resources are maintained with integrity and confidentiality and that their availability is not compromised. Texas law imposes mandatory cybersecurity training requirements.<sup>33</sup> HHS employees and contracted staff must complete the HHS Information Security/Cybersecurity Training within 30 days of hire or prior to accessing HHS IR, whichever is earliest.<sup>34</sup> HHS employees and contracted staff must also complete the HHS Information Security/Cybersecurity Training as an annual requirement. HHS Employees and contracted staff must access HHS’s System Training Solutions/iLEARN to complete the training.<sup>35</sup>

If an HHS employee or contracted staff is in a role that handles regulated or confidential data types with additional requirements (e.g., employees who use federal tax information) or in an information technology (IT) role (e.g., information owner or custodian) with a security requirement, additional role-based annual training (e.g., Safeguarding Internal Revenue Service Federal Tax Information) may be required.

When an HHS employee or contracted staff leaves the agency, their supervisor is required to immediately terminate access to all HHS IR, in accordance with agency procedures. Failure to properly separate an employee or contracted staff from HHS IR, could result in the agency receiving costly fines or penalties for allowing unauthorized access to confidential data or systems.

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<sup>31</sup> 34 Tex. Admin. Code [§ 20.133\(c\)\(3\)](#).

<sup>32</sup> 34 Tex. Admin. Code [§ 20.133\(c\)\(5\)](#).

<sup>33</sup> Tex. Gov’t Code [§ 2054.5191](#).

<sup>34</sup> Pursuant to HHS Policy relating to Tex. Gov’t Code [§ 2054.5191](#).

<sup>35</sup> HHS Information Security/Cybersecurity Training.

## 5. PROCUREMENT AND CONTRACTING SERVICES DIVISION (PCS)

PCS is the centralized office that handles procurement and contracting services for the HHS System. PCS partners with HHS staff, especially program staff and contract managers, and System Contracting, to provide procurement advice and forms, determine procurement methods, plan procurements, develop solicitation documents, manage procurement timelines, conduct vendor conferences, evaluate proposals, assist with negotiations when requested, and assist with awarding and executing contracts. Visit the [Contracting with HHS web page](#) for more information and resources. HHS staff should also refer to the [PCS SharePoint site](#).

The PCS vision is to ensure that stakeholders can successfully carry out their mission, maximize operational performance, and minimize risk through a collaborative and transparent procurement and contracting system that provides high quality, timely, and value-added services.<sup>36</sup>

The HHS procurement and contracting operating model is complex and composed of many customers, stakeholders, decision-making processes, activities, tools, and information systems interacting with each other to improve the health, safety, and well-being of Texans while being good stewards of public resources.

### 5.1 PCS Procurement Teams

PCS Purchasers and PCS Managers are responsible for facilitating the solicitation process for Invitations for Bids (IFB), Requests for Applications (RFA), Requests for Offers (RFO), Requests for Proposals (RFP), and Requests for Qualifications (RFQ).

Once a program area submits a requisition initiating a procurement in HHS's Centralized Accounting and Payroll/Personnel System (CAPPS) Financials, a purchaser is assigned to the procurement. The purchaser contacts the program area, reviews the requisition for compliance, coordinates with appropriate representatives from CQC, PCS Historically Underutilized Business (HUB) program office, and System Contracting, when applicable, and schedules a kick-off meeting to plan the procurement and develop timelines. It is important to remember that the purchaser cannot commit to reduced timelines on behalf of other divisions. Expedited timelines will need to be discussed with and agreed to with all parties involved.

#### 5.1.1 The Goods Team (Non-IT)

The Goods Team processes commodities and finished products procurements utilizing:

- a. Texas Correctional Industries;
- b. The Texas Purchasing from People with Disabilities program (managed by the Texas Workforce Commission and, by contract, administered by WorkQuest [formerly TIBH Industries]);
- c. CPA Term Contracts;
- d. The federal government; and
- e. Texas Multiple Award Schedule Contracts (TXMAS), as required.

When the Goods Team utilizes competitive procurement methods for goods, the most common is the IFB process. The Goods Team is structured in two sections to better serve the HHS System: Administrative Goods and Client Goods.

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<sup>36</sup> [Health and Human Services Procurement and Contracting System Strategic Plan for Fiscal Years 2020–2023](#).

#### 5.1.1.1 Administrative Goods

This team purchases items needed to support the administrative needs for all HHS agencies, such as furniture, equipment, appliances, sit-stands, employee awards, retirement gifts, vehicles, golf carts, tools, construction supplies, books, promotional items, clothing, and a high volume of office supplies and paper.

#### 5.1.1.2 Client Goods

- a. **Food:** The team purchases food to support the clients living in the State Supported Living Centers (SSLCs) and state hospitals including food, drinks, and snacks for the HHSC canteens, including produce, dairy, ice cream, bread, dry goods and frozen food. The team also purchases kitchen equipment, kitchen supplies, linen, utensils, and paper goods.
- b. **Medical:** The team purchases medical supplies to support all HHS agencies, including clients living in the SSLCs and state hospitals. Items purchased include medical and dental equipment, mobility equipment, medical and dental goods, hospital beds, supplements, clothing, medications, and vaccines. The team also purchases truckloads of water for distribution during declared emergencies.
- c. **Laboratory:** The team purchases items to support multiple tests performed by DSHS and HHSC laboratories. Items purchased are laboratory equipment and instruments, chemicals, consumables, labware, plasticware, gloves and other supplies.
- d. **Material Inventory Management System (MIMS):** The team purchases goods stocked in warehouses at state hospitals and SSLCs. Items stocked support patients at the state hospitals, residents at SSLCs, and administrative staff. HHSC has 19 warehouses supplying 24 facilities that stock almost 12,000 inventory items.

#### 5.1.2 The Services Team

The Services Team supports the administrative needs of HHS agencies, as well as the purchase of services for the clients of HHSC, DSHS, TCCO, and DFPS. The team purchases a variety of administrative services including janitorial, electrical, plumbing, and HVAC. Client purchases can include services to support the clients living in the state hospitals and SSLCs, as well as services required for DFPS Child Protective Services (CPS) and Adult Protective Services (APS).

The Services Team uses competitive procurement methods for services, usually through the IFB; this process is most appropriate when services are standardized or uniform, with price and meeting specifications being the most important considerations.

##### 5.1.2.1 Administrative Services Purchase Examples

- a. **Courier Services:** The team purchases courier services as an open market.
- b. **Grounds Maintenance:** The team purchases lawncare services for the HHS regional offices, state hospitals, and SSLCs through an open market purchase.
- c. **Modular Furniture Installation:** If Texas Correctional Industries grants a waiver for the purchase, the team purchases modular furniture installations through open market.

#### 5.1.2.2 Client Services Purchase Examples

- a. State Operated Facilities: The team purchases services to support the clients residing in the state hospitals and SSLCs, including mental and dental services.
- b. DFPS Services: DFPS provides services for APS and CPS. The services may include medical and mental assessments, psychological and counseling services, and substance use disorder services.
- c. DSHS Services: The team procures services necessary for DSHS clients. These services can include items needed to address health crises, campaigns for public service announcements, and preventative care to ensure the health of clients.
- d. Disaster Related Services: The team also supports clients through the distribution of truckloads of water and ice during declared emergencies.

#### 5.1.3 The Complex Team

Complex procurement is the procurement of services that involve a high degree of difficulty in developing specifications or statements of work due to the nature of the products or services; a limited or specialty market; delivery to at-risk or vulnerable populations; the addition of federal regulations and mandates; and/or a longer-than-average procurement timeline. These procurements are typically high-risk, publicly scrutinized, and subject to multiple oversight entities. The Complex Team is broken up into the four teams outlined below.

##### 5.1.3.1 Health Services Tier I

This tier of Health Services procurement professionals process HHS's most complex procurements. Dollar values for these procurements typically range from the hundred-millions to the tens-of-billions. Most often, this team solicits via the RFP method. Services procured by this group encompass a broad range of health services, from large pharmaceutical delivery contracts to the state's managed care organization procurements.

##### 5.1.3.2 Health Services Tier II

Like Health Services Tier I, Tier II most often solicits via the RFP method. Dollar values for these procurements are quite large, but typically do not exceed \$100 million. Contract value alone does not determine the tier of a health services procurement, as resource allocation and complexity will always play a role in assignments.

##### 5.1.3.3 Health Services Tier III

This team primarily processes RFQs for professional services, consulting services, and legal services that fall under the statutory authority of Texas Government Code, Chapter 2254. Professional services are explicitly defined under this statute. The most commonly procured professional services include doctors, nurses, and optometrists; however, professional services can include any of the following: certified public accountants, architects, landscape architects, land surveyors, physicians (including surgeons), optometrists, professional engineers, real estate appraisers, registered nurses, and interior designers.

It is important to remember that professional, consulting, and legal services have very specific requirements outlined in statute. PCS is able to guide customer organizations through those steps.

This team may also process smaller, routine RFPs, if needed, due to workload constraints in the other Health Services teams.

#### 5.1.3.4 Complex Construction

The Complex Construction team procures major construction projects for the HHSC Maintenance and Construction Division. The team solicits primarily via the RFP method to procure services aimed at building new state hospitals, renovating old and/or outdated buildings, and occasionally may assist with the procurement of extensive deferred maintenance.

#### 5.1.4 The IT Goods and Services Team

This team processes all information technology (IT) procurements for goods and services. It is comprised of two smaller teams: one that processes RFOs on the open market and another that processes goods and commodities purchased from Texas Department of Information Resources' (DIR) cooperative contracts and technology services through DIR's Statement of Work process and using DIR's Deliverables-Based IT Services (DBITS) and other DIR IT services contracts.

#### 5.1.5 The Grants Team

Grants are used to advance a public purpose through the creation or support of an activity. Grants are strategic investments in the state and its future. Through careful design and planning, the proper solicitation of grant applications is key to transforming grants from a piece of financial assistance into a powerful tool that educates and drives public policy while improving outcomes for Texans.

In contrast to the procurement of goods or services, grants use the RFA method to solicit applications and must follow the federal Uniform Grant Guidance (UGG), state Uniform Grant Management Standards (UGMS) or its successor, published by the SPD, as applicable, as well as other applicable state and federal law.

The Grants Team provides strategic and collaborative grant services to the HHS System. The team's chief function is to serve as experts in facilitating the solicitation and selection of qualified applicants to implement grant-funded projects. This is done while navigating and correctly implementing the unique rules, regulations, and procedures associated with the use of state and federal grant funds.

#### 5.1.6 The Business Operations Team

The Business Operations Team helps PCS operate with transparency and accountability, providing the support needed to be successful. The team analyzes and reports data to help manage performance; publishes policies, processes, and procedures; and equips staff with information, training, and other resources required to work effectively. The Business Operations team includes: training, both internal to PCS and agency-wide; procurement support, including CAPPs and SCOR technical assistance; and business integrity. In addition, the Business Operations team handles reporting HHS contract information in accordance with the Texas Government Code and the General Appropriations Act (GAA), Article IX. This includes uploads into the Legislative Budget Board Contracts Database, filing the monthly Texas Purchasing from People with Disabilities Exceptions Report with the CPA, and entering vendor performance data into the CPA Vendor Performance Tracking System (VPTS).

##### 5.1.6.1 Procurement Support Services

PCS Customer Service and Level 1 Support staff provide service to PCS staff, potential contractors, public, and agency programs. All inquiries received are reviewed and answered within three business days.

5.1.6.1.1 PCS Customer Service

The Customer Service mailbox focuses on providing customer support for the following items:

- a. Requests for requisition status;
- b. Requests for buyers assigned to requisitions;
- c. Vendor requests for demonstration meetings;
- d. Inquiries on requisition entry/CAPPS Financials Wizard questions;
- e. Questions related to searching items within Texas SmartBuy;
- f. Guidance on National Institute of Governmental Purchasing (NIGP) class and items;
- g. General procurement questions;
- h. Requests to expedite the processing of a requisition(s); and
- i. Program inquiries for goods and services teams.

Contact PCS Customer Service at: [PCS\\_CST\\_HHSC@hhsc.state.tx.us](mailto:PCS_CST_HHSC@hhsc.state.tx.us).

5.1.6.1.2 PCS Level 1 Support

PCS Level 1 Support focuses on providing Level 1 support for the following items:

- a. Requests for purchase order adjustments and purchase order close-outs to release funds back to program budget;
- b. Assist agency staff with submitting or questions regarding enterprise portal requests for CAPPS Financials access;
- c. Program requests to PCS Level 1 Support to administratively approve requisitions and/or CAPPS contract approvals on their behalf;
- d. Requests to release pre-encumbrances on requisitions/purchase orders;
- e. Program requests for reassignment of requisitions/contract approvals;
- f. Handles contract administrator changes to contracts;
- g. Requisition denials;
- h. Creating new origin codes;
- i. Requester name changes on requisitions (ex: term employee);
- j. Provide CAPPS Financials guidance on requisition entry;

- k. Assist with cancellation of requisitions; and
- l. Approval mapping requests for CAPPS approval mapping for programs, PCS-300 Approval Mapping Change Form.

Contact PCS Level 1 Support at: [PCS\\_Level\\_1\\_Support@hhsc.state.tx.us](mailto:PCS_Level_1_Support@hhsc.state.tx.us).

#### 5.1.6.2 PCS Liaison

##### 5.1.6.2.1 Responsibilities

PCS Liaisons are purchasers or managers who provide key guidance and communication during the procurement planning on specific procurements. They may provide assistance to:

- a. Determine the proper procurement method;
- b. Identify the correct solicitation template and associated exhibits;
- c. Provide a procurement number;
- d. Provide guidance to ensure fully-developed CAPPS Financials Wizard responses; and
- e. Provide general guidance with a specific procurement process.

All other requests for assistance should be sent to PCS Customer Service or PCS Level 1 Support.

##### 5.1.6.2.2 Requesting Assistance

Within two business days of receiving the initial request, the assigned PCS Liaison will contact the requester to determine any additional needs. PCS Liaison assistance can be requested by emailing [PCS\\_liaison@hhsc.state.tx.us](mailto:PCS_liaison@hhsc.state.tx.us) and providing the following required information:

- a. Detailed description of services;
- b. Agency and division;
- c. Funding source (state, federal, or both);
- d. Information concerning whether the procurement is new or a re-procurement;
- e. Existing contract number;
- f. Estimated dollar value;
- g. Target contract award date; and
- h. Information concerning any required vendor transition times.

#### 5.1.7 Historically Underutilized Business (HUB) Program Office

HHS is committed to implementing an effective and successful HUB Program. The HUB Program Office provides customer service to the agency's procurement and contracting staff, respondents, HUB businesses, and prime contractors. It develops and implements policies to ensure strict compliance with the state statutes and administrative rules that govern the program. Tasks include, but are not limited to, educating the agency's internal and external customers on HUB requirements; facilitating the inclusion of HUB contract requirements on solicitations valued at \$100,000 or more through the entire lifecycle of a contract; marketing the agency's HUB Program and procurement opportunities to encourage HUB utilization; administering the Mentor-Protégé Program; and tracking and preparing HUB data for reporting and analytical analysis.

#### 5.1.8 Contract Management Support Team

PCS created the Contract Management Support (CMS) Team in May 2020 as a result of Procurement and Contracting Improvement Plan (PCIP) project team recommendation 17PM: Standardize Contract Management and Monitoring Processes Across HHSC. This team provides contract management support assistance and oversight for HHS staff, leaders and business units with contract management related responsibilities.

PCS CMS focuses on strengthening contract management practices by developing policies and procedures, creating tools and templates, monitoring and analyzing key success indicators and working to support program contract management areas when needed.

The PCS CMS Unit can be contacted at [PCS\\_CMSupport@hhsc.state.tx.us](mailto:PCS_CMSupport@hhsc.state.tx.us).

#### 5.1.9 Other

In addition to the teams listed in this section, other staff report directly to PCS executive management who are dedicated to overseeing communications for the division; managing PCS policies, procedures, and forms; and performing other support functions for the division.

### 5.2 PCS Stakeholder Partners

PCS works closely with other departments and divisions independent from PCS that perform certain functions to help support customer organizations in the procurement and contracting process. Compliance and Quality Control, System Contracting, and Contract Finance Support each have a role in the procurement and contract management lifecycle. *Reference Section 7.2 regarding Management Pillars of Operations.*

#### 5.2.1 Compliance and Quality Control (CQC)

CQC was created in April 2018 as an independent division that reported directly to the HHSC Chief Operating Officer (COO). CQC provides compliance and oversight review of PCS and other agency functions to ensure organizational resources and processes align with and satisfy all purchasing and contracting requirements. In March 2020, oversight of the CQC division changed from the COO to the HHSC Chief Policy and Regulatory Officer (CPRO) to strengthen CQC's integrity as a procurement and contract management oversight body by establishing greater operational independence from PCS.

As part of its duties, the CQC solicitation review unit (SRU):

- a. Reviews and approves all complex solicitations prior to submission for review by the Contract Advisory Team, prior to posting public notice of the solicitation, and prior to the posting of all addenda;

- b. Reviews and validates the evaluation tool; facilitates the complex solicitation evaluation and scoring process in conjunction with PCS Purchasers;
- c. Conducts audits concerning the procurement and contracting process including required documentation of procurement files and contract files; and
- d. Manages the CAPPs template library.

In addition to the standard reviews required for complex solicitations, CQC has an insurance specialist on staff to review these solicitations and make recommendations for required insurance coverages. The CQC insurance review is mandatory for all complex, construction solicitations at the direction of the Deputy Executive Commissioner for HHSC's Health and Specialty Care System and is available as a resource for all complex solicitations. CQC may review, revise, or create, as directed, procurement-related policies, processes, procedures, and rules to ensure compliance with state law and the Comptroller's Guide.

CQC also includes the fiscal monitoring unit (FMU) and the single audit unit (SAU), which monitor recipient and subrecipient grantees to ensure compliance with applicable fiscal requirements of federal and state regulations, HHSC policies, procedures and rules, and contract provisions.

#### 5.2.2 System Contracting

System Contracting is a department in the Office of Chief Counsel. System Contracting provides legal assistance and guidance related to procurement and contracting activities. One of System Contracting's primary roles in procurement and contract management is working with PCS and program personnel on solicitations assigned to PCS's complex procurement and grants teams, and with contract managers for contract actions or amendments.

PCS and program personnel should work with their management and/or contract managers prior to seeking a System Contracting attorney assignment, as indicated below.

##### 5.2.2.1 System Contracting Intake Request - Attorney Assignment:

- a. When PCS is involved in a procurement, PCS personnel are responsible for requesting an assigned attorney.
- b. When PCS is not involved, program personnel are responsible for requesting an assigned attorney.

To request a System Contracting attorney assignment, all required information must be provided, including drafts of documents for which review is requested. The intake information template ([Appendix F](#)) must be copied, completed, and included in the body of the email. Do not include as an attachment to the email; rather, copy and paste the template language into the body, complete, and send to the System Contracting intake email address: [SystemContracting@hhsc.state.tx.us](mailto:SystemContracting@hhsc.state.tx.us).

##### 5.2.2.2 Program Policy Issues

For policy issues of a programmatic nature, such as applicable program law or requirements, Program should contact their designated policy attorney or, if they do not have one, the Policy Department in the Office of Chief Counsel at: [HHSLegalPolicy@hhsc.state.tx.us](mailto:HHSLegalPolicy@hhsc.state.tx.us).

The Policy Department provides general legal advice and support to all HHS agencies and programs in their daily operations, rulemaking efforts, and legislative matters. With significant day-to-day interaction with programs, the Policy Department can help connect programs to resources in other Office of Chief Counsel departments when there is a need for specialized support.

#### 5.2.2.3 Data Governance

For assistance with Data Use Agreements (DUAs) and other matters of confidentiality, Program should contact the Data Governance section within the Office of Chief Counsel's Personnel Department at: [OCC Data Governance@hhsc.state.tx.us](mailto:OCC_Data_Governance@hhsc.state.tx.us).

#### 5.2.3 Contract Finance Support

Contract Finance Support (CFS) is a division of HHSC reporting to the Chief Financial Officer. CFS may provide:

- a. Financial risk assessment of proposed procurements and assistance identifying the need for a review of financial capacity of any respondents;
- b. Subject matter expert(s) to evaluate financial capacity submitted with responses;
- c. Assistance developing cost workbooks and financial provisions and requirements;
- d. Subject matter expert(s) to review price component for high-risk, high-value, or other applicable procurements; and
- e. Assistance negotiating pricing and developing financial payment structure.

Requests for assistance from the CFS division should be emailed to:

[FSDMajorProcurementsFinancialAnalysis@hhsc.state.tx.us](mailto:FSDMajorProcurementsFinancialAnalysis@hhsc.state.tx.us).

## 6. OVERVIEW OF HHS AGENCY ROLES AND RESPONSIBILITIES

HHS agency staff serve critical roles in different phases of the procurement and contract lifecycle and may assume more than one role during different lifecycle phases. Clearly delineated roles and responsibilities for agency staff reinforce accountability and awareness of decision-making authorities and responsibilities. Key roles with expected responsibilities are expressed in categories of Responsible, Accountable, Consulted, and Informed (RACI). See definitions for categories in the RACI Definitions table below.

The [RACI matrices](#) consist of key functions of the procurement and contracting system, which are generally listed in chronological order. The primary function of the matrices is not to show process or work flow, but rather to articulate expectations of various roles and responsibilities for key functions.

Responsible	Accountable	Consulted	Informed
<p>The role assigned to perform the function.</p>	<p>The single authority/owner to make decisions; accountable that the function is performed.</p> <p>The accountable role is the role that follows through on required consultation and informing to ensure that required stakeholders are consulted and/or informed.</p>	<p>The role that is consulted on the function and consulted on outputs of the function.</p> <p>Consultation is not optional. *</p> <p>The accountable and responsible are expected to take input from the consultation into account, with the expectation of two-way communication.</p>	<p>The role is informed due to a dependency on the function.</p> <p>Informing is not optional. * Not informing impacts the dependability of the system.</p> <p>Expectation of one-way communication.</p>
<p>* Unless otherwise specified.</p>			

### 6.1 Customer Organizations Roles

Customer organizations are the agencies, offices, divisions, departments, sections, and units that receive procurement and contracting information, guidance, and services from PCS, including departmental groups within PCS. These customer organizations are components of the following agencies or areas: HHSC, DSHS, DFPS, Office of the Inspector General (OIG), TCCO, and other governmental entities that PCS supports. Customer organizations who initiate a procurement will assign staff to serve in certain roles. These include:

- a. Customer Organization Program/Contract Management role: a coordinating area within the customer organization pursuing a procurement or contract. Program staff will have subject matter expertise related to the goods or services sought, while contract managers facilitate the procurement process on behalf of the program area. Program areas may also have financial, IT, and data related subject matter experts (SMEs) that participate in a procurement at the program level. Many areas in the organization may have either a representative from the program area and/or a representative from the contract management area leading the procurement on behalf of the customer organization.
- b. Customer Organization Evaluators: staff from the customer organization area assigned to score proposals/applications or participate in oral presentations.
- c. Customer Organization Contract Attorney or other attorneys: the assigned contract attorney, or other attorneys, that support the corresponding customer organization program.
- d. Customer Organization Information Technology role: the relevant information technology department within the customer organization that supports programs on information technology (IT) matters. When the departments within HHSC IT initiate a procurement, those departmental areas serve in a customer organization capacity.
- e. Customer Organization Finance/Budget role: the relevant agency financial and budgetary departments within the customer organization that supports programs on financial and budgetary matters.

## 6.2 PCS Roles

PCS has key roles that support customer organizations in the procurement and contracting process. These are:

- a. PCS Purchaser: a qualified purchaser with a CTCD certification that is assigned to process a procurement.
- b. PCS Liaison: a liaison with a CTCD certification providing support to customer organizations on specific procurements, as requested.
- c. PCS Manager: the manager of the PCS Purchaser responsible for overseeing the quality of work and adherence to procurement regulations.
- d. HUB Coordinator: the HUB coordinator assigned to a procurement within PCS. DFPS has a HUB Coordinator that supports DFPS programs.

## 6.3 CQC Roles

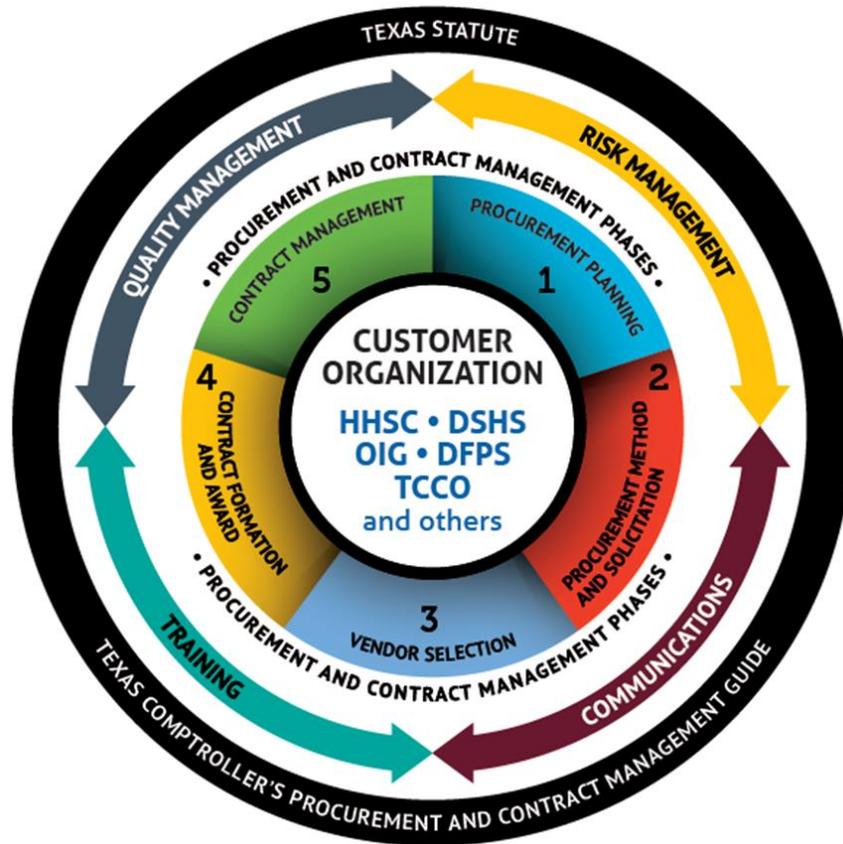
Staff from the CQC SRU may serve in the following roles:

- a. CQC Financial Analyst: a financial analyst assigned to a complex procurement or grant solicitation to review and validate the evaluation tool.
- b. CQC Insurance Specialist: an insurance specialist assigned to review or provide insurance recommendations for a complex procurement or grant solicitation.
- c. CQC Solicitation Reviewer: a contract administration manager assigned to review and approve a complex procurement or grant solicitation.

## 7. THE PROCUREMENT LIFECYCLE

### 7.1 PCS Operating Model

The image below depicts the PCS Operating Model, including the HHS Procurement and Contract Management Lifecycle. The Procurement and Contract Management Lifecycle is a continuous process with common characteristics that exist between all public procurements. Following each of the processes outlined below helps to ensure that the procurement is conducted in a transparent and efficient manner.



The Procurement and Contracting Management Lifecycle identifies the five phases performed for every procurement. While the Comptroller’s Guide distinguishes grants as separate from the procurement of goods and services, the solicitation, evaluation, selection and management of grants largely follows this same lifecycle. In addition, PCS has developed a detailed framework for the procurement [end to end process](#)<sup>37</sup> located on the PCS SharePoint site.

**Phase 1: Procurement Planning**

Define the business need and establish the procurement objectives;

**Phase 2: Procurement Method Determination**

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

**Phase 3: Vendor Selection**

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

<sup>37</sup> [Procurement and Contract Improvement Plan \(PCIP\)](#) (22PP)

**Phase 4: Contract Formation and Award**

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

**Phase 5: Contract Management**

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

7.2 Management Pillars of Operations

The PCS Operating Model is supported by the four management pillars of operations, illustrated in the image above as Quality Management, Risk Management, Communications, and Training. The pillars span the entire procurement and contract management lifecycle and apply to the staff stakeholders that support the processes, including PCS, System Contracting, Contract Finance Support, CQC, and customer organizations (*Reference Section 5.2 regarding PCS Stakeholder Partners*).

7.2.1 Quality Management

Ensures quality work products and services throughout the procurement and contracting processes, which translates, either directly or indirectly, to quality services for clients.

7.2.2 Risk Management

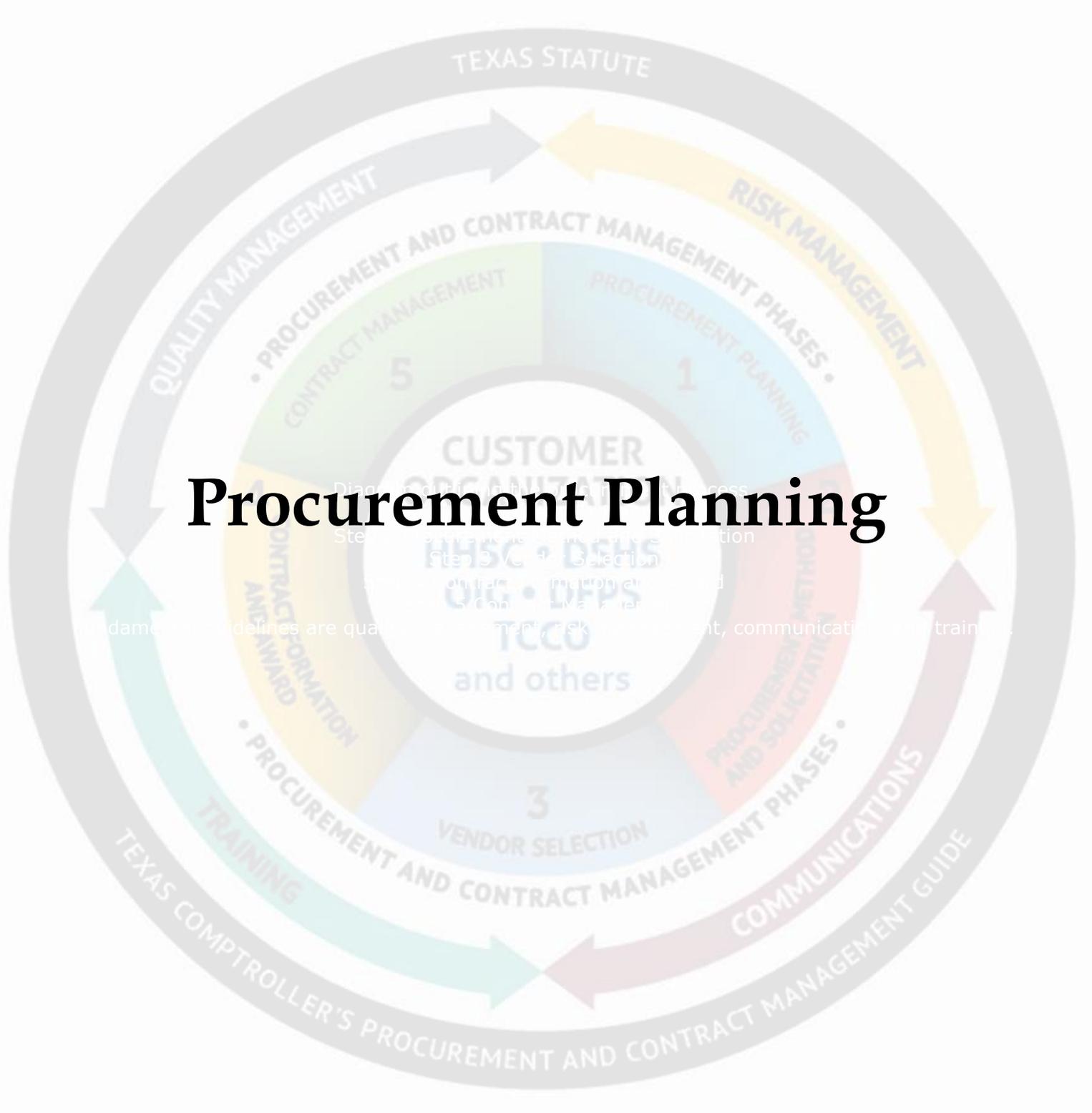
Management and monitoring of risks are critical aspects of procurement and contracting operations for proactive decision-making, ensuring compliance, and optimizing resources.

7.2.3 Communications

An effective and efficient procurement and contracting system requires timely, relevant, and clear communication between participants that supports the procurement and contracting system.

7.2.4 Training

Training expands the knowledge base and skillset of employees, so they can perform their jobs well. For procurement and contracting functions, training provides benefits such as improved employee performance and satisfaction, consistency in services, and compliance with state statutes.



# Procurement Planning

fundamental guidelines are quality management, risk management, communication, and training.

## 8. PLANNING AND DEVELOPMENT

Procurement planning is the process of deciding what to buy, when to buy, and from what source, based on an identified need. Identifying and defining a need begins the procurement and contract management lifecycle and provides the basis for the contract.

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

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

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

Factors to consider in planning for any procurement include:

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

### 8.1 Procurement Lead Times

Procurement lead time is the interval between a decision to purchase a product or service to when the contract is awarded.<sup>38</sup> Generally, the PCS Purchaser, in coordination with program area staff and contract manager, will develop a procurement timeline. The timeline should include all key milestones for completing the procurement within required deadlines. However, it is the program area's responsibility to conduct appropriate planning and development activities prior to being assigned a PCS Purchaser considering the overall procurement lead time. PCS Liaisons are available to assist program areas in planning and development activities prior to a PCS Purchaser assignment (*Reference Section 5.1.6.2 regarding PCS Liaison*). PCS has developed estimated procurement timelines for HHS customers to serve as a resource for procurement planning. [The Procurement Action Lead Time Schedule](#) contains estimated procurement timelines for the different methods of procurements.

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<sup>38</sup> *Comptroller's Guide, Solicitation Process.*

Considerations when determining a procurement timeline include:

- a. Complexity of the procurement;
- b. Internal approvals;
- c. External reviews;
- d. Waiver and exemption requests, including those from TCI and WorkQuest indicating that the product or service may be otherwise procured;
- e. Exemption requests (Data Center Services and Cooperative Contracts) from the DIR indicating that the product or service may be otherwise procured;
- f. Internal proprietary purchase justification approval;
- g. Emergency purchases;
- h. Internal budget approval;
- i. Procurement specific delegation request to CPA for goods exceeding \$50,000 via email [open.market@cpa.texas.gov](mailto:open.market@cpa.texas.gov) or for services with an estimated contract value of more than \$100,000 via POD web portal found on the Texas SmartBuy website, as applicable;
- j. Contract Advisory Team (CAT) review for procurements with a value of at least \$5 million;<sup>39</sup>
- k. Quality Assurance Team (QAT) review for major information resources projects (MIRP) with a value of at least \$10 million;<sup>40</sup> and
- l. Finding of Fact from the Governor's Office for major consulting procurements.

## 8.2 Needs Assessment

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

- a. Facilitates effective prioritization of the required funding to make the purchase;
- b. Establishes if the service can be provided by internal resources;
- c. Determines how these proposed goods/services fit with existing programs, systems, etc.;
- d. Identifies the type and level of service required to meet the need;
- e. Establishes the procurement objective;
- f. Provides framework to develop the statement of work, solicitation, evaluation, and contract documents;
- g. Establishes whether confidential information will be exchanged under the contract, identify the Information Owner and Designee, and assess the information security risk level;

<sup>39</sup> Tex. Gov't Code [§ 2262.101\(a\)](#).

<sup>40</sup> Tex. Gov't Code [§ 2054.160\(a\)](#).

- h. Determines level of insurance necessary to provide protection and mitigate risk to the HHS agency or the HHS System; and
- i. Provides necessary information to determine how performance and quality of goods or service delivery will be measured, documented and tracked, as well as specific remedies, sanctions, and/or damages if requirements, specific performance measures, and/or milestones are not met.

### 8.3 Factors for Assessing Need

The following factors must be considered when assessing need for a procurement:

- a. State or federal laws, rules, or regulations;
- b. HHS agency or system-wide policy;
- c. Executive Commissioner or another applicable official directive;
- d. The costs and benefits of the proposed contract;
- e. Potential ethical or conflict of interest issues that may arise;
- f. Potential risks to the HHS agency or the HHS System that may result if the need is not met;
- g. Level of priority or importance of the need;
- h. Availability of funding, staff, expertise, and other resources to meet the need;
- i. Cost-effectiveness of the goods and services;
- j. Cost savings and efficiencies in use of contracted goods and services;
- k. Availability of funds;
- l. Any legal concerns or potential issues;
- m. Availability of other sources, including internal resources, to meet the need; and
- n. Existing opportunities to reduce cost or resources.

PCS created online training modules to assist program staff and requesters with needs assessment, including a specific module on the CAPPs Financials Wizard. HHS staff can access CAPPs training on the [PCS Training Site](#).

### 8.4 Risk Management

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

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

One risk management tool is the Procurement Risk Assessment ([Form PCS 148](#)). Program staff must complete the form and attach to the requisition.<sup>41</sup> For RFX (i.e., RFP, RFO, RFA, RFQ) procurements, the form is reviewed and approved with all attendees at the kick-off meeting. For other procurements, program staff and PCS Purchaser must discuss and approve the form. Once approved, PCS Purchaser must incorporate the form into the procurement file.

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

## 8.5 Contract Value Estimate

During the procurement planning phase, Program must determine a cost estimate that will be used for the procurement. The Max Potential Contract Value<sup>42</sup> must be entered into CAPPs Financials Wizard. The cost estimate must be developed in good faith, as it will be used not only in the selection of the appropriate procurement method and determining appropriate approvals, but also for compliance with statutory requirements that may be applicable to the purchase, based on contract value, funding source, or expenditure restrictions and prohibitions,<sup>43</sup> as well as required internal agency approvals. The cost estimate should be documented and included in the procurement file.

In accordance with the Comptroller's Guide and CPA administrative rule,<sup>44</sup> for SPD reporting, review, and delegation requirements, contract value is defined as "the estimated dollar amount that an agency may be obligated to pay pursuant to the contract and all executed and proposed amendments, extensions and renewals of the contract." In other words, the contract value is the total maximum potential value of the contract since all potential renewals and extensions are included.

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

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

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

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

- a. Market research, which may include methods such as: online research, review of industry periodicals and information obtained from professional organizations, attendance at trade shows, discussions with other customers, informal budget quote by contacting several vendors to obtain pricing information, using a vendor's advertised price list, and consultations with industry representatives;
- b. Historical cost estimate is developed through a historical spend analysis of the agency's similar contracts and/or other agency purchasing data;
- c. Estimate developed in collaboration with subject matter experts within the agency;

<sup>41</sup> [Procurement Risk Assessment Instructions](#).

<sup>42</sup> 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.

<sup>43</sup> *Comptroller's Guide, Procurement Planning*.

<sup>44</sup> 34 Tex. Admin. Code [§ 20.25\(b\)\(13\)](#).

- d. Issuing a Request for Information (RFI), which gathers information directly from the industry about a particular type of product or service;
- e. Set amount driven by the funding source, such as a grant for a specified dollar amount; and
- f. Benchmarking, the comparison of a particular item, service, or process with other entities or an established industry standard.

## 8.6 Procurement Planning Results and Outputs

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

## 8.7 Information Technology Purchasing Plan (ITPP)

State agencies are required to purchase IT goods and services through the Department of Information Resources (DIR) Cooperative Contracts program unless there is an exemption. There are blanket exemptions and one-time exemptions.<sup>45</sup>

HHS employees use the ITPP to request purchasing authority to procure IT-related goods or services that have an estimated value of \$50,000 or more. The ITPP serves as IT's purchasing plan for the fiscal year and is compiled and submitted annually, with opportunities for updates each quarter to include additional planned procurements. The newly published, and streamlined [Process for Developing and Approving the Information Technology Purchasing Plan](#) for the fiscal year is available for download from the HHSC intranet site. The threshold for inclusion in the ITPP has increased to \$50,000 with a streamlined approval process.

IT program areas can contact HHSC's IT Business Operations (ITBO) for assistance in obtaining budgetary estimates from a DIR contracted vendor. Budgetary estimates can be used to enter ITePRO forms. All procurement requests are initiated via an ITePRO form for requisition entry into CAPPs Financials. If an IT procurement is over \$50,000, then it needs to be on an ITPP document.

State agencies must submit statements of work with an initial contract term value greater than \$50,000 for technology services to DIR for review prior to submission to a vendor.<sup>46</sup> DIR purchases must adhere to DIR requirements.<sup>47</sup>

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<sup>45</sup> [DIR Exemption Overview](#).

<sup>46</sup> [DIR Statement of Work \(SOW\)](#).

<sup>47</sup> Tex. Gov't Code [ch. 2157](#); See, e.g., [Tex. Admin. Code, Title 1, Part 10](#); [1 Tex. Admin. Code § 212.41](#).

DIR Commodity Item Purchasing Under DIR Contracts:

Contract Value (Initial Contract Term)	Number of DIR Vendors
\$50,000 or less	May directly award the contract to a single vendor on DIR contract
More than \$50,000 to \$1 million	Must submit to three vendors (or all DIR vendors in a category with less than three vendors) SOW requires DIR review
More than \$1 million to \$5 million	Must submit to six vendors (or all DIR vendors in a category with less than six vendors) SOW requires DIR review
More than \$5 million	Agencies must conduct an independent procurement and cannot use DIR Cooperative Contracts unless it is a DIR-coordinated bulk purchase. <sup>48</sup>

8.8 The Statement of Work (SOW)

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

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

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

8.8.1 SOW Types

A statement of work can be performance-based, a design specification, or a mixture of both:<sup>49</sup>

- a. Performance-based specifications focus on outcomes or results rather than processes, and on the required goods and services rather than how the goods and services are provided.
- b. Design specifications outline exactly how the contractor must perform the service or how the goods perform.

<sup>48</sup> Tex. Gov't Code § 2157.068(e-2), (e-3).

<sup>49</sup> Comptroller's Guide, Scope of Work.

### 8.8.2 Drafting Specifications

All specifications should:

- a. Permit competition between products of equal quality;
- b. Include a statement regarding the qualitative nature of the purchase; and
- c. Identify the minimum essential characteristics and standards to which the purchase must conform if it is to satisfy the intended use.

### 8.8.3 SOW Development

Tips to keep in mind when writing a statement of work:

- a. Identify SMART objectives: specific, measurable, achievable, realistic, and timely.
- b. Consider appropriate project development or design methodology. Waterfall methodology works well with projects that have assured predictability, like construction projects. Agile methodology is intended for projects that may benefit from incremental development and successes, like software development.
- c. Use simple descriptions: Write so a person unfamiliar with the good or service can easily understand what the agency is buying.
- d. Avoid acronyms and definitions: Avoid acronyms and references to definitions contained in other sections of the solicitation, including a glossary.
- e. State requirements once: The statement of work should not duplicate terms and conditions or other provisions in the solicitation, contract, or terms and conditions.
- f. Use non-proprietary terminology: Requiring the use of proprietary goods or services limits competition and increases the risk of a bid challenge or allegation that the requirements are slanted to a particular contractor.
- g. Write with the evaluation criteria in mind: The statement of work must include all of the requirements that will be used to evaluate and choose a contractor. A well-written statement of work will allow the agency to differentiate between competing proposals.

### 8.8.4 SOW Best Practices

An SOW brings together work details, schedules, terms, and expected outcomes to define exactly what should be done on a project and how it should be procured, as well as to protect against scope creep, where features, additions, and nice-to-haves can balloon beyond what was initially planned.

A good SOW involves team collaboration to collectively build a solid business requirement document that describes how requirements will be executed, analyzed, and managed. Moreover, a contract manager should participate in the development of the statement of work and be part of the team early in the process.

#### 8.8.4.1 Primary Sources

While a SOW is unique for each project, best practices in writing an SOW share basic elements that are generally consistent across projects. Primary sources for developing the SOW are:

- a. Needs assessment;
- b. Previous procurement for the service;
- c. Any current or prior contracts for the service and how those contracts did or did not result in the desired outcomes; and
- d. Description of the service maintained by the agency (e.g., in the TAC or agency program handbook).

8.8.4.2 Key Elements

When developing an SOW, the drafter should not only consider the elements of proper specification drafting, but also other elements such as key performance measures (desired outcomes, such as a 99% answer rate in a call center), deliverables (such as reports), project milestones, and other aspects to ensure the outcome of the contractor's work meets the outcomes intended by the program. When PCS reviews an SOW submitted by a program area, they assess the following key elements:

- a. Sufficient detail: The SOW must contain sufficiently detailed description of what is required of the contractor to satisfactorily perform the work. The program must ensure that all requested goods and/or services are clearly stated.
- b. Clear deliverables and deadlines: The SOW should outline the deliverables and associated deadlines clearly and completely. It must also identify the responsible party for each deliverable. Clarity in responsible party for each task is imperative in holding the contractor accountable.
- c. Acceptance criteria: Specify how the agency will determine if the product or service is acceptable.
- d. Contractor performance and financial capacity: The SOW must clearly specify the contractor qualifications, experience, and financial capability being requested in the proposal.
- e. Consider the dollar amount: Program areas should consider the dollar amount when requesting evidence of financial capability. High estimated value of contracts may need more evidence from a respondent of financial viability. Examples of proof of financial viability include contacting bidder's current customers, written descriptions of size and scope of operations, prior contracting experience with the State, balance sheets, D&B reports, or an audited statement by a CPA.
- f. Eligible population: Define and describe the population eligible to receive services under the resulting contract and ensure it is consistent with the eligibility information in existing program documentation, such as the program handbook, as applicable. Identify who will determine eligibility.
- g. Characteristics of the service population: Define the characteristics of the individuals to be served under the resulting contract. The intent is to give the contractor information on the population it will be serving. For example, will individuals served be court-ordered into services, receiving services voluntarily, have open abuse and neglect cases.

- h. Service authorization and referral process: Identify how individuals will be referred for services provided by the contractor (e.g., agency, self-referral, contractor outreach) and describe the process, including any forms, through which individuals will be referred or approved for services.
- i. Location of work or service areas: Describe where the work is to be performed (e.g., region, counties, cities, zip codes) and where people will meet to do the work.
- j. Period of performance: Specify the allowable dates for projects, such as start and finish time, number of hours that can be billed per week or month, and anything else that relates to scheduling.
- k. Deliverables schedule: List and describe what is due and when, including any reports the contractor is required to submit.
- l. Minimum qualifications: List the minimum acceptable qualifications for the service provider's staff and organization.
- m. Professional licenses and certifications: Describe the applicable license and certification standards required for completing the work.
- n. Record keeping: Describe in detail all records the contractor and service providers are required to keep, such as: referral records, individuals' records, case files, reports, notifications, performance measure supporting documentation, billing records, personnel records, subcontractor files and agreements, licenses, certifications, qualifications, background check results, health records, or investigation records. Specify the format for these records.
- o. Established standards: Describe any regulatory, agency, or industry specific standards that need to be followed in fulfilling the contract.
- p. Type of contract and payment schedule: Define the payment methodology, basis for payment, and invoicing process.
- q. Liquidated damages and other remedies: Determine whether liquidated damages are appropriate (e.g., for failure to meet specific performance measures or milestones), as well as stating other remedies (such as, corrective action plans, escalated monitoring, payment holds) that may be applied if contract requirements (e.g., specific performance measures and/or reporting requirements) are not met. All remedies that may be utilized must be stated in the solicitation. Some remedies, one common example being contract termination, are included in HHS's Uniform Terms and Conditions (UTCs). In drafting the SOW, care should be taken to ensure consistency regarding damages and remedies throughout the entire solicitation package.
- r. Monitoring activities: Describe the strategy to be used to monitor and assess contractor performance.
- s. Transition and turnover planning: Identify any transition activities the new contractor will be required to perform in order to be ready to effectively provide services on the contract effective date. Identify any transition activities the new contractor will be required to perform at the end of their contract in order to effectively transition individuals and services to a subsequent contractor, as well as the anticipated time period for transition activities.

8.8.5 Contract Performance Standards and Key Measures

Including performance measures in the SOW sets the expectation of performance. Contracts must include specific performance measures that set clear expectations for the contractor and hold contractors accountable for those expectations. Performance measures encourage routine improvement, effectiveness, and efficiency. Strong performance measures allow the HHS System to:

- a. Establish performance measures with clearly defined indicators;
- b. Develop processes for collecting performance data and information;
- c. Develop processes for analyzing and reporting data and information;
- d. Conduct quality improvement planning, implementation, and evaluation;
- e. Ensure contract goals, objectives, and strategies align with outcomes;
- f. Operate efficiently and effectively;
- g. Maximize resources; and
- h. Provide data to determine whether contractors are meeting their objectives.

Contracts must specify remedies for noncompliance (e.g., contract termination) and may include any incentives for exceeding standards.

Performance standards will vary based on the contract and additional standards may be necessary.

8.8.6 Characteristics of Good Key Performance Measures

The SOW must contain minimum objective performance standards that are clearly stated, so that contractor’s performance under any resulting contract can be monitored and measured. For services, PCS will look for program’s method, procedure, or test condition to verify each stated performance standard. For commodity elements, PCS will look for means for program to verify quantity and whether specifications are met. The characteristics of good key performance measures include the following:

- a. Simple: Can our stakeholders understand it?
- b. Relevant: Does it matter to key stakeholders?
- c. Stable: Is it usable during business cycles over time?
- d. Timely: Is it taken when and where results appear?
- e. Accurate: Does it consistently measure what it purports to?
- f. Used: Does it change what the agency is doing?
- g. Informative: Does it tell us about what we are doing, or should be doing?
- h. Specific: Does it allow for, or factor out, other measures?
- i. Unique: Is it measuring something already measured?

- j. Cost-effective: Is measuring worth it, and how good is good enough?
- k. Non-disruptive: Does it create ethical, legal, or other types of conflicts?

KEY PERFORMANCE MEASURES	
Types and Definitions	Examples
Outcome and Effectiveness: Measurable indicator of the agency's effectiveness in serving its customers and in reaching the mission, goals, and objectives.	<ul style="list-style-type: none"> <li>a. Percentage of provider enrollment applications processed in 30 days.</li> <li>b. Percentage of licensed providers inspected annually.</li> <li>c. Percentage of providers with no violations.</li> </ul>
Output: Measurable indicator of the number or volume of services an agency produces. Used to assess workload and the agency's efforts to address those demands.	<ul style="list-style-type: none"> <li>a. Number of substance abuse beneficiaries in the program.</li> <li>b. Number of inspections conducted.</li> <li>c. Number of provider applications processed.</li> </ul>
Efficiency: Measurable indicator of productivity expressed in unit costs, units of time, or other ratio-based units. Used to assess the cost-efficiency, productivity, and timeliness of agency operations, outcomes, and outputs.	<ul style="list-style-type: none"> <li>a. Average cost per case.</li> <li>b. Average cost per inspection.</li> <li>c. Average time for complaint resolution.</li> </ul>
Explanatory/Input: Indicator of factors, agency resources, or requests received that can impact an agency's performance.	<ul style="list-style-type: none"> <li>a. Percentage of medical school graduates entering a primary care residency.</li> <li>b. Number of business facilities registered.</li> <li>c. Number of cases received.</li> </ul>

### 8.9 Contractor Compensation

The method of payment has a direct impact on how the SOW is written and how the contract is managed. HHS agencies must measure or verify that the work is complete and how much and how often the agency will pay the contractor, if more specific than stated in the Uniform Terms and Conditions. Program should be mindful of, and consistent with, applicable law (e.g., the [Texas Prompt Payment Act](#)).

Payments should be:

- a. Consistent with the type of product or service delivered;
- b. Structured to fairly compensate the contractor and encourage timely and complete performance of work;
- c. Approximately equal to the value of the completed work; and
- d. The solicitation should specify the payment type (fees, costs, and price) that is consistent with the type and value of work performed and as defined in the solicitation.

Retainage may be considered under payment provisions, as will.

## 8.10 Determination of Payment Type

Determination of the appropriate compensation method to make payment to the contractor helps ensure the State receives the best value.

### 8.10.1 Compensation Method/Primary Payment Type

HHS agency staff must determine the most effective compensation method or primary payment type during the procurement planning stages. The payment type selected will be one that best ensures:

- a. Delivery of services;
- b. Efficiencies and effectiveness of those service; and
- c. The best value to the program and individuals served.

### 8.10.2 Multiple Payment Types

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

- a. Cost Plus Incentive;
- b. Fee-for-Service;
- c. Fixed Price;
- d. Performance Based;
- e. Rate Based; and
- f. Time and Material.

## 8.11 Evaluation Criteria

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

Developing the evaluation criteria should be an extension of the solicitation objective and should align directly with the end user’s desired results and expectations. When developing the evaluation criteria, consider the overall objectives of the procurement and the expected results. Apply relative importance and weight to the criteria accordingly. Generally, cost weights should fall somewhere between 30-40%, and other criteria should not fall below 5% or exceed 30%.

The evaluation tool must measure items described in the solicitation, and the evaluation tool must contain a column that contains a reference to the area in the solicitation from which each criterion and sub-criterion comes. The image below illustrates how weights effect numeric scores:

Line Item Score using Scoring Guide		Line Item Weight and Final Score												
		1%	2%	3%	4%	5%	10%	15%	20%	25%	30%	40%	60%	70%
<b>Unacceptable</b>	1	0.10	0.20	0.30	0.40	0.50	1.00	1.50	2.00	2.50	3.00	4.00	6.00	7.00
	2	0.20	0.40	0.60	0.80	1.00	2.00	3.00	4.00	5.00	6.00	8.00	12.00	14.00
	3	0.30	0.60	0.90	1.20	1.50	3.00	4.50	6.00	7.50	9.00	12.00	18.00	21.00
<b>Marginal</b>	4	0.40	0.80	1.20	1.60	2.00	4.00	6.00	8.00	10.00	12.00	16.00	24.00	28.00
	5	0.50	1.00	1.50	2.00	2.50	5.00	7.50	10.00	12.50	15.00	20.00	30.00	35.00
	6	0.60	1.20	1.80	2.40	3.00	6.00	9.00	12.00	15.00	18.00	24.00	36.00	42.00
<b>Acceptable</b>	7	0.70	1.40	2.10	2.80	3.50	7.00	10.50	14.00	17.50	21.00	28.00	42.00	49.00
	8	0.80	1.60	2.40	3.20	4.00	8.00	12.00	16.00	20.00	24.00	32.00	48.00	56.00
	9	0.90	1.80	2.70	3.60	4.50	9.00	13.50	18.00	22.50	27.00	36.00	54.00	63.00
<b>Exceptional</b>	10	1.00	2.00	3.00	4.00	5.00	10.00	15.00	20.00	25.00	30.00	40.00	60.00	70.00

PCS will return ineffective evaluation criteria to the program. For criteria to be effective, they should have the following characteristics:

- a. Clear: not subject to multiple interpretations, not ambiguous;
- b. Relational: all key elements of the project requirements must relate to the requirement definition and be covered by evaluation criteria;
- c. Discriminating: separate best, average and weaker proposals;
- d. Non-discriminatory: fair and reasonable;
- e. Realistic: given the nature or value of the contract;
- f. Measurable: must have distinguishing importance;
- g. Economical: use of the criteria should not consume an unreasonable amount of time or resources; and
- h. Justifiable: makes sense and can be justified on common sense, technical and legal basis; mandatory and heavily weighted criteria must be justified.

8.12 Vendor Selection Methodology—Evaluation Team Selection & Scoring

8.12.1 Method of Vendor Selection

Program must specify and provide to PCS the method of vendor selection to be included in the solicitation. The most common selection method is evaluation of the written proposal. The written proposal is scored by individual evaluation team members, to come up with an average score for each respondent in each evaluation criteria. The evaluation criteria are then totaled according to advertised weights in the solicitation, and the highest scoring respondent is awarded the resulting contract. However, other methods and variations exist, such as consensus scoring and the addition of interviews or demonstrations. In a consensus scoring approach, individual evaluators read the proposals prior to evaluation work sessions and note their observations of strengths, weaknesses, and questions regarding the respondent's proposal. Once all proposals have been reviewed individually, the evaluation team will meet to develop consensus scores for each respondent. Finally, a second phase of evaluation consisting of interviews or demonstrations may be utilized to further separate the respondents. The solicitation may specify that a competitive range will be set to determine who will advance to the second phase of evaluation, or the solicitation may specify that

all respondents will be required to participate in in the second phase of evaluation. The solicitation must clearly specify how the interviews or demonstrations will be evaluated and scored. The most common mistakes made when developing the selection methodology are:

- a. Not clearly identifying how respondents are selected for interviews or demonstrations;
- b. Not including a justifiable scoring methodology for interviews or demonstrations; and
- c. Not detailing the process for selection from written evaluation, to competitive range, to interviews and/or demonstrations, to final selection.

Clearly stating the methodology at each step, including interviews and demonstrations, will help avoid issues resulting from solicitation ambiguity, such as vendor protests or perceptions of impropriety. Additionally, ensuring that the evaluation team is knowledgeable enough to make justifiable judgment calls is equally important. If the procurement is large-scale and technically complex in several areas, consensus scoring may improve overall outcomes. *Reference Section 14.2.3 regarding Respondent Evaluation*, for more information on vendor selection and evaluation scoring.

#### 8.12.2 Consensus Scoring

In a consensus scoring approach, the evaluation team meets to develop consensus scores for each respondent. This process may take a few hours or a few days, depending on the number and length of proposals and the availability of the Evaluation Team members.

During consensus scoring sessions, the evaluation team facilitator directs the team's attention to each item in the evaluation criteria. The evaluation team considers one proposal at a time, comparing the respondent's proposed offering against the specifications in the underlying RFX. Consensus scoring sessions encourage open discussions and questions among members of the evaluation team. Evaluators discuss the relative strengths and weaknesses of a respondent's proposal in each area. Open debate about a respondent's statement or response is encouraged to help ensure nothing proposed by a respondent in response to a requirement is overlooked. This discussion may provide additional insight into the respondent's offering and/or correct misperceptions held by individual evaluators.

For these reasons, a consensus rating arrived at by the evaluation team after consideration and discussion of all information provided by a respondent can represent a more accurate assessment of the respondent's offering than a mathematical averaging of individual evaluator's scores. It is important to remember that, even with these benefits, it may not be a fit for all procurements. Some procurements that are smaller-scale and have plenty of individual subject matter experts may be better suited to individual evaluations with averaging, especially if there is difficulty blocking schedules and the evaluators are not experienced with participating in procurements. The consensus process can take days, or even weeks, depending on the size of the proposals, complexity of the procurement, and availability of the evaluation team.

The general process for conducting consensus scoring includes:

##### 8.12.2.1 Step 1: Evaluation Team Formation.

The evaluation team must be selected in advance of the commencement of evaluation training, ideally in the early stages of solicitation drafting. The members must be subject matter experts in some or all the RFX's topic. Evaluation teams should be kept to a manageable size—not less than five and not more than eight evaluators.

#### 8.12.2.2 Step 2: Minimum Qualifications Review.

Some RFPs may include minimum qualifications which, upon review, may disqualify a respondent. These items are not scored and represent requirements respondents must demonstrate to be considered for award. Many of these can be handled in PCS's initial screening of these responses. However, some may require the program to conduct a minimum qualification review due to the expertise required to screen, and these will be accounted for in the consensus meetings using the Consensus Scoring Rubric.

Proposals that fail to meet any of the minimum qualifications in an RFP are to be rejected. Documentation supporting this decision should be placed on the Respondent's Consensus Scoring form in the "Minimum Qualifications" section. Copies of proposals rejected by PCS are not distributed to the evaluation team members for evaluation. Proposals that have remaining minimum qualification screening requirements that must be evaluated by program SMEs will be submitted to the evaluation team members (provided PCS's initial review does not result in a disqualification). Minimum qualification determinations will be made by the program area SMEs prior to commencement of the consensus scoring sessions.

#### 8.12.2.3 Step 3: Individual Review (*Not Scoring*).

Prior to receiving proposals, evaluation team members should familiarize themselves with the released RFP and all issued amendments and addendums (this includes the Q&A addenda). After proposals have been received, and with ample time prior to the first meeting of the evaluation team, team members should be given one copy of each proposal to be reviewed. The evaluation members must read and review each proposal.

- a. Notetaking: Individual notes should highlight significant points in the proposals (for example, strengths/weaknesses) and note any questions they would like to discuss in the evaluation team meeting(s). The evaluators are not to score the proposals in their individual notes, as the scoring is done by consensus in the group setting.
- b. One method of individual notetaking that has been successfully utilized is using the P/N/Q/I method. Using this method, evaluators mark their individual comments with one of the four letters. The letters represent:
  - i. P (Positive): Indicates what the evaluator sees as a strength.
  - ii. N (Negative): Indicates what the evaluator sees as a weakness.
  - iii. Q (Question): Indicates the evaluator is uncertain about the information presented.
  - iv. I (Interesting): Indicates the evaluator finds the information interesting (i.e., when proposal provides an innovative approach or solution – "outside the box").

#### 8.12.2.4 Step 4: Team Evaluation.

The use of a consensus approach to evaluate the proposals means that evaluation team members will not assign any scores during their individual reviews of the proposals. Instead, the entire evaluation team will arrive at a consensus as to assignment of points on each evaluation criterion of each proposal during the evaluation team meeting(s).

A facilitation team consisting of a facilitator, a scribe, and a CQC analyst will be assigned by PCS and CQC joint decision. A facilitator must assist the team in developing consensus. The facilitator must not exercise decision-making in the determination of the assignment of points to proposals.

Evaluation teams may decide to review proposals by alphabetical order, random selection or another appropriate method. It is recommended, however, that the evaluation team review and assign points to only one proposal at a time. This approach works best when proposals are reviewed and scored by proceeding through each of the RFP's evaluation criteria in numerical order. After completing the review and assigning points to an entire proposal, the team then moves on to the next proposal, and so forth.

Proposals must be evaluated against the criteria of the RFP. The evaluation team must not evaluate or compare proposals to each other except when evaluating for cost. The scribe will keep the only document for recording the team consensus comments and assigned points for each proposal. The document to be used is the Consensus Scoring Rubric. The evaluation team must not assign points for the same factor in more than one evaluation criterion. For example, if the team believes that "quality assurance" should be taken under consideration and evaluated under the "Past Performance" criterion, they should not also evaluate "quality assurance" under the "Demonstrated Approach" criterion.

#### 8.12.2.5 Step 5: Awarding Points.

In determining how well a proposal scored, all proposals start off with zero points and are awarded points based on how well they responded to the criteria of the RFP. Proposals that exceed the minimum requirements receive higher scores. This approach not only allows for a clear indication of which proposals met the minimum requirements, it also allows for a natural separation between outstanding, adequate, and substandard proposals.

##### 8.12.2.5.1 Replacement Scoring Method for Interviews

The replacement method uses the interviews consensus scores to replace the written evaluation consensus scores. Interview questions center around clarifying the respondent's written proposal, asking questions to ensure the score for each criterion are addressed. Each respondent must have the same opportunity to address questions related to the solicitation criteria as the other respondents, which means questions must be prepared in advance of the interviews. This does not preclude asking follow-up questions to clarify a respondent's answer, or other questions that will not impact the score. Following each oral interview, the evaluation team meets to adjust and finalize the *Consensus Scoring Rubric*.

##### 8.12.2.5.2 Combined Scoring Method for Demonstrations

The combined scoring method adds points to the initial points held by a respondent from the written proposal or the revised interview scores. Demonstration criteria must be developed and identified in the solicitation. Each respondent must have the same amount of time for demonstrations. Following each demonstration, the evaluation team meets to score the demonstrations and finalize the *Consensus Scoring Rubric*. Demonstrations will be scored according to the criteria in the solicitation. Options include weighted consensus scoring or attribute consensus scoring on a scale of 1-

10, with the final an average of all scores. The demonstration score will be added to the written proposal score (or the post-interview score if both interviews and demonstrations are being utilized) to create the final score.

8.12.2.6 Step 6: Price Scoring.

Scoring of the cost proposal information should be in accordance with whatever was specified within the RFP. Some RFPs may require advanced price evaluation, which must be done by the program area. However, most will be done by a CQC financial analyst in the following manner:

- a. The lowest price proposal will receive the maximum cost points.
- b. If two or more proposals have the exact same lowest price, then they all receive the maximum cost points.
- c. Proposals that do not have the lowest price will be assigned points based on the following formula:
  - i.  $(\text{Lowest submitted cost proposal} / \text{Cost of proposal being scored}) \times (\text{Total cost points available}) = \text{Pro-Rated Score}$
  - ii. Example: If 30 points was the maximum to be awarded for price, and the lowest price proposal is \$10,000 and the proposal being scored is \$14,000, the \$14,000 proposal would receive 21.4 points based on the following calculation:
  - iii.  $(\$10,000/\$14,000) \times 30 \text{ points} = 21.4 \text{ points.}$

8.13 Historically Underutilized Business (HUB) Determination

8.13.1 HUB Goals:

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

Each state agency shall make a good faith effort to assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year in accordance with the following Texas Statewide HUB Goals:

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

- f. 21.1% for commodities contracts.

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

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

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

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

#### 8.13.3 Determination of Subcontracting Opportunities

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

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

#### 8.13.4 HUB Subcontracting Plan (HSP) Requirements

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

To initiate this process, the PCS purchaser obtains the required documentation from the program area and submits a copy of the SOW, a copy of the requisition, and a list of probable subcontracting opportunities to include the NIGP codes to the [HHSCHUB@hsc.state.tx.us](mailto:HHSCHUB@hsc.state.tx.us) mailbox.

This request will be assigned a HUB coordinator to assist with the solicitation and ensure the agency complies with HUB requirements as well as the agency's initiatives. Upon review of the submitted documentation, the HUB coordinator works with the purchaser and program area to determine subcontracting probability and completes the [Form PCS 406](#). The completed Form PCS 406 and the correlating HUB solicitation language is provided to the purchaser to incorporate into the solicitation documents. The purchaser will review Form PCS 406 to confirm and verify the NIGP codes for accuracy.

If the purchaser concurs, they will execute the Form PCS 406 and save the document in the procurement file. If any changes are made to the solicitation documents that impacts the HUB program (i.e., scope of work, procurement timetable, etc.), the purchaser will notify the HUB coordinator of the change for input or to revise the Form PCS 406. When the solicitation is posted on the ESD, the purchaser will notify the HUB Coordinator that it is posted, so that the HUB Program Office may facilitate additional marketing efforts to engage the HUB vendor community.

#### 8.14 Determination of Subrecipient, Recipient, or Contractor Relationship

To determine appropriate solicitation method and compliance regulations, the determination of a subrecipient, recipient, or contractor relationship is generally made during the planning phase for an RFA and RFP. The determination process involves various stakeholders that may include program staff, legal, and PCS, with the final determination made by the PCS Grants Division. The final determination shall remain consistent throughout the procurement and contract lifecycle.

[Form PCS 438](#), where applicable, must be completed in order to complete the determination process. This is required if you are one of the program areas designated by PCS that requests both procurements and grants. *Reference Section 12.2 regarding Determination of Subrecipient, Recipient, or Contractor Relationship.*

#### 8.15 Planning Exception—Emergency Procurements<sup>50</sup>

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

Emergency purchases discussed in this section are different from agency purchases conducted under a Declaration of Disaster by the Governor.<sup>51</sup> SPD authority does not extend to purchases made under the Texas Disaster Act of 1975.

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

<sup>50</sup> See *Comptroller's Guide, Emergency Purchases*.

<sup>51</sup> Tex. Gov't Code [§ 418.004\(1\)](#).

The decision to declare an emergency purchase is the sole responsibility of the agency. If an emergency exists, a written determination of the basis for the emergency and for the selection of a particular vendor must be made and approved, using [Form PCS 01](#), and included in the procurement file.

Once the Form PCS 01 is completed, program requester will follow PCS procurement process by completing a requisition, and attaching the approved Form PCS 01, the SOW used to obtain a budgetary quote, the budgetary quote, and any other supporting documentation needed for PCS to complete the purchase. *Reference Section 10.6 regarding Emergency Procurements*, for more detailed HHS procedures regarding emergency purchases.

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

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

#### 8.16 The Requisition

The last step in the procurement planning phase involves the submission of the requisition to initiate a procurement in CAPPs Financials.<sup>52</sup> At this stage, the customer organization has secured documentation of any program-specific external reviews and approvals and appropriate internal approvals. These program-specific reviews and approvals may be needed from the SAO, Office of Attorney General, DIR, Governor's Office, or other office. One example of a program specific review is when HHSC is required to request participation for review of major health care procurements from the Office of Attorney General.<sup>53</sup> Because this activity is specific to the program and doesn't apply to all procurements, the responsibility to obtain and document the reviews and approvals is the responsibility of the customer organization.

Once program has submitted the requisition to initiate the solicitation and has been assigned a PCS Purchaser, the customer organization must promptly provide any approval and review documentation to the PCS Purchaser, to ensure the purchaser has the required documentation for a complete procurement file.

All HHS procurements are initiated through the submission of a requisition into CAPPs Financials.<sup>54</sup> Responses to Wizard<sup>55</sup> questions assist determination of the procurement method and requirements. Before PCS can start procurement processing, program management must approve the request in CAPPs and budget check the requisition.

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<sup>52</sup> On September 5, 2017, HHS upgraded and renamed the Health and Human Services Administration System (HHSAS) Financials, a Financial PeopleSoft system, to the Centralized Accounting and Payroll/Personnel System (CAPPs) Financials.

<sup>53</sup> Tex. Gov't Code [§ 531.018](#).

<sup>54</sup> To access CAPPs Financials, security permissions for the user must be established through the [HHS Enterprise Portal](#). CAPPs Resources are available on the [HHS Connection Contracting and Procurement](#) page.

<sup>55</sup> Wizard document found on <https://hhsconnection.hhs.texas.gov/procurement-contracting>.

At a minimum, all requisitions must include:

- a. Complete contact information of the requester including full name, email address, and phone number; and
- b. A clearly stated “need by date” in accordance with *Section 8.1 regarding Procurement Lead Times*.

Other requirements for common procurements are included in the following table. For assistance in submitting a requisition, please contact PCS Customer Service at: [PCS\\_CST\\_HHSC@hhsc.state.tx.us](mailto:PCS_CST_HHSC@hhsc.state.tx.us).

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

Procurement	Requisition Requirements
Goods (non-IT)	<ul style="list-style-type: none"> <li>• Separate line item for each good and include the following:                             <ul style="list-style-type: none"> <li>o Item Description*</li> <li>o Quantity</li> <li>o Unit of measure (UOM)</li> <li>o NIGP Code – Class &amp; Item</li> <li>o Price</li> </ul> </li> <li>• Line Comments should contain, if applicable:                             <ul style="list-style-type: none"> <li>o Contract information and/or number (e.g., SPD Term Contract, TXMAS, MMCAP, etc.)</li> <li>o Quote/Wishlist/Cart from the preferred vendor, if item is not available from TCI, WorkQuest (formerly TIBH), or another SPD Term contact.</li> <li>o Additional documentation (e.g., SOW or item specifications, diagrams, etc.)</li> </ul> </li> <li>• Header Comments should contain, if applicable:                             <ul style="list-style-type: none"> <li>o Agency Contact information (names, email addresses, and phone numbers) for lead contact, contract manager, and responsible party for the order</li> <li>o Contact Information for the preferred vendor (i.e., name of vendor, vendor representative name, email address, phone number, and VID, if known)</li> <li>o Shipping codes for Bill-To and Ship-To</li> <li>o Program-specific info (e.g., end user contact info, special delivery instructions, AP contact info, etc.)</li> </ul> </li> <li>• Expedite and Emergency Requisitions:                             <ul style="list-style-type: none"> <li>o Once requisition has been submitted and has received all necessary workflow approvals, email: <a href="mailto:PCS_CST_HHSC@hhsc.state.tx.us">PCS_CST_HHSC@hhsc.state.tx.us</a>.</li> </ul> </li> </ul>

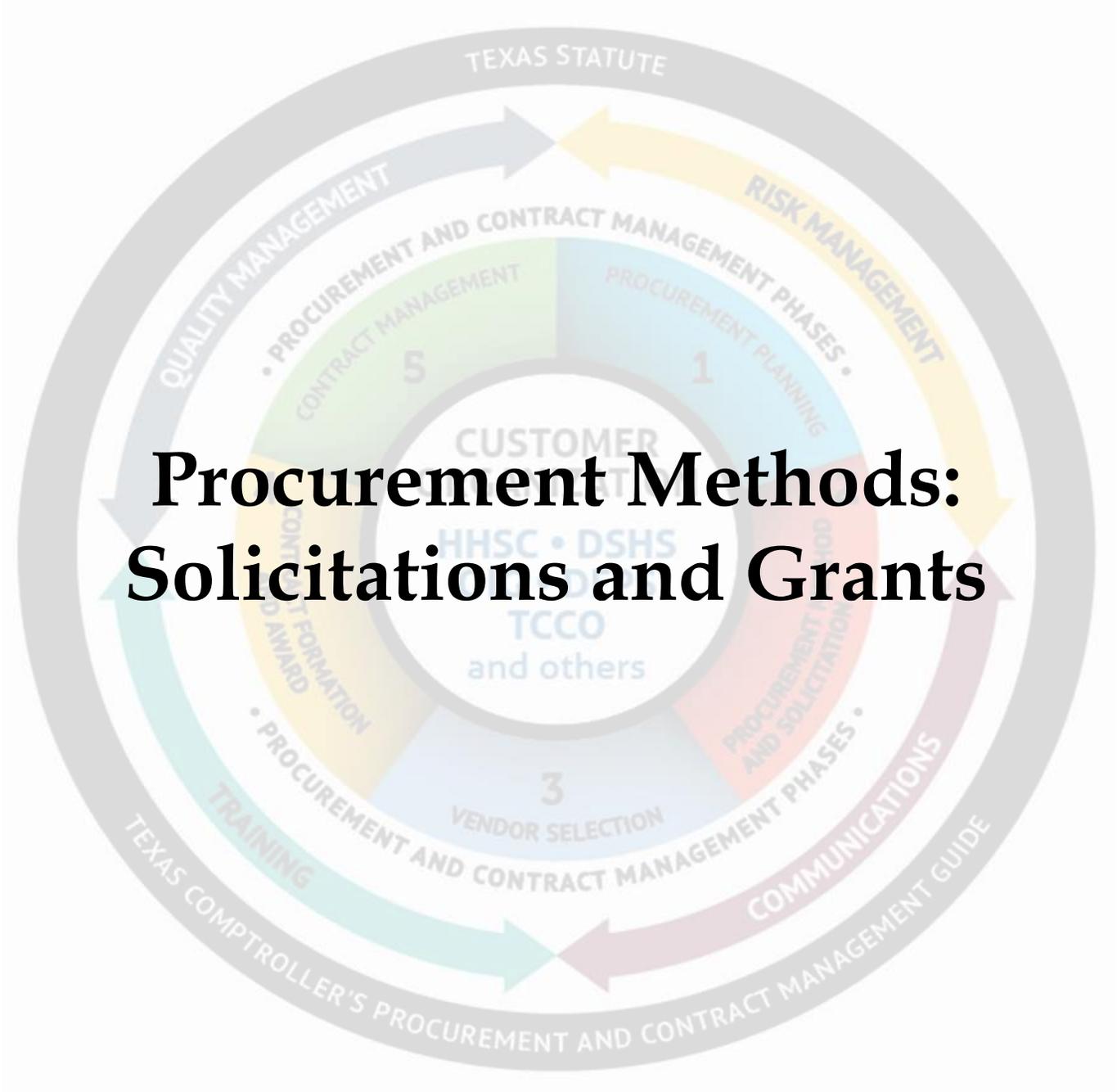
Procurement	Requisition Requirements
	<ul style="list-style-type: none"> <li>o Include the requisition number and a justification statement in the email message.</li> <li>o For Emergency Requisitions, fill out HHS <a href="#">Form PCS 01</a> with signature from program's commissioner. Attach form in email message.</li> </ul> <ul style="list-style-type: none"> <li>• Proprietary and Sole-Source Procurements:               <ul style="list-style-type: none"> <li>o Fill out HHS <a href="#">Form PCS 02</a></li> <li>o Attach completed HHS Form PCS 02 in submitted requisition signed by the authorized signature authority: <a href="https://hhsconnection.hhs.texas.gov/sites/inttranet/files/documents/purchasing-contracting/purchasing/hhs-special-purchases-auth-designees.pdf">https://hhsconnection.hhs.texas.gov/sites/inttranet/files/documents/purchasing-contracting/purchasing/hhs-special-purchases-auth-designees.pdf</a>. If HHSC program, attach the HHS Form PCS 02 without required signatures, so HHS Form PCS 02 can be reviewed and approved by PCS.</li> </ul> </li> </ul> <p>* Item Description should include Manufacturer's Name, Full Product Name, Manufacturer Part Number, Size, Color, Type, and Grade. Include screen shots or catalog page numbers if available.</p> <p>Sample Description: Avery, 8160, Easy Peel White Address Labels w/ Sure Feed Technology for Inkjet Printers, 1 x 2.63, White, 30/Letter-size Sheet, 25 Sheets/Pack, Item #574566</p>
Temporary Staff Services	<ul style="list-style-type: none"> <li>• Service Dates</li> <li>• Job Class #</li> <li>• Job Class Title</li> <li>• Highway District #</li> <li>• Rate (Entry Level, Experienced, Expert)</li> <li>• Job Description</li> <li>• Knowledge, Skills, and Abilities</li> <li>• Work Hours (AM/PM)</li> <li>• Work Days (Mon-Fri)</li> <li>• Work Hours per Week</li> <li>• If overtime is allowed, it is calculated at a different rate and requires an additional line on the requisition</li> <li>• Prior to issuing a purchase order, the purchaser will need the name of the person for each position</li> </ul> <p>Sample requisition line: Temporary Staffing, 09/01/2020-08/31/2021, Job Class 0006, Receptionist, District 1, Entry Level, John Doe, Up to 40 hours per week</p>

Procurement	Requisition Requirements
Moving Services	<ul style="list-style-type: none"> <li>• Estimated dollar amount of the move</li> <li>• SOW with moving details to include, but not limited to:                             <ul style="list-style-type: none"> <li>o Move Dates</li> <li>o Locations</li> <li>o Items to be moved</li> <li>o Hours when moves should occur</li> <li>o Floorplans (if available)</li> <li>o Site Contact Person(s)</li> </ul> </li> </ul>
Printing Requisitions	<ul style="list-style-type: none"> <li>• All print jobs:                             <ul style="list-style-type: none"> <li>o Proof(s) attached to requisition</li> <li>o Quote attached to requisition</li> </ul> </li> <li>• For jobs over \$2,500, in addition to the above, the following is needed:                             <ul style="list-style-type: none"> <li>o Print Shop Job Request Form</li> <li>o All bids or no bids received by State Print Shops</li> <li>o Bid Tabulation</li> <li>o Email to TCI giving the opportunity to negotiate price if not the lowest bidder</li> <li>o Email to <a href="mailto:stateprintshops@cpa.texas.gov">stateprintshops@cpa.texas.gov</a> showing award notification with bid tabulation</li> <li>o Documentation to show that an unsuccessful request to the State Print Shops was made</li> </ul> </li> </ul>
Conference/Meeting Room Space	<p>If state-owned or state-leased facilities do not meet the agency's needs, the following is needed:</p> <ul style="list-style-type: none"> <li>• Documentation of at least one of the following by filling out and submitting the Hotel Conference Space Requisition Wizard in CAPPs Financials:                             <ul style="list-style-type: none"> <li>o Not available when needed;</li> <li>o Not adequate to accommodate the meeting, conference, or examination; or</li> <li>o Not an economically favorable alternative to other facilities.</li> </ul> </li> <li>• Copy of TFC reservation portal calendar.</li> </ul>

Procurement	Requisition Requirements
IT Products	<ul style="list-style-type: none"> <li>• ITPP (including table and line number) for products over \$50K</li> <li>• Product Part Number</li> <li>• Product Description (a screen shot)</li> <li>• Budgetary Estimate: DIR contract number must be referenced on budgetary estimate</li> <li>• Legally approved signature page for IT amendments</li> <li>• <a href="#">Form PCS 515</a> for IT amendments</li> <li>• DIR Cooperative Contracts and/or DCS exemption, if needed, to facilitate the IT procurement process</li> </ul>
IT Services	<ul style="list-style-type: none"> <li>• ITPP (including table and line number) for services over \$50K</li> <li>• Completed SOW: For IT services over \$50,000, DIR review is required</li> <li>• Budgetary Estimate: DIR contract number must be referenced on budgetary estimate</li> <li>• Legally approved signature page for IT amendments</li> <li>• Form PCS 515 for IT amendments</li> <li>• DIR Cooperative Contracts and/or DCS exemption, if needed, to facilitate the IT procurement process</li> <li>• Clearly state contract manager’s name, email and phone number in requisition comments, as applicable</li> <li>• Requisition should be created to match how purchase order will be billed as well as received</li> </ul>
Complex Procurements	<ul style="list-style-type: none"> <li>• Completed SOW. Fulfill this requirement by submitting a draft RFx in the <i>current</i> template with the SOW Section completed. If you submit something other than this approved method, your requisition may be denied if the SOW does not contain all the required components as detailed in the current RFx Template.</li> <li>• Accurate Request Document. Your answers to the CAPPS Financials Wizard Questions are utilized to automatically complete your Request Document, which accompanies your requisition. Answering these questions incorrectly or incompletely will result in your requisition being completely denied. It must re-route through the approval process.</li> <li>• Contract Value. Contract value is the most common mistake on the Request Document, and always requires re-routing for approvals because approvals vary at different contract values.</li> </ul>

Procurement	Requisition Requirements
	<p>Remember, the value of the contract is the value of the initial term plus all renewals and extensions, if applicable. (Example: Initial contract term is one-year at \$100,000, plus 3 one-year renewals. The contract value is \$400,000.)</p> <ul style="list-style-type: none"> <li>• <a href="#">Form PCS 438</a> Determination. must be completed in order to determine whether the contract will operate under a subrecipient or contractor relationship.</li> </ul>
Construction	<ul style="list-style-type: none"> <li>• Maintenance and Construction (M&amp;C) solicitation documents uploaded to the M&amp;C SharePoint site. All construction solicitation documents must be uploaded to the M&amp;C SharePoint site. The required documents include the solicitation template and all related exhibits. Once the folder is populated, the M&amp;C Contract Specialist will email the SharePoint folder link to the PCS Construction Team Director for assignment.</li> <li>• Accurate Request Document. Your answers to the CAPPs Financials Wizard Questions are used to automatically complete your Request Document, which accompanies your requisition. Answering these questions incorrectly or incompletely, will result in your requisition being completely denied. It must re-route through the approval process.</li> <li>• Contract Value. Contract value is the total estimated construction budget for the project. The total construction budget does not include professional services fees associated with the project.</li> <li>• Assignment. The PCS Construction Team Procurement Director will assign a PCS Purchaser to the project.</li> <li>• Development. The assigned PCS Purchaser will work with the assigned M&amp;C Project Manager for development of the solicitation documents.</li> </ul>

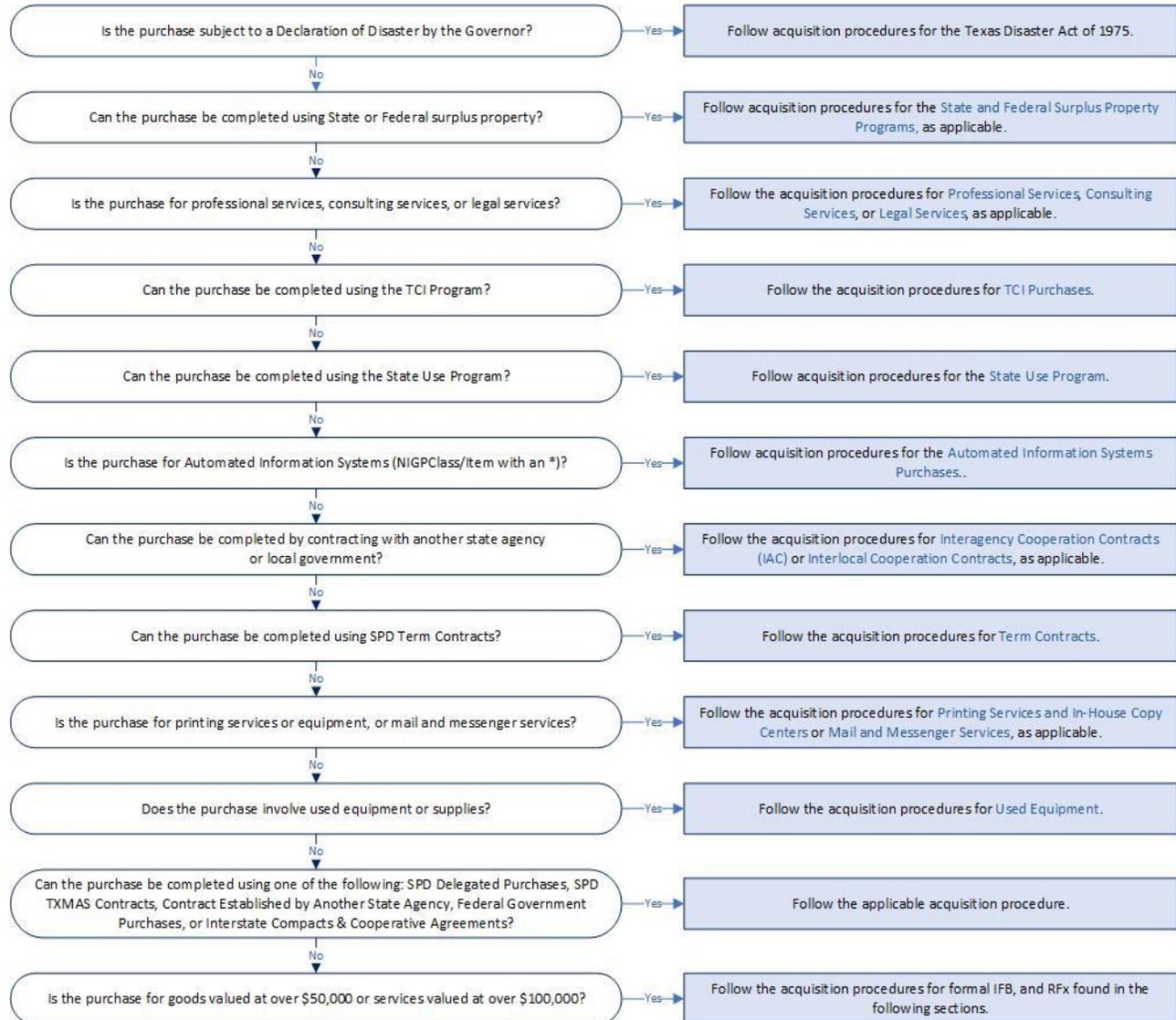
# Procurement Methods: Solicitations and Grants



## 9. PROCUREMENT METHODS

Texas law requires that contract awards may only be made to responsive vendors providing best value to the state. The best value standard may vary depending on the procurement method;<sup>56</sup> therefore, public procurement personnel must ensure that the appropriate best value standard is used as the basis for contract award.<sup>57</sup>

Processes for selecting the appropriate procurement method is illustrated below.



### 9.1 Texas Disaster Act of 1975

Under Chapter 418 of the Texas Government Code, the Governor may by executive order or proclamation declare a state of disaster if the governor finds a disaster has occurred or that the occurrence or threat of

<sup>56</sup> Best value standards include, but are not limited to, the following: Tex. Gov't Code §§ [2155.074](#), [2156.007](#), [2157.003](#), [2254.003](#), and [2254.027](#).

<sup>57</sup> *Comptroller's Guide, Procurement Method Determination*. Full description of method selection on pp 15-16 of v1.3 of guide.

disaster is imminent. The Governor may suspend the provisions of any regulatory statute<sup>58</sup> 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.<sup>59</sup> A purchase made under a disaster must clearly relate to the disaster, conform to the directives of the disaster declaration, and occur within the timeframe specified in the disaster declaration. The requisition must contain a copy of the disaster declaration.

## 9.2 State and Federal Surplus Property Program

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

## 9.3 Texas Correctional Industries (TCI) Purchases

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

Most goods offered by TCI are available for purchase through the SPD Texas SmartBuy online ordering system. PCS will process an internal purchase order and send directly to TCI for services and goods that are not available through the SPD online ordering system.

### 9.3.1 TCI Goods and Services

- a. Graphics: signs, awards, plastics, laser engraved awards, custom printing, cardboard boxes, folders;
- b. Janitorial goods: soaps, detergents, mops, wax applicators, brooms, and brushes;
- c. Garments/textiles: apparel, bedding, mattresses, linens, leather goods, bags, flags, embroidery, windscreens, drapery;
- d. Modular office systems and furniture;
- e. Metal goods: truck beds, trailers, dump truck and tarp accessories, park equipment, toilets, sinks, showers, detention and security equipment, school equipment, kitchen and food service, storage, shelving, fencing; and
- f. Services: auditorium seating, aluminum bleachers, braille transcribing, bus renovation, computer recovery, furniture refurbishing, tire retreading, Geographic Information System (GIS) Data Conversion.

Competitive bidding is not required for items purchased from TCI.

### 9.3.2 Exceptions

<sup>58</sup> Tex. Gov't Code [§ 418.0155](#) (Suspension List).

<sup>59</sup> Tex. Gov't Code [§ 418.016](#) (Suspension of Certain Laws and Rules); see also *Comptroller's Guide, Procurement Method-Texas Disaster Act of 1975*.

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

- a. TCI grants a waiver;
- b. SPD determines that the good or service produced by TCI does not meet the requirements of the agency; or
- c. SPD certifies that the good or service can be purchased elsewhere at a lower price after the agency gives TCI final opportunity to negotiate on price.<sup>60</sup>

#### 9.4 State Use Program

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

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

Purchases of goods and services from WorkQuest do not require competitive bidding. Purchases of *goods* from WorkQuest must be purchased through Texas SmartBuy online ordering system. Purchases of *services* are made through internal purchase orders. Any time the quality of a WorkQuest product or service is deemed unacceptable or failed to meet agency specifications, this information should be reported to WorkQuest and a vendor performance report must be filed with SPD.<sup>61</sup>

##### 9.4.1 WorkQuest Commodities (Goods)

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

##### 9.4.2 WorkQuest Services

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

##### 9.4.3 WorkQuest Temporary Staffing Services

CPA has an established managed term contract with WorkQuest for purchasing temporary staffing services. WorkQuest contracts with Peak Performers and Goodwill at the time of initial publication

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<sup>60</sup> See *Comptroller's Guide, Texas Correctional Industries Purchases*.

<sup>61</sup> See *Comptroller's Guide, The State Use Program*.

of this Handbook) to provide multiple job classifications across the state with negotiated hourly rates.

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

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

#### 9.4.4 Moving Service Purchases

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

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

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

### 9.5 CPA Statewide Contracts

#### 9.5.1 Texas Multiple Award Schedule (TXMAS) Contracts

Pursuant to Government Code, Subchapter I, SPD has established Texas Multiple Award Schedule (TXMAS) contracts. The TXMAS Program adapts existing competitively awarded government contracts to service the procurement needs of state agencies and Texas SmartBuy members. Agencies are not required to use these contracts. Neither consulting services nor professional services (such as engineering and architecture) are offered as part of the TXMAS program in accordance with Texas Government Code [Chapter 2254](#).<sup>62</sup> TXMAS contracts are available at <http://www.txsmartbuy.com/>.

Agencies may utilize TXMAS contracts without obtaining delegated authority from SPD to make purchases that exceed \$50,000 for goods and \$100,000 for services. Prior to purchasing from a TXMAS contract, however, the purchaser must follow applicable procedures to purchase first from TCI, the State Use Program, and the SPD Statewide Term Contracts. For purchases that exceed \$25,000, the agency must post the award notice on the ESBID.<sup>63</sup>

##### 9.5.1.1 Best Value Determination

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

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

<sup>62</sup> Tex. Gov't Code §§ [2155.001\(2\)](#), [2155.502\(c\)\(4\)](#).

<sup>63</sup> See *Comptroller's Guide, Procurement Method – SPD Texas Multiple Award Schedule (TXMAS) Contracts*.

which the contract relates or all TXMAS vendors included in the applicable TXMAS category if the category has fewer than three vendors.

9.5.1.2 Negotiations

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

9.5.1.3 Orders Entered on Texas SmartBuy

Purchase orders for TXMAS contracts must be entered through the Texas SmartBuy online ordering system. Only products or services listed in the underlying contract may be purchased from the TXMAS contract, with one exception: incidental, off-schedule items may be purchased as “best value, open market” items, provided that they are necessary for product integration or product completeness. The purchasing entity is responsible for ensuring that the quoted price for such incidental items is fair and reasonable. These incidental items may be added to the TXMAS purchase order if they are clearly labeled as “open market (OM), best value” items. Incidental items may not exceed \$5,000 or 50 percent of the purchase order total, whichever is less. If the pending order includes incidental items that exceed the stated limits, a request may be submitted to SPD for review and consideration of an exception. Exception requests shall be submitted to [txmasquote@cpa.texas.gov](mailto:txmasquote@cpa.texas.gov). The request must include a copy of the complete vendor quote listing all core items and a detailed incidental charge breakdown.<sup>64</sup>

9.5.2 SPD Statewide Term Contract Purchases

SPD establishes Term Contracts (TxSmartBuy Term and Managed), categorized by commodity/service codes (NIGP Class/Item codes), as a supply source for all state agencies. The term of each contract is determined by SPD. Competitive bidding by state agencies is not required for items purchased from SPD term Contracts. All agencies are encouraged to use Term Contracts whenever possible.<sup>65</sup> Contracts are based on historical estimated quantities, specified by SPD, and may be ordered as needed.

9.5.2.1 Required Use of Term Contracts

SPD term contracts are required unless:

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

<sup>64</sup> *Comptroller’s Guide, Procurement Method – SPD Texas Multiple Award Schedule (TXMAS) Contracts.*

<sup>65</sup> *Comptroller’s Guide, Term Contracts; see [34 Tex. Admin Code §20.220](#).*

- d. The delivery time on the term contract does not meet the delivery need.

#### 9.5.2.2 Justification for Term Contract Not Used

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

#### 9.5.2.3 PCS Purchaser Responsibilities

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

#### 9.5.3 Managed Term Contracts

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

#### 9.6 Spot Purchases (Non-IT)

##### [PCS Operating Procedure 442](#)

Procurements for goods and services must, whenever possible, be accomplished through competitive bidding. With the exception of printing services,<sup>66</sup> if the total value of the purchase is \$5,000 or less, competitive bidding is not required. Dividing purchases to avoid the competitive bidding requirement is expressly prohibited.<sup>67</sup> The PCS Purchaser will review all purchasing methods to determine which is applicable to the procurement.

Historically Underutilized Business (HUB) vendors will be used to the fullest extent possible and may be provided an opportunity to quote on small purchases. Pursuant to HHS policy, procurements with a total value of \$3,000 to \$5,000 (including those with a total value of \$5,000) require at least one HUB be given the opportunity to respond. Purchases may not be divided into smaller transactions to avoid competition.

## 10. COMPETITIVE PROCUREMENT

A competitive bidding procurement method is used when the requirements are clearly defined and described by detailed specifications. For a purchase made through competitive bidding, the solicitation must include the factors other than price that will be considered in determining which bid offers the best value for the state. The purchase price and whether the goods or services meet all specifications are the most important best value considerations.

<sup>66</sup> Tex. Const. art. XVI, §21; purchases for printing must comply with the procedures set forth in the *Comptroller's Guide, Printing Services and In-House Copy Centers*.

<sup>67</sup> Tex. Gov't Code [§ 2155.132\(g\)](#).

With the exception of printing services, competitive bidding is not required if the total contract value is \$5,000 or less.

COMPETITIVE PROCUREMENT METHODS			
Method	Use When	Advantages	Disadvantages
Invitation for Bids (IFB)	Products or services are standardized or uniform.	Simple award process.  In determining best value, price and whether the goods or services meet specifications are the most important considerations.	Defined specifications may be difficult to develop.  Does not encourage innovative solutions.  Negotiations are not allowed if there is more than one qualified bidder. <sup>68</sup>
Request for Proposals (RFP) / Request for Offers (RFO)	Negotiations are preferred.  Vendor is expected to provide innovative ideas or solutions.	Allows customized proposals to meet the same business need  Allows for negotiations.  Considerations in addition to price are used to determine best value	Procurement lead time is much greater.  More complex evaluations.
Request for Qualifications (RFQ)	Vendor selection is dependent on the vendor's skills and qualifications.  Procuring a professional service in a non-competitive market, typically a medical professional.  Price is not a factor until after vendor is selected.	Emphasizes the competency and experience of the vendors.	Vendor selection occurs before price is negotiated.  Two-step process.

10.1 Informal Bidding (Non-IT)

[PCS Operating Procedure 444](#)

Informal bidding is used when the value of a contract is over \$5,000, but not more than \$25,000, for the life of the contract (i.e., total value of the contract). The PCS purchaser will provide bid opportunities to vendors active on the CMBL within the National Institute of Governmental Purchasing (NIGP) class/item designated in

<sup>68</sup> Tex. Gov't Code [§ 2155.088](#); 34 Tex. Admin. Code [§ 20.206\(d\)\(5\)](#).

the solicitation. The PCS purchaser must solicit bids from a minimum of three (3) active vendors on the CMBL, two (2) of which must be current as a Texas-certified HUB.

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

Negotiations are not permitted using this competitive bidding procurement method. However, if there is only one qualified bidder then the PCS Purchaser may negotiate with the sole bidder, including price, provided the negotiation does not result in a material change to the advertised specifications.<sup>69</sup> Proprietary procurements must also follow all required procedures for proprietary purchases.<sup>70</sup>

## 10.2 Formal Bidding (Non-IT)

### [PCS Operating Procedure 446](#)

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

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

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

## 10.3 Information Technology Purchases

DIR is the state's information technology and telecommunications agency. DIR also oversees the Data Center Services (DCS) program. PCS purchasers are required to use contracts established by DIR to obtain automated information systems (AIS), unless the procurement is subject to an exclusion or exemption.<sup>71</sup> AIS type products and services are associated with computers (automation) or telecommunications systems.

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

### 10.3.1 Cooperative Contracts

DIR manages over 700 master IT goods and services contracts awarded based on state procurement rules using the request for offer method of procurement. Particular types of DIR cooperative contracts (DBITS, IT Staffing Services, Other Telecom Services, and Information Security) and purchasing requirements are set forth below. Agencies are required to purchase IT commodities using DIR's cooperative contracts or must request an exemption. Agencies may negotiate lower prices when purchasing from a DIR cooperative contract; however, the DIR vendor may not charge a price higher than the price published in the DIR contract. An agency may not enter into a contract to purchase a commodity item through the DIR Cooperative Contracts Program if the value of the contract's initial term exceeds \$5 million unless it is a DIR coordinated bulk purchase.

<sup>69</sup> Tex. Gov't Code [§ 2155.088](#); 34 Tex. Admin. Code [§ 20.206\(d\)\(5\)](#).

<sup>70</sup> See *Comptroller's Guide, Competitive Bidding (IFBs, Informal Bidding)*.

<sup>71</sup> Tex. Gov't Code [§ 2157.006](#).

### 10.3.2 Bulk Purchasing Initiatives

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

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

### 10.3.3 Texas.gov Contracts

[Texas.gov](https://www.texas.gov) is the official website of the State of Texas. It provides portal and payment services for Texas state agencies and local governmental organizations. Services provided through Texas.gov enable citizens to conduct government business in a variety of easy, secure ways. Application services feature proactive reminders and alerts, customized dashboard, and stored transaction and payment history to the online convenience of renewing a driver license, vehicle registration, or professional license (along with 1,000+ other services). Texas.gov's payment services solution offers complete transaction management that specifically meet the unique needs of Texas. These services require an interagency or, as applicable, interlocal agreement signed with DIR.

### 10.3.4 Shared Technology Services Contracts (STS)

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

### 10.3.5 Telecommunication Services Contracts

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

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

### 10.3.6 IT Staff Augmentation Contract (ITSAC)

IT Staffing Services contracts are one category of DIR Cooperative Contracts that provide for temporary IT staffing augmentation services. Contracted staff render services and are paid on an hourly basis. The DIR ITSAC competitive process is managed through DIR's ITSAC portal. The ITSAC Portal solicits responses from all eligible ITSAC vendors for the selected labor category. This ensures that state agencies will have met all pricing request threshold requirements.<sup>72</sup>

The customer ITSAC Portal will be used to post solicitation requests, review details related to submitted solicitations, cancel/withdraw solicitations, review candidates submitted by vendors, award the solicitation, and mark which candidates were interviewed and/or hired. For more information visit [DIR's IT Staffing webpage](#).

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<sup>72</sup> DIR website, IT Staffing page: <https://dir.texas.gov/View-Contracts-And-Services/Pages/Content.aspx?id=13>

State agencies are not required to obtain DIR's signature on a resulting purchase orders when using an IT staffing services contract.

#### 10.3.7 Deliverables-Based IT Services Contracts (DBITS)

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

DIR DBITS contract categories include:

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

#### 10.3.8 DIR Statement of Work Review Process

State agencies are required to submit SOWs to DIR for review prior to the submission to a vendor for technology services. SOWs must meet [threshold requirements](#) for commodity purchases.<sup>73</sup> DIR has established contracts that prequalify vendors to respond to SOWs across a variety of technology categories, including:

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

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<sup>73</sup> 1 Tex. Admin. Code [§ 212.41](#).

The SOW review process has four phases: draft submission, draft review, final submission, final review, and execution.

DIR SOW REVIEW PHASES	
Participants	Phase Steps
Agency & DIR	<b>DRAFT</b> Agencies will submit draft SOWs to DIR for review before offering SOWs to vendor(s). DIR will review the SOWs and consult with the agency as necessary to ensure the scope of the SOW aligns with the master contract being solicited. Comments, findings, and determination (approval/rejection) will be by email for record purposes.
Agency	<b>PRELIMINARY</b> The agency will submit the approved draft SOW to appropriate DIR vendors (following procurement thresholds), evaluate responses, and negotiate the final version of the SOW. The agency and vendor will execute their portions of the final SOW. The agency will send the signed version of the SOW to DIR for review.
DIR	<b>FINAL REVIEW</b> DIR will review the final negotiated SOW to ensure it is still within the original scope and, when so, will execute the SOW and return to the agency.
Agency	<b>EXECUTED</b> Once executed, the agency may issue a purchase order to the vendor. The agency must post the SOW on its website.

10.3.9 DIR Threshold Requirements

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

DIR THRESHOLDS	
Procurement Value (Initial Contract Term)	Number of DIR Vendors
\$50,000 or less	May award directly to DIR vendor of choice
More than \$50,000 but not more than \$1 million	3 (or all vendors in a category with less than 3 vendors)
More than \$1 million but not more than \$5 million	6 (or all vendors in a category with less than 6 vendors)

### 10.3.10 DIR Threshold Exemptions

DIR threshold requirements do not apply to:

- a. Contracts procured through the Data Center Services program signed by the contracted vendors (e.g., Atos, Capgemini and Xerox Corporation);
- b. Agency customer agreements with the Texas.gov program, pursuant to its enabling statute;<sup>74</sup> and
- c. Contracts for telecommunications services, such as TEX-AN Services and Managed Services for Telecommunications.

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

### 10.3.11 DIR Procurement Exemptions

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

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

- a. Cooperative Contracts – Blanket Exemptions;
- b. Cooperative Contracts – One-Time Exemption;
- c. Certification for Purchase through Local Cooperatives;
- d. Data Center Services Exemption;
- e. Telecom Exemption; and
- f. Texas.gov Exemption.<sup>75</sup>

### 10.3.12 HSPs and DIR Cooperative Contracts

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

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<sup>74</sup> [DIR Website, Threshold Exemptions](#) (citing Tex. Gov't Code ch. 2054, subchs. F and I).

<sup>75</sup> [DIR Website, Exemption Overview](#)

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*agency obtains 100% HUB credit for any HUB direct and subcontracting payments from these contracts.*

## 10.4 Printing Services

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

### 10.4.1 HHS Print Shop

When an HHS program has identified a printing need, all print requests, including newsletters, forms, brochures, business cards, and letterhead, will be sent to the HHS Print Shop first, prior to entering a CAPPs requisition, using the online print order form, [Form D-8](#).

The HHS Print Shop will determine if the print job can be completed in-house; a requisition will not be required. HHS Printing Services functions on a cost-recovery basis, much like a commercial print shop. When the print job is complete, costs are calculated, and a Cost Report is forwarded to the requester's agency fiscal department. A summary of charges is sent to the fiscal department each month with a request for payment using an Interagency Transaction Voucher (ITV). Payment is due within 30 days of the invoice date. For further information, see [Billing](#).

If the request cannot be completed by the HHS Print Shop, the HHS Print Shop will submit the request using the CPA SPD [Print Shop Job Request Form](#), which sends the request to all contracted State Print Shops for printing jobs that exceed \$2,500. The HHS Print Shop will enter a CAPPs requisition on your behalf and will include the Print Shop Portal request, all responses, the bid tabulation and notification to CPA, and the print shops award to be included for the procurement file. PCS will process the requisition and submit the order to one of the State Print Shops. If one of the State Print Shops cannot fulfill the order, see [Section 10.4.2 regarding Print and Print-related Requests Not Available Through State Print Shop \(Exceeding \\$2,500\)](#).

If the printing request is under \$2,500, requests can be sourced directly from any of the contracted State Print Shops.

HHS Programs may submit the print request by completing the CPA SPD [Print Shop Job Request Form](#), only if the HHS Print Shop is not able to provide in-house services. To submit specifications to the State Print Shops for bid, HHS personnel must complete the Print Shop Job Request Form. Once completed, click on the submit button on the bottom of the form and the form will be routed to the contacts at each of the State Print Shops. Once the Print Job Request is submitted, the agency must print or save a copy of the results page for the procurement file. The Print Shop Job Request Form provides the HHS personnel with an opportunity to enter the "Project Due Date," the "Estimate Needed by," and the "Time Needed by" fields for their job. State Print Shops that can perform the work and respond to the request will reply by the date and time provided on the form.

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

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

10.4.2.1 Specifications and Estimated Price

If the above process is completed and all State Print Shops submit a no bid or no response, HHS Print Shop will enter a requisition, or if HHS program entered the CPA SPD portal request, HHS program will enter a requisition and attach documentation to show that the State Print Shop request was made and was unsuccessful.

HHS program should determine their print job specifications and estimated purchase price for their print job.

The initiating HHS personnel should provide details of their needs, including:

- a. Department name and department identification number;
- b. Description of the needed printing, including quantities, type stock, special assembly instructions, and other relevant information; and
- c. Required delivery date.

10.4.2.2 Purchases less than \$3,000

A quote will be obtained from commercial vendors and a purchase order will be issued.

10.4.2.3 Purchases between \$3,000 and \$5,000

The purchaser will locate at least one HUB vendor on the CMBL and a suggested vendor, if requested. A purchase order will be issued to the vendor with the best value to the state.

10.4.2.4 Purchases over \$5,000

A solicitation will be completed (traditionally an invitation for bid). Please allow time for processing according to dollar threshold and procurement method. ESBID posting requirements apply to printing services contracts that will exceed \$25,000.

For more information, see [State Print Services](#) and [HHS Templates](#).

10.5 Conference and Meeting Room Space

10.5.1 Prohibitions and Requirements

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

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

10.5.2 Process for Obtaining Conference or Meeting Room Space

The HHS agency or program requesting the purchase of conference or meeting space determines space rental needs, general location, and the potential cost for the purchase. If HHS agency staff

contact vendors for estimated costs of their conference or meeting space needs, agency staff must clearly explain to all contacted vendors that the price estimate is sought for informational purposes only and that the agency's request for an estimate is not a formal solicitation. When obtaining price estimates from vendors, care must be taken to avoid giving any vendor any competitive advantage in a future procurement initiative.<sup>76</sup> HHS agency staff must not reserve space or sign contracts with hotels or private facilities for conferences or meeting space. Only PCS staff are authorized to enter into space rental contracts or agreements that are obtained through the PCS procurement process.

HHS agency staff must check for availability of state-owned or state-leased space in the general location in which the meeting space is needed. HHS agency staff must use the [Texas Facilities Commission Conference Room Reservation Portal](#) to determine if state space is available that will meet the agency's need. If space and availability do not meet the agency's needs, a copy of the reservation portal calendar search must be saved and attached to the requisition. Additionally, the requesting agency must document at least one of the criteria in Section 10.5.1 when filling out the Hotel Conference Space requisition section of the CAPPs Financials Wizard when entering a CAPPs Financials requisition. If competitive bidding is required, bids are obtained, and the requester is consulted to confirm the winning bid meets the requester's needs. If a formal procurement is required, appropriate formal procurement process will be used.

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

## 10.6 Emergency Procurements

### [PCS Operating Procedure 400](#)

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

#### 10.6.1 Excerpt from the Comptroller's Guide:<sup>77</sup>

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

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

The decision to declare an emergency purchase is the sole responsibility of the agency. If an emergency exists, a written determination of the basis for the emergency and for the selection of a particular vendor shall be included in the procurement file. For an emergency purchase of goods or services exceeding \$25,000, an agency must send to SPD a full written explanation of the emergency

<sup>76</sup> Comptroller's Guide, *Informal Budget Quotes*.

<sup>77</sup> Comptroller's Guide, *Emergency Purchases*.

along with other documentation required by SPD. The notification to SPD must be provided via email to [spd.policy@cpa.texas.gov](mailto:spd.policy@cpa.texas.gov) as soon as reasonably practical given the nature of the emergency.

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

#### 10.6.2 Emergency Purchase Justification

If the purchase is over \$5,000, the requesting agency must document and justify the emergency purchase by completing [Form PCS 01](#), Justification for Emergency Purchases. Approval must be provided by either the requesting agency's commissioner or commissioner designee by signing Form PCS 01.

#### 10.6.3 HUB Requirements for Emergency Procurements

In accordance with Texas Government Code [Section 2155.137\(b\)](#), emergency procurements are required to contain all the same HUB requirements as all other procurements. It is important to have the HUB program involved as soon as the procurement is identified as an emergency, so that HUB can work with the program area and purchaser to ensure the agency complies with statute and rules in submission of the HUB Subcontracting Plan (HSP), when subcontracting is probable. Generally, the respondent is required to provide HUBs and trade organizations or development centers seven working days to respond to the required subcontracting notice.<sup>78</sup> In emergency procurements, the agency has the flexibility to determine a different time period, as required by the circumstances. The procurement file must be documented, and the pre-determined reduced timeframe must be clearly stated in the solicitation documents.<sup>79</sup> Respondents may also utilize any of the other four available good faith effort methods to submit a responsive HSP other than the solicitation method mentioned above.

### 10.7 Proprietary Purchases

#### [PCS Operating Procedure 401](#)

A proprietary purchase is one where the specifications or conditions of the proposed purchase are proprietary to one vendor and do not permit an equivalent product or service to be supplied.<sup>80</sup> The term "proprietary" refers to a product or service that has a distinctive feature or characteristic which is not shared or provided by competing or similar products or services. Because Texas procurement law promotes the use of competitive bidding for purchases, proprietary purchases are subject to enhanced scrutiny.

#### 10.7.1 Competitive or Sole Source

Proprietary purchases may be either sole source or competitive:

- a. Sole Source: The specified product or service is only available for purchase through a single vendor (e.g., manufacturer, publisher, service provider). Examples of sole source proprietary

<sup>78</sup> 34 Tex. Admin. Code [§ 20.285\(d\)](#).

<sup>79</sup> 34 Tex. Admin. Code [§ 20.206\(d\)](#).

<sup>80</sup> Tex. Gov't Code [§ 2155.067\(a\)](#).

purchases include a back issue of a magazine available from only the publisher and an educational conference available from only the conference sponsor.

- b. Competitive: The specified product or service is available for purchase through more than one vendor (e.g., dealers, distributors, resellers, authorized service providers). Examples of competitive proprietary purchases include brand-specific replacement parts for equipment available through multiple OEM-authorized dealers and software that a software publisher makes available to the public through several resellers.<sup>81</sup>

#### 10.7.2 Proprietary Purchase Justification

Proprietary purchases require a completed [Form PCS 02](#) - Proprietary Purchase Justification, in the procurement file. The Proprietary Purchase Justification form must include the following information in order to document best value to the state:

- a. Describe the product or service the agency proposes to purchase, and provide a statement regarding the agency's business need and planned use;
- b. Explain why the agency specifications for the product or service are written as they are, and why those specifications are necessary to accomplish the agency's goal for the procurement;
- c. State the reason that no other competing products or services will satisfy the need of the agency and provide examples of the technical, practical, or operational risks that would occur if competing products or services are selected; and
- d. Specify whether the purchase is sole source or competitive.

The Form PCS 02 must be signed by the agency head or a person to whom such signature authority has been properly delegated in the Agency Procurement Plan.

#### 10.7.3 General Procurement Requirements

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.

### 10.8 Consulting Services Contracts

#### [PCS Operating Procedure 576](#)

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

- a. "Consulting service" means the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee.<sup>82</sup>
- b. "Major consulting services contract" means a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000, or \$25,000 for an institution of higher education other than a public junior college.<sup>83</sup>

<sup>81</sup> *Comptroller's Guide, Proprietary Purchases.*

<sup>82</sup> Tex. Gov't Code [§ 2254.021\(1\)](#).

<sup>83</sup> Tex. Gov't Code [§ 2254.021\(2\)](#).

### 10.8.1 Major Consulting Services Special Procedural Requirements

Texas Government Code, Chapter 2254 includes strict procedural requirements for major consulting contracts that if not followed will render such a contract void.<sup>84</sup> A major consulting services contract requires a finding of fact issued by the Governor that the services are necessary.<sup>85</sup> Unless an emergency waiver is obtained from the Governor,<sup>86</sup> a major consulting services contract requires a finding of fact issued by the Governor that the services are necessary and cannot be performed by the agency with its own staff. Additional procedural requirements include conflict of interest provisions and restrictions on contracting with former employees.

A state agency may contract with a consultant only if there is a substantial need for the consulting services; and the agency cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with a state governmental entity.<sup>87</sup> In selecting a consultant, a state agency must base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and if other considerations are equal, give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.<sup>88</sup>

### 10.8.2 Notice of Intent and Finding of Fact

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

### 10.8.3 Solicitation Advertisement

Not later than the 30th day before the date it enters into a major consulting services contract, a state agency must post in the electronic state business daily (ESBD) under Texas Government Code, Section 2155.083: (1) an invitation for consultants to provide offers of consulting services; (2) the name of the individual who should be contacted by a consultant that intends to make an offer; (3) the closing date for the receipt of offers; and (4) the procedure by which the state agency will award the contract.<sup>89</sup>

If the services relate to services previously provided by a consultant, the agency must disclose that fact in the invitation for offer. If an agency intends to award the contract to a consultant that previously provided the services, unless a better offer is received, the agency must disclose the intention in the invitation for offer. (The invitation for offer will be procured using the RFP procurement method.)<sup>90</sup>

### 10.8.4 Post Award Requirements

- a. Not later than the 10th day after entering into a consulting services contract if the amount of the contract, including an amendment, modification, renewal, or extension, exceeds \$14,000,

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<sup>84</sup> Tex. Gov't Code [§ 2254.034](#).

<sup>85</sup> Tex. Gov't Code [§ 2254.028\(a\)\(3\)](#).

<sup>86</sup> Tex. Gov't Code [§ 2254.025](#).

<sup>87</sup> Tex. Gov't Code [§ 2254.026](#).

<sup>88</sup> Tex. Gov't Code [§ 2254.027](#).

<sup>89</sup> Tex. Gov't Code [§ 2254.029](#).

<sup>90</sup> Tex. Gov't Code [§ 2254.029](#).

written notice of award shall be provided to the Legislative Budget Board on a form prescribed by the LBB.<sup>91</sup>

- b. After the contract is awarded, a notification of award must be posted to the ESBD if the contract is expected to exceed \$25,000.<sup>92</sup>
- c. Pursuant to the Texas Government Code [Section 2254.036\(b\)](#), copies of all documents, films, recordings, or reports compiled by the consultant shall be filed with the Texas State Library. Pursuant to HHS Policy, the HHSC Records Management Division files the applicable documents with the Texas State Library.
- d. Pursuant to Texas Government Code, Section 2254.036(a), on request, a state agency shall, after the agency's contract with a consultant has ended, supply the LBB and the Governor's Budget and Planning Office with copies of all documents, films, recordings, or reports compiled by the consultant under the contract.

#### 10.8.5 Renewal, Amendment, and Extension

A state agency that intends to renew, amend, or extend a major consulting services contract shall comply with Sections [2254.028](#) (notice of intent and finding of fact) and [2254.029](#) (ESBD under Texas Government Code, Section 2155.083), if the contract after the renewal, amendment, or extension is a major consulting services contract.<sup>93</sup>

A state agency that intends to renew a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029, if the original contract and the renewal contract have a reasonably foreseeable value totaling more than \$15,000.<sup>94</sup>

A state agency that intends to amend or extend a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029, if the original contract and the amendment or extension have a reasonably foreseeable value totaling more than \$15,000.<sup>95</sup>

#### 10.8.6 Emergency Waiver

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

<sup>91</sup> Tex. Gov't Code [§ 2254.0301](#).

<sup>92</sup> Tex. Gov't Code [§ 2254.083\(k\)](#).

<sup>93</sup> Tex. Gov't Code [§ 2254.031](#).

<sup>94</sup> Tex. Gov't Code [§ 2254.031](#).

<sup>95</sup> Tex. Gov't Code [§ 2254.031](#).

10.8.7 Mixed Contracts

Texas Government Code Chapter 2254, [Subchapter B](#) applies to a contract that involves both consulting and other types of services if the primary objective of the contract is the acquisition of consulting services.<sup>96</sup>

10.8.8 Distribution of Consultant Reports

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

10.9 Request for Proposal (RFP)

[PCS Operating Procedure 571](#)

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

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

All agencies, including HHSC and those agencies that HHSC supports regarding purchasing — DSHS, DFPS, and TCCO — must obtain delegation of purchasing authority from the CPA SPD, Procurement Oversight & Delegation (POD) team (for services) or the Open Market Review process (for goods), except for the following procurements:

- a. Consulting services;
- b. Professional services;
- c. Health care services;
- d. Information resources technology;
- e. Goods or services acquired for the benefit of or on behalf of clients of programs operated by HHSC, DSHS, or DFPS;
- f. Procurements specifically authorized or delegated to HHSC, DSHS, or DFPS by statute;
- g. Contracting out agency purchasing functions or other administrative/program functions;
- h. Goods and services related to construction projects for state hospitals and state supported living centers;
- i. Deferred maintenance projects for state hospitals and state supported living center; and
- j. Any other procurements for which the contracting agency has been granted procurement authority by statute.

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<sup>96</sup> Tex. Gov't Code [§ 2254.038](#).

## 10.10 RFP Construction

### [PCS Operating Procedure 571](#)

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

#### 10.10.1 HHSC Maintenance and Construction (M&C) Division

Construction procurements support the HHSC M&C Division, and can be advertised under both Texas Government Code [Chapter 2156](#) and [Chapter 2269](#):

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

#### 10.10.2 Types of Construction Projects

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

- a. New building and site construction;
- b. Renovation of existing structures and site conditions;
- c. Deferred maintenance;
- d. Repairs to facilities and equipment; and
- e. Indefinite Delivery Indefinite Quantity (IDIQ) multiple award contracts in various disciplines.

## 10.11 Request for Qualifications (RFQ)

### [PCS Operating Procedure 570](#)

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

#### 10.11.1 Professional Services

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

- a. Within the scope of the practice, as defined by state law, of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing;
- b. Provided in connection with the professional employment or practice of a person who is licensed or registered as one of the following: a certified public accountant, an architect, a landscape architect, a land surveyor, a physician, including a surgeon, an optometrist, a professional engineer, a state certified or state licensed real estate appraiser, or a registered nurse; or

- c. Provided by a person lawfully engaged in interior design, regardless of whether the person is registered as an interior designer under Chapter 1053 of the Occupations Code.<sup>97</sup>

The RFQ method may also be utilized to procure legal or consulting services, although utilization of an RFP is far more common. *Reference Section 10.8 regarding Consulting Services Contracts, and contingent fee legal services.*<sup>98</sup>

#### 10.11.2 Audit Services (Requires SAO Delegation)

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

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

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

#### 10.12 Drafting the Solicitation

A solicitation will be required for a competitive procurement. Drafting of the solicitation begins with program development of specifications or scope of work. The process involves collaboration between the program area, PCS, Budget, IT, System Contracting, CQC and other key stakeholders. It is imperative the solicitation is written in a manner that attracts responses that meet the program area's business need. Examples of solicitation templates are available in the CAPPs template library.

#### 10.13 Specification Drafting

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

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

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

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

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<sup>97</sup> Tex. Gov't Code [§ 2254.002\(2\)](#); see also *Comptroller's Guide, Procurement Method-Professional Services*.

<sup>98</sup> Tex. Gov't Code ch. 2254, [subch. C](#).

#### 10.13.1 Performance-based Specifications

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

#### 10.13.2 Design-based Specifications

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

#### 10.13.3 Descriptive Specifications — Referenced Brand or Equivalent

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

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

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

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

#### 10.13.4 Restrictive Specifications

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

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

Regardless of whether the specification is performance-based, design-based, or mixed, restrictive specifications that result in proprietary procurements are not permitted unless the procedures for Proprietary Purchases are followed. See [PCS Operating Procedure 401](#).

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

#### 10.14 Entering a Requisition for an RFx

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

##### 10.14.1 Completed Scope/Statement of Work

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

##### 10.14.2 Accurate Request Document

Answers to the CAPPS Financials Request Document Wizard are utilized to automatically complete the request document, which accompanies the requisition. If answers are incorrect or incomplete, the requisition must be completely denied, and it must re-route through the approval process.

##### 10.14.3 Contract Value

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

##### 10.14.4 PCS 438 Determination

[Form PCS 438](#), where applicable, must be completed in order to determine whether the contract will operate under a subrecipient or contractor relationship. This is required if you are one of the customer organizations designated by PCS that requests both procurements and grants. *Reference Section 12.2 regarding Determination of Subrecipient, Recipient, or Contractor Relationship Process.*

## 11. NON-COMPETITIVE CONTRACTS, AGREEMENTS, AND OPEN ENROLLMENTS

### 11.1 Non-Competitive Contracts and Agreements

#### 11.1.1 Interagency Contracts—the Interagency Cooperation Act

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

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

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

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

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

#### 11.1.2 Interlocal Contracts — the Interlocal Cooperation Act

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

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

In addition, an interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract.<sup>99</sup>

#### 11.1.3 Memorandum of Agreement (MOA) and Memorandum of Understanding (MOU)

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

#### 11.1.4 Processing a Non-Competitive Contract or Agreement

- a. Once the program identifies a need using one of the non-competitive methods listed above, the contract manager will download the applicable contract template and uniform terms and conditions from the CAPPS Financials Contract Template Library.
- b. The contract manager will contact System Contracting for an attorney assignment.

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<sup>99</sup> Tex. Gov't Code [§ 791.011\(d\), \(e\)](#).

- c. The assigned attorney and contract manager will work on the applicable contract/agreement.
- d. The contract manager will create a procurement number in CAPPs Financials and create the contract record.
  - i. If the contract has funds associated, the contract manager will enter a CAPPs Financials requisition with the total contract value in the request document and the funds associated with the fiscal year on the requisition line.
  - ii. If the contract does not have funds associated, no requisition is required.
- e. The contract manager will create the contract packet that includes the signature page, any attachments (if applicable), the required terms and conditions and any supplemental or special conditions (if applicable), [Form PCS 515](#), and the requisition and request document, if funds are associated.
- f. The contract manager will enter the contract elements into the contract record and create a document.
  - i. If the agreement has funds associated, the contract packet must be routed for CAPPs approvals. The contract manager will load the applicable approvers into the approval path in CAPPs and submit.
  - ii. If the agreement does not have funds associated, the document will auto approve.
- g. Once the documents are approved or auto approved, the contract manager will send the contract packet to HHSC PCS Procurement QA to route in DocuSign for execution.
- h. Once executed, the contract manager will finalize the contract record in CAPPs, complete any necessary contract elements, put the contract in approved status, and save. (This process will automatically send the record to SCOR).
- i. The contract manager will load the executed contract and any contract documents in SCOR.

## 11.2 Open Enrollment Contracts

An open enrollment is a noncompetitive method used for the acquisition of services when the eligibility of potential providers includes a common set of qualifying criteria and fixed terms and conditions (including fixed compensation rates). Open enrollments are not procurements, so there are no restrictions on discussions with applicants prior or during the posting period. However, there must be consistency in responses provided. All eligible applicants — anyone who meets all the eligibility requirements and accepts all terms and conditions (including pricing/rates) — that can provide the required services in the requested locations will receive a contract.

### 11.2.1 How to Determine the Use of Open Enrollment Contracts

In determining whether to use open enrollment as a contracting method, the following conditions must exist:

- a. Services are readily available and may be needed throughout the state or in a specified HHS region;
- b. Services are those for which providers can be required to meet defined, accepted standards (including state licensure, accreditation, and/or certification) or specific eligibility criteria; and
- c. A standard payment rate will be established for all providers for the same services.

### 11.2.2 Developing the Enrollment Document/Scope of Work

The contract manager is responsible for taking the lead in developing the open enrollment document/scope of work and ensuring that the following criteria are included in the open enrollment document:

- a. HHS agency/program are the sole point of contact for the open enrollment while it is posted, as well as receive and screen all applications for completeness and ability to contract.
- b. Provider/Entity Eligibility Requirements are criteria the applicant must meet to qualify to receive a contract. This will include vendor screening checks as well as applicable experience, license, accreditation, certification and other key requirements to provide the service requested.
- c. The fixed rates stated in the enrollment for the services provided can be statewide or by region. The rate can be linked to a program site or linked to Medicaid/Medicare rates.
- d. A service location is where the applicant provides services throughout the state or a specific region. If an open enrollment seeks service providers at multiple locations, and applicants are permitted to select what locations they wish to service, and if an applicant applies to a specific location, that is the only location at which the applicant can provide services.
- e. An allocation method for multiple contractors in one area. The enrollment must state how service determination will be made if an area has multiple providers.

### 11.2.3 Processing an Open Enrollment

- a. The contract manager or HHS agency program contact will work with the System Contracting attorney when drafting the open enrollment documents, using the Open Enrollment template approved by System Contracting as well as System Contracting approved contract templates. Once the open enrollment documents are approved by the assigned attorney and program, the contract manager will create an open enrollment procurement number in CAPPS Financials.
- b. The contract manager will post the open enrollment to the HHS website, Open Enrollment Opportunities page, and may post the enrollment on their program website linking to the HHS Open Enrollment Opportunities website page, if necessary.

Amendments to the posted open enrollment, as determined by the contract manager or HHS agency program staff, must be submitted to System Contracting for attorney assignment. Typically, amendments will require posting a new open enrollment. Depending on the circumstances, some amendments may be made to posted open enrollments. However, if there is an amendment, it must be incorporated into all existing contracts that were issued under the open enrollment that is being amended. The contract manager or HHS agency program staff must ensure that the same qualification, requirements, rates, terms and conditions apply to all contractors. Individual consideration must be given to each amendment to determine the course of action to be taken (e.g., amending or reposting) and System Contracting must be consulted.

To post or modify an approved posting on the HHS Open Enrollment Opportunities website page, program personnel should complete the Web Services Request form.

Enrollments for DFPS will be posted to the ESD as well as the HHS Open Enrollment Opportunities website page by a purchaser. Requests for this action should be submitted to HHSC PCS CST.

- c. Once the enrollment is posted and applications are received by the contract manager or HHS agency program, submitted documentation will be reviewed for completeness by the contract manager or HHS agency program.
- d. Applications will be screened, and a determination of the applicant's capacity to perform will be made by the contract manager or HHS agency program. The screening of the document should include:
  - i. Forms, attachments or documentation of eligibility requested; and
  - ii. Procurement checks as listed in the enrollment document.
- e. If the application is missing required documentation requested in the enrollment, the HHS agency program may contact the applicant to complete the application.
- f. Once the enrollment contact has screened the application and determined the applicant is eligible, the contract will be drafted.
- g. To receive a contract number and for the contract to be entered in CAPPs, the program contract manager will:
  - i. Locate the procurement number entered in CAPPs Financials and click the create contract button;
  - ii. Populate the contract data in the contract entry page and create a document; and
  - iii. The document will automatically approve.
- h. The contract manager submits the contract packet which includes the signature page, any attachments, if applicable, the term and conditions and any special conditions, if applicable, [Form PCS 515](#) to HHSC Procurement QA for routing in DocuSign; or the contract can be submitted electronically to the applicant in accordance with the signature authority thresholds set out in C-046.
- i. Once executed, the contract manager finalizes the contract record in CAPPs, completes any necessary contract elements, puts the contract in approved status and saves. (This will automatically send the record to SCOR).
- j. The contract manager loads the executed contract and any contract documents into SCOR.

## 12. GRANTS

In contrast to the procurement methods, a Request for Applications (RFA) is not a sanctioned method for procuring goods and services from a vendor. An agency issues an RFA when it, as the grantor, is responsible for awarding grant funds to other entities, such as other state agencies, local governments, nonprofit organizations, or private entities.<sup>100</sup>

There may be instances where state or federal grant funding can be used to fund multiple programs that provide different services for varying target populations or service areas. Although several programs can be supported via available grant funding, RFA documents are intended to solicit applications for singular programs. An RFA can encompass multiple eligible activities or costs under the same program that allow for variances in the applicant's project approach or methodology. Although multiple program RFAs may have the same funding source or authority,

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<sup>100</sup> *Comptroller's Guide, Request for Applications.*

encouraging applicants to submit one application for each program under separate RFAs provides evaluators and final decision-makers alike the opportunity to review the merits and cost-effectiveness of that project alone against the program requirements. This eliminates potential confusion in determining an applicant's proposed cost and approach to multiple programs that could be contained within the same RFA. **NOTE: PCS will make the final determination as to whether applications for multiple programs may be solicited under a single RFA. Until such a determination has been requested and provided by the PCS Grants Director in writing, when developing documents prior to PCS involvement HHS program staff should operate under the assumption that RFAs will be utilized to solicit applications for singular programs.**

Grant solicitations and announcements are posted on the PCS Grants Request for Applications (RFA) web page, which may be accessed at <https://apps.hhs.texas.gov/pcs/rfa.cfm> and on the State of Texas Department of Information Resources' Texas.gov eGrants web site which may be accessed at <https://txapps.texas.gov/tolapp/egrants/search.htm>.

## 12.1 Request for Applications (RFA)

### [PCS Operating Procedure 572](#)

RFAs are a type of solicitation method by which an HHS agency awards grant funds to other entities such as other state agencies, local governments, nonprofit organizations or private entities. An RFA announces that grant funding is available and allows organizations to present applications.

#### 12.1.1 Outline

An RFA must include the grant objective, guidelines, any limitations on spending or eligibility, performance measures, remedies for failure to meet performance measures and reporting requirements, the evaluation criteria, and other information needed to submit an application. The RFA will typically outline:

- a. What type of applicants are eligible;
- b. Requirements in accordance with the grant or notice of award;
- c. What the expectations are; and
- d. How applications are submitted and reviewed.

#### 12.1.2 Remedies

Remedies may include:

- a. Costs disallowance;
- b. Increased monitoring;
- c. Corrective action plans;
- d. Placing special conditions on awards or precluding the recipient from obtaining future awards for a specified period; or
- e. Grant termination.

#### 12.1.3 Uniform Grant Guidance (UGG) and Uniform Grant Management Standards (UGMS)

When issuing an RFA, [Title 2, Part 200 of the Code of Federal Regulations \(2 CFR Part 200\)](#), the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,

UGG and the Texas Comptroller of Public Accounts grant management standards must be considered to the extent applicable.

12.2 Determination of Subrecipient, Recipient, or Contractor Relationship Process

The determination of a subrecipient, recipient, or contractor relationship is made during the planning phase for an RFA or RFP.

12.2.1 Stakeholders

The determination process involves various stakeholders that may include:

- a. Customer organization contract staff;
- b. Customer organization program staff;
- c. OCC Legal Policy; and
- d. PCS, with the final determination made by the PCS Grants Division.

12.2.2 Compliance

HHS agencies must comply with UGG and UGMS (or its successor), as applicable, when determining the correct solicitation method and implementation. [Form PCS 438](#) must be completed to help stakeholders in their assessment of the standards, principles, and requirements that will govern the relationship. Form PCS 438 serves as a tool to assist in the final determination of the relationship. For DFPS procurements, the DFPS 438 form will be used in place of Form PCS 438. The approved Form PCS 438 is uploaded into the SCOR Contract module, Documents sub-module. Requests for 438 determinations should be sent to [PCS\\_Grants@hpsc.state.tx.us](mailto:PCS_Grants@hpsc.state.tx.us).

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

DEFINITIONS	
Federal: Definitions from the Uniform Grant Guidance (UGG)	State: Definitions from the Uniform Grant Management Standards (UGMS)
<p><b>Contract:</b> A legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward (see § 200.92 Subaward). (2 CFR § 200.22)</p>	<p><b>Contract:</b> A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to): awards and notices of awards; job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and, bilateral contract modifications.</p> <p>Procurement contracts do not include grants and cooperative agreements covered by 31 USC 6301 et. seq. or by the Uniform Grant Management Standards.</p> <p>(UGMS, § III. State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart A, _3)</p>
<p><b>Contractor:</b> An entity that receives a contract as defined in § 200.22 Contract.</p> <p>(2 CFR § 200.23)</p>	<p><b>Subcontractor or Vendor:</b> A purveyor of goods or services engaged by a primary contractor to provide goods, services or both through a procurement relationship generally available to any purchaser for a stated price.</p> <p>(UGMS, § II. Cost Principles for State and Local Governments and Other Affected Entities, Attachment A, (B)(22))</p>
<p><b>Federal award:</b> Has the meaning, depending on the context, in either paragraph (a) or (b) of this section: (a)(1) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101 Applicability; or (2) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101 Applicability.</p> <p>The instrument sets forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for</p>	<p><b>Grant:</b> An award of financial assistance, including cooperative agreements, in the form of money, property in lieu of money, or other financial assistance paid or furnished by the state or federal government to an eligible grantee to carry out a program in accordance with rules, regulations and guidance provided by the grantor agency.</p> <p>The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations.</p> <p>Also, the term does not include assistance, such as a fellowship or other lump sum award, for</p>

DEFINITIONS	
<p>assistance covered in paragraph (b) of § 200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.</p> <p>Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned, contractor operated facilities (GOCOs).</p> <p>See also definitions of Federal financial assistance, grant agreement, and cooperative agreement. (2 CFR § 200.38)</p>	<p>which the grantee is not required to account.</p> <p>(UGMS, § III. State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart A, .3)</p>
<p><b>Recipient:</b> 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 subrecipients. (2 CFR § 200.86)</p>	<p><b>Grantee:</b> The entity to which a grant is awarded and that is accountable for the use of the funds provided.</p> <p>The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.</p> <p>(UGMS, § III. State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart A, .3)</p>
<p><b>Subrecipient:</b> A non-federal entity that receives a sub award from a pass-through entity to carry out part of a federal program. It does not include an individual that is a beneficiary of such program.</p> <p>A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency. (2 CFR § 200.93)</p>	<p><b>Subgrantee:</b> The government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.</p> <p>“Subgrantee” is synonymous with “subrecipient.”</p> <p>(UGMS, § III. State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart A, .3)</p>

SUBRECIPIENT, RECIPIENT, OR CONTRACTOR DETERMINATION		
Federal Award	State Award	Federal and State
<p>Federal Award to HHS Agency</p> <p>TO EITHER Subrecipient OR Contractor</p> <p>Reference: UGG (principles)</p>	<p>State General Revenue Funds</p> <p>TO EITHER Recipient OR Contractor</p> <p>Reference: UGMS (principles)</p>	<p>State General Revenue and Federal Award to HHS Agency</p> <p>TO EITHER Subrecipient OR Contractor</p> <p>Reference: UGG (principles)</p>

### 12.2.3 Program Responsibilities — DSHS, DFPS, and HHSC’s HDIS, IDD-BHS, and AES

DSHS, DFPS, and HHSC’s Health Developmental and Independence Services (HDIS), Intellectual or Developmental Disabilities – Behavioral Health Services (IDD-BHS), and Access and Eligibility Services (AES) program areas are responsible for the following steps when determining the contractor, subrecipient or recipient relationship status:

- a. Coordinate with stakeholders to determine the relationship between the state and entity.
- b. Coordinate the completion of [Form PCS 438](#).
- c. Submit the completed subrecipient/contractor determination packet via email to the PCS Grants inbox at [PCS\\_grants@hhsc.state.tx.us](mailto:PCS_grants@hhsc.state.tx.us). The packet contents must include:
  - i. Form PCS 438;
  - ii. Statement of Work (SOW); and
  - iii. Funding information:
    - A. If the funding is federal or both state and federal, include the Federal Grant Application or Notice of Grant Award (NOGA); and
    - B. If the funding is state, type the citation of funding such as Appropriations Act Rider or authorizing statute in the *Comments* field.
- d. PCS Grants staff will coordinate with the requester to obtain additional clarifications or requests for more information to make a final determination if needed. PCS Grants has 10 business days to make a determination once receiving a complete determination packet.
- e. After the PCS Grants team designates the final determination and returns the completed Form PCS 438 to the program area, the program contract manager uploads it into the SCOR Contract module, Documents sub-module, within 10 business days from the contract begin date.
- f. If the program requests a re-determination, they may resubmit Form PCS 438 with additional supporting documentation for reconsideration within five business days from the date of the decision. PCS will process the request for a re-evaluation within three business days and consult with PCS and OCC Legal Policy, as necessary. The final determination shall remain consistent throughout the procurement and contract lifecycle.

## 13. SOLICITATION REVIEW

### 13.1 System Contracting

System Contracting attorneys are involved primarily, but not exclusively, in solicitations assigned to PCS’s complex purchasing team. When an attorney is assigned to a solicitation, the attorney is involved throughout the solicitation and contract development processes. *Reference Section 5.2.2 regarding System Contracting.*

To request an attorney assignment for matters in which PCS is involved, PCS should complete and submit the System Contracting intake email template with draft documents to [SystemContracting@hhsc.state.tx.us](mailto:SystemContracting@hhsc.state.tx.us). For matters in which PCS is not involved, program personnel should complete and submit the System Contracting intake email template with draft documents to [SystemContracting@hhsc.state.tx.us](mailto:SystemContracting@hhsc.state.tx.us).

### 13.2 Compliance and Quality Control Review (CQC)

All solicitations and addendums for RFPs, RFAs, RFOs, and RFQs must be submitted to HHS CQC for review and approval prior to submission to the CAT, if CAT review is applicable, and prior to posting. Evaluation tools, scored criteria and subcriteria, and score sheets will be reviewed for accuracy, relevance, reasonableness, as well as other factors that ensure an effective solicitation. IFBs may be subject to review by HHS CQC prior to posting if specifically requested by the Deputy Executive Commissioner of PCS, Associate Commissioner of PCS, Deputy Executive Commissioner of CQC, or Associate Commissioner of CQC. Bids are subject to spot checks prior to award at the discretion of the Deputy Executive Commissioner of PCS, Associate Commissioner of PCS, Deputy Associate Commissioner of CQC, or Associate Commissioner of CQC.

### 13.3 Contract Advisory Team (CAT) Review

CAT assists state agencies in improving contract management practices by reviewing and making recommendations on solicitation and contract documents that have an expected value of at least \$5 million dollars during the full term of the contract, including renewal periods. RFPs, RFAs, RFOs, and RFQs must be reviewed and approved by CQC prior to submission to CAT. *Reference Section 13.5 regarding CQC Review of Solicitations and Evaluations.*

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

Generally, grant agreements are not subject to a CAT review when the recipients eligible for award are governmental entities or nonprofit business entities. However, upon request, CAT will review grant agreements where the recipients eligible for award are for-profit business entities. Sole federally-funded grants do not require review by CAT.

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

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

The Quality Assurance Team is an interagency working group comprised of members from the LBB, DIR, and CPA, with SAO participating as an advisory member. The QAT is legislatively tasked with the review, approval, and oversight of MIRPs. All state agencies are subject to QAT oversight, except for institutions of higher education and self-directed, semi-independent state agencies. Submission of required documents and notices to QAT are handled by the Federal and State Reporting Coordination department within the HHS Information Technology Business Operations Division. Program staff, contract managers, and purchasers should work

closely with the Federal State Coordination team to ensure all requirements are met and appropriately documented in the contract and procurement file. The Federal and State Reporting Coordination department may be contacted by email: [IT\\_FederalStateCoordination@hhsc.state.tx.us](mailto:IT_FederalStateCoordination@hhsc.state.tx.us).

#### 13.4.1 General Requirements

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

- a. Texas Project Delivery Framework documents are required to be filed with QAT for each MIRP before the project can be initiated.<sup>101</sup>
- b. A project plan must be developed and filed with QAT before HHS spends more than ten percent (10%) of allocated funds for the project.<sup>102</sup>
- c. An acquisition plan is required to be filed with QAT for MIRPs that involve a procurement with a value of at least \$10 million.<sup>103</sup>
- d. Before issuing a solicitation for a MIRP with a contract value of at least \$10 million, HHS must develop a procurement plan, consistent with any acquisition plan provided in the Comptroller's Guide with anticipated service levels and performance standards for each contractor and a method to monitor changes to the scope of each contract.<sup>104</sup>
- e. HHS is required to notify QAT when it advertises a procurement for a MIRP. The notification is required to include the requisition number of the solicitation.<sup>105</sup>
- f. Prior to negotiating a MIRP contract with a value of at least \$10 million, HHS must submit the draft contract containing proposed terms to QAT.<sup>106</sup>
- g. After the final negotiated terms of a MIRP contract with a value of at least \$10 million are developed, HHS must submit the final negotiated, unsigned contract to QAT. QAT will review and provide recommendations. HHS is required to comply with the recommendations or submit a written explanation to QAT why the recommendation is not applicable to the contract at issue.<sup>107</sup>
- h. Within 10 business days of contract award of a MIRP with a value of at least \$10 million, HHS must provide notice of the completed contract to QAT.<sup>108</sup>

#### 13.4.2 Amending or Canceling MIRP Contracts

Additional notifications are required before amending a contract for MIRPs including notifications to the governor, lieutenant governor, speaker of the house of representatives, presiding officer of the standing committee of each house of the legislature with primary jurisdiction over appropriations, and the QAT if: (i) the total value of the amended contract exceeds or will exceed the initial contract

<sup>101</sup> Tex. Gov't Code §§ [2054.158\(b\)\(2\)](#), [2054.303](#).

<sup>102</sup> Tex. Gov't Code [§ 2054.304](#).

<sup>103</sup> See generally, Tex. Gov't Code [§ 2054.305](#).

<sup>104</sup> Tex. Gov't Code [§ 2054.305](#).

<sup>105</sup> [GAA](#), H.B. 1, 86<sup>th</sup> Leg., R.S., art. IX, sec. 9.02(c)(2).

<sup>106</sup> Tex. Gov't Code [§ 2054.160\(a\)\(1\)](#) (MIRP with value of at least \$10 million); see also [GAA](#), H.B. 1, 86<sup>th</sup> Leg., R.S., art. IX, sec. 9.01(d) (MIRP with value exceeding \$10 million).

<sup>107</sup> Tex. Gov't Code §§ [2054.158\(b\)\(4\)](#), [2054.160\(a\)\(2\)](#), (b) (MIRP with value of at least \$10 million); see also [GAA](#), H.B. 1, 86<sup>th</sup> Leg., R.S., art. IX, sec. 9.01(d) (MIRP with value exceeding \$10 million).

<sup>108</sup> [GAA](#), H.B. 1, 86<sup>th</sup> Leg., R.S., art. IX, sec. 9.02(c)(3).

value by 10% or more; or (ii) the amendment requires the contractor to provide consultative services, technical expertise, or other assistance in defining project scope or deliverables. In addition, if such amendments are being made, HHS must provide a justification for the amendment to the QAT as well as a copy of the final version of the amendment, including all appendices and attachments.<sup>109</sup> See also QAT requirements related to canceled contracts and the issuance of new solicitations for identical or similar goods and/or services for the development of the same project.<sup>110</sup>

Before canceling or continuing an existing MIRP contract subject to QAT monitoring that is more than 50% over budget or over schedule, HHS must conduct a cost-benefit analysis to compare canceling or continuing the contract. The QAT must approve the cost-benefit analysis for the project to continue.<sup>111</sup>

The QAT may waive certain review requirements.<sup>112</sup> Any waiver received from the QAT should be saved in the contract file.

#### 13.4.3 Definition of a MIRP<sup>113</sup>

A MIRP is defined as:

- a. Any information resources technology project identified in a state agency's biennial operating plan whose development costs exceed \$5 million and that:
  - i. Requires one year or longer to reach operations status;
  - ii. Involves more than one state agency; or
  - iii. Substantially alters work methods of state agency personnel or the delivery of services to clients; and
- b. Any information resources technology project designated by the legislature in the GAA as a MIRP.<sup>114</sup>

### 13.5 CQC Review of Solicitations and Evaluations

#### [PCS Operating Procedure 753](#)

It is the policy of PCS that all RFPs, RFAs, RFOs, and RFQs be submitted to CQC for review and approval prior to submission to the Contract Advisory Team (CAT) and prior to posting the solicitation or addenda related to the solicitation; that all solicitations with scored evaluations be submitted to CQC Financial Analysts for review and validation of the proposed scored criteria, evaluator score sheets, and final evaluation tool; and that the compilation and final scoring for solicitations with scored evaluations be completed by CQC Financial Analysts.

<sup>109</sup> Tex. Gov't Code §§ [2054.1181\(j\)](#), [2054.160\(c\)](#), [\(d\)](#) (MIRPs with value of at least \$10 million); see also [GAA](#), H.B. 1, 86<sup>th</sup> Leg., R.S., art. IX, sec. 9.01(e), (f), (g).

<sup>110</sup> [GAA](#), H.B. 1, 86<sup>th</sup> Leg., R.S., art. IX, sec. 9.01(h).

<sup>111</sup> [GAA](#), H.B. 1, 86<sup>th</sup> Leg., R.S., art. IX, sec. 17.10(c).

<sup>112</sup> [GAA](#), H.B. 1, 86<sup>th</sup> Leg., R.S., art. IX, sec. 9.01(i).

<sup>113</sup> More information is available on the [DIR Website](#).

<sup>114</sup> Tex. Gov't Code [§ 2054.003\(10\)](#).

### 13.6 Solicitation Advertisement

[PCS Operating Procedure 537](#)

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

### 13.7 Vendor Conference

[PCS Operating Procedure 574](#)

A vendor conference is a structured, face-to-face meeting with potential respondents to clarify what is being purchased, to further explain PCS's procurement process, and to answer questions related to the requirements in the solicitation packet. The purpose of the conference is to provide respondents with additional information or clarifications that may be helpful in formulating their responses.

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

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



## 14. VENDOR SELECTION

### 14.1 Bid Room

#### [PCS Operating Procedure 210](#)

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

#### 14.1.1 Bid Room Roles and Responsibilities

- a. Bid Room Coordinator receives notification of posted event from purchaser, ensures responses are received on or before the due date and time designed in the solicitation, time stamps the packages, and indicates how many packages were received from the vendor. Electronic submissions are submitted to the PCS Bid mailbox or via the online bid room system. The network email server time stamp is the official timepiece that determines receipt of responses. Response information is entered in the Response Log. The coordinator keeps responses secured until the solicitation due date and time. At the due date and time, the coordinator provides original responses and a copy of the Response Log to the purchaser.
- b. PCS Purchaser, upon posting of solicitation, notifies Bid Room Coordinator of the bid opening. Notification includes an event number, due date and time of event, as well as the specified format for responses. Purchasers may not have bids submitted to their own email address. The purchaser receives responses provided by the bid room coordinator, keeps a copy of the Response Log in the procurement file, and notifies the bid room coordinator of any canceled solicitations.
- c. Vendor submits responses via hand delivery, the PCS bid room mail box, or the Online Bid Room System.

#### 14.1.2 Online Bid Room System

The HHS Online Bid Room is a bid room database for vendors to submit responses to formal and informal solicitations. The HHS Online Bid Room can be used for formal IFB, RFA, RFO, RFP, RFQIT, and RFQ solicitations. Refer to <https://hhs.texas.gov/doing-business-hhs/contracting-hhs/hhs-online-bid-room> for more information.

### 14.2 Screening Responses — Bids, Proposals, and Applications

#### 14.2.1 Administrative Review

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

If no responses or a single response to a competitive solicitation is received, PCS will review the solicitation for restrictive specifications and contact several potential respondents to ask why they elected not to submit a response. PCS will document any relevant vendor feedback in the procurement file. The HHS agency will decide to either proceed with the evaluation process or re-advertise with a revised solicitation.

### 14.2.2 HSP Evaluation

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

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

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

- a. **Solicitation Method:** The respondent must notify at least three currently Texas-certified HUBs per subcontracting opportunity providing the certified HUB at least seven working days to respond. The date the notification is sent is day zero and does not count in the required seven working days (excluding the day the notice was sent, weekends, federal and state holidays and any other day the executive director has closed the agency (i.e., cold weather days)). The notice must provide the scope of work for HUB to determine if they are interested in pursuing, provide a location where the specifications are located (i.e., link to the posting on ESD or a physical location, etc.), and information regarding insurance and bonding requirements (if applicable). In addition, the respondent must notify a minimum of two minority, women, trade organizations and/or business development centers providing the same information above as well as the same time frame for response.
- b. **Mentor-Protégé:** A mentor may utilize a protégé from a state agency sponsored Mentor-Protégé (M-P) agreement for subcontracting the protégé is able to provide. The M-P relationship may be utilized in lieu of additional soliciting to HUBs.
- c. **Utilizing 100% HUBs for all subcontracting:** The respondent indicates that all subcontracting will be done utilizing HUB vendors.
- d. **Meeting or exceeding the contract's HUB goal:** The respondent will meet or exceed the contract HUB goal (whichever is the highest, statewide or agency-specific) with HUB subcontractors. The respondent cannot utilize a HUB subcontractor used in a previous continuous contract for a period of five years or more.
- e. **Self-Performing:** The respondent is required to document how they are able to provide all services, equipment, materials and/or supplies needed to perform the contract without subcontracting. The agency must review the proposal to ensure that this is a true statement and pay careful attention to the list of key personnel, to ensure that all personnel listed are employees. Statements within the proposal that include "partners," "affiliates," "team member," and/or "consultants" indicate subcontracting activities. When in doubt, ask the respondent for a clarification. Sometimes, respondents don't think of these examples as subcontractors, but they are according to the state definition.

Regardless of the above GFE method chosen, respondents are required to provide supporting documentation to substantiate compliance. The supporting documentation must be included in the procurement file. If the solicitation response does not contain a completed HSP or contains a HSP that the agency determines was not developed in good faith, the response shall be rejected as a material failure to comply with advertised specifications. The HSP evaluation is performed by the

agency's HUB program ([Form PCS 415](#)) and is on a pass or fail bases. Responses that do not contain a responsive HSP cannot be considered for a contract award.

#### 14.2.3 Respondent Evaluation

To select the respondent that provides best value to the state, HHS agency staff conduct an evaluation of the response in accordance with the evaluation procedure published in the solicitation. Complex procurements may have a standard evaluation process that utilizes an evaluation tool or may be conducted through a consensus scoring method (*Reference Section 8.12.2 regarding Consensus Scoring Method*). The standard evaluation process may be conducted in CAPPs Financials or outside CAPPs Financials. Most RFA evaluations are conducted outside CAPPs Financials due to complexity factors that impact the use of the evaluation tool.

At a minimum, an RFX evaluation team should consist of three to five scoring members who represent different subject matter areas related to the final product or service. The program should ensure appropriate subject matter representation on the team, including program, contract management, finance, IT, and others as needed. The PCS purchaser serves as the evaluation team facilitator and is a non-scoring member. Scoring and non-scoring members of the evaluation team must be noted in the procurement file. If the evaluation is to be conducted within CAPPs Financials, the evaluation team will be required to have employee IDs to log into the system and to request access to CAPPs Financials as an evaluation team member.

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

Each member of the evaluation team is provided:

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

Each response is evaluated independently against the evaluation criteria published in the solicitation. Evaluators will record their scores for each response on the evaluation tool's scoring matrix provided to them by the Purchaser if the evaluation is being conducted outside of CAPPs Financials, or by logging into CAPPs Financials and recording the scores in the CAPPs Financials evaluation tool. Unless prohibited by statute or agency policy, evaluators will review and score the entire response to facilitate a comprehensive evaluation of the response. The evaluation team only reviews the price component if the team is evaluating the price. The price component may be evaluated by SMEs, evaluation team, or if solely objective the CQC-FA.

Evaluators must not communicate with a respondent. All questions related to the response or the evaluation process must be directed to the PCS purchaser facilitating the evaluation. The PCS Purchaser may follow up with the respondent to obtain clarification or seek assistance from a technical advisor. A respondent's clarification must be in writing and signed by an authorized representative.

#### 14.2.3.1 Oral Presentations

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

#### 14.2.3.2 Best and Final Offer (BAFO)

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

#### 14.2.3.3 Preferences

Preferences are established by statute.<sup>115</sup> A vendor must claim the applicable preference(s) in its response by marking the appropriate preference on the preference form included in the solicitation. If the appropriate box is not marked on the preference form, a preference will not be granted unless other documents included in the response sufficiently demonstrate that the vendor may receive the preference and is requesting the preference. Upon the agency's request, the vendor must provide adequate documentation to support a claimed preference below.<sup>116</sup>

- a. Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- b. Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
- c. Agricultural products grown in Texas
- d. Agricultural products offered by a Texas bidder
- e. Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- f. Services offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
- g. Texas Vegetation Native to the Region
- h. USA-produced supplies, materials or equipment
- i. Products of persons with mental or physical disabilities
- j. Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel

<sup>115</sup> Tex. Gov't Code ch. 2155, [subch. H](#); 34 TAC [§ 20.306](#).

<sup>116</sup> *Texas Procurement and Contract Management Guide, Preferences*

- k. Energy efficient products
- l. Rubberized asphalt paving material
- m. Recycled motor oil and lubricants
- n. Products produced at facilities located on formerly contaminated property
- o. Products and services from economically depressed or blighted areas
- p. Vendors that meet or exceed air quality standards
- q. Recycled or reused computer equipment of other manufacturers
- r. Foods of higher nutritional value
- s. Commercial production company or advertising agency located in Texas

#### 14.2.3.4 Tie Bids

A tie bid occurs when two or more bids or responses to a competitive solicitation receive the same score. If after final evaluation scores are calculated the winning bidder or respondent cannot be determined because two or more bids or responses received the same score, the tie will be resolved in accordance with [PCS Operating Procedure 755](#).

#### 14.2.3.5 Certification of Vendor Assessment Process

[Form PCS 08](#) is used to document certification of the vendor assessment process. Pursuant to Texas Government Code Section [2261.0525](#), before a state agency may award a contract to a vendor, the agency's procurement director must review the process and all documents used by the agency to assess each vendor who responded to the solicitation. The procurement director or designee (a person whose position in the agency's procurement office is at least equal to the position of contract manager) must certify in writing that each response to the solicitation was assessed using the written criteria in the solicitation or, if applicable, the written evaluation criteria established by the agency, and that the final calculation of scoring responses was accurate. Any scoring changes following initial assessment and scoring of responses must be justified in writing. The written justification must be reviewed by the agency's procurement director and the procurement director must certify in writing that the change in scoring was appropriate.

Pursuant to Texas Government Code Section [2261.054](#), if a state agency awards a contract to a vendor who did not receive the highest score in an assessment process certified under Texas Government Code Section [2261.0525](#), the agency must state in writing in the contract file the reasons for making the award. Form PCS 08 is used to document the required justification and certification.

*See also, Section [15.14.6](#) regarding Other Certifications.*

The completed PCS 08 must be included with supporting documentation attached to [Form PCS 515](#) used for contract review, approval, and execution. The approved Form PCS 08 must be maintained in the procurement file, and is uploaded into the SCOR, Procurement module.

14.2.3.6 Documentation

Once the procurement is complete and the first contract awarded and executed through CAPPs, the event will be available in SCOR for PCS to upload the procurement file documentation. PCS will upload the solicitation package as one file within 10 days and the rest of the procurement file within 30 days.

14.3 Litigation History Review

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

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

The information may be considered as an indicator of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements.

14.4 Financial Capacity Review

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

14.5 Reference Checks

If applicable, purchasers may check vendor references by completing [Form PCS 145](#) - Vendor Reference Survey Form.

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

[PCS Operating Procedure 538](#)

In order to provide respondents with timely notice and information, and to ensure transparency and public confidence in HHSC procurement processes, it is the policy of HHSC PCS that a respondent should be notified as soon as reasonably practicable following the determination that the respondent's solicitation response is nonresponsive or has been disqualified from further review, including disqualification for failure to submit a compliant HUB Subcontracting Plan. In addition, unless it is determined to be contrary to the best interests of the agency, HHSC PCS will provide notice to all respondents of the intent to award at the time the agency has successfully negotiated a contract.

# Contract Formation and Award



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## 15. CONTRACT FORMATION AND AWARD

### 15.1 Contract Negotiations

Negotiations may not begin until program staff have informed the purchaser of their selection to proceed to negotiations. Program staff must do this by initiating and sending the partially completed [Form PCS 08](#) (Vendor Selection Justification and Procurement Certification Form) signed by the program, to the purchaser. Partially completed means that the Form PCS 08 selection information is completed and is signed by the program. Everything from the “Negotiation Results” down to the PCS leadership signatures will be completed later. As the Form PCS 08 must also include the outcome of the negotiations, the final Form PCS 08 cannot be delivered to the purchaser until after negotiations. Once the purchaser informs the program in writing that they may begin negotiations, the program staff may begin scheduling the negotiation meetings. PCS is not required to be involved in negotiations. However, program staff must have their assigned attorney present during negotiations and included on all related correspondence. If program areas need guidance on conducting negotiations, or need assistance scheduling the negotiations, PCS will be available to assist.

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

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

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

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

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

If using liquidated damages, prior to negotiations program staff should also develop a liquidated damages schedule that protects what is most important, keeps the contractor on track, and reflects as justifiably as possible the value of deliverables for which a value is difficult or impossible to assess. In addition, almost

every contract negotiation will cover the following negotiation topics: order of precedence, limitations of liability, indemnification, and data security and ownership.

## 15.2 Purchase Orders and Contracts

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

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

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

### 15.2.1 Transactional Purchase Order (TPO)

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

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

### 15.2.2 Contract

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

### 15.2.3 Purchase Order (PO)

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

### 15.2.4 Signature Requirements

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

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

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

### 15.3 Procurement Card (State Issued Credit Card)

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

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

PCS Purchasers are exempt from HHS Procard policy restrictions and may use the Procard for agency CAPPS requisitioned goods or services following state and federal laws, rules, regulations, and HHS policies relating to purchasing, accounting, and asset management functions.

### 15.4 Contract Terms

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

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

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

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

Essential provisions that must be included in every contract are:

- a. Terms Necessary for the Formation of a Legally Binding Contract. The necessary elements of a contract are offer, acceptance, legal purpose, consideration, certainty of subject matter, and competent parties. Accordingly, each contract must include terms which address the following:
  - i. Scope of work;
  - ii. Financial provisions (e.g., price and payment terms);
  - iii. Contract term and termination provisions; and
  - iv. Identification of the contracting parties.

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

- b. Texas Required Contract Clauses. The most common statutorily required contract clauses are compiled on the list of Texas Required Contract Clauses located in the Comptroller’s Guide. The Texas Required Contract Clauses are required to be included in both solicitations and contracts unless an exception is noted.
- c. Recommended contract clauses are included in the Comptroller’s Guide and are typically included in most contracts. Recommended clauses include, but are not limited to the following:
  - i. Administrative provisions;
  - ii. Provisions that allocate risk and specify remedies;
  - iii. Provisions relating to the identification and safeguarding of confidential information; and
  - iv. Provisions relating to rights and ownership of work product and intellectual property.

15.4.3 Minimum Required Terms and Conditions

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

- a. Begin and end date;
- b. Description of the goods and services to be provided;
- c. Specific requirements such as performance measures, and/or milestones, specific remedies, and any liquidated damages;
- d. Data Use Agreement and Security and Privacy requirements, as applicable;
- e. Payment and invoicing information;
- f. Renewal periods, if any, available to the HHS agency including extension language: “Following the base term and any allowable extensions, System Agency may extend any resulting Contract for not more than one additional option period to address immediate operational or service delivery needs. If the resulting Contract does not include a defined option period, the extension

is limited to one year.” This does not apply to a TPO. Best practice for TPO is to define the extension period in the contract;

- g. Any service level standards or agreements;
- h. Points of contacts and notice provisions;
- i. The process to change or amend the contract;
- j. All required and applicable affirmations and terms and conditions, both in the Comptroller’s Guide and in other governing authority;
- k. As applicable, specific insurance requirements;
- l. Termination provisions; and
- m. Clause that states continuation is contingent on the availability of state or federal funding.

In addition, contracts subject to Texas Government Code [Chapter 2261](#) must include a remedies schedule, a graduated sanctions schedule, or both, for breach of the contract or substandard performance under the contract;<sup>117</sup> and when feasible, include provisions that require the contractor to carry director or officer liability insurance coverage in an amount not less than the value of the contract that is sufficient to protect the interests of the state in the event an actionable act or omission by a director or officer of the contractor damages the state’s interests.<sup>118</sup>

System Contracting develops affirmation and uniform terms and conditions documents for use in contracts.

#### 15.4.4 Contract File Documentation Note Regarding Texas Government Code Section 2261.204

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

### 15.5 Insurance

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

Insurance should be evidenced by delivery of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates, and compliance with all applicable required provisions. The delivery timing and location should be in accordance with the procurement or contract. Additionally, it is

<sup>117</sup> Tex. Gov’t Code [§ 2261.101](#); State agencies shall design fair and feasible standards that will hold contractors accountable for breach of contract or substandard performance under a contract without diminishing the number of able providers who are willing to contract with the state.

<sup>118</sup> Tex. Gov’t Code [§ 2261.102](#).

recommended to specify in the insurance requirements of the procurement or the contract that, upon request, the contractor is required to provide, without expense, copies of the policies and all endorsements.

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

Contractor should be responsible for deductibles and self-insured retention, if any, stated in policies. All deductibles or self-insured retention should be disclosed on the certificate of insurance required above. If coverage is underwritten on a claims-made basis, the retroactive date should be coincident with the date of the contract, and the certificate of insurance should state that the coverage is claims made and include the retroactive date.<sup>119</sup>

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

## 15.6 Bonds

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

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

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

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

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<sup>119</sup> Certain contracts may have projects or work orders that continue past the contract end date. Program should work closely with their contract attorney to include requirements concerning insurance coverage after termination of the base contract as needed for the specific contract and work at issue.

- i. Verify certification with the U.S. Department of Treasury (DOT):
  - A. [http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570\\_a-z.htm](http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm).
  - B. Verify that the company is listed on the DOT's list of certified surety companies and that the company is permitted to do business in Texas.
  - C. Print the bonding company's information for the official contract file.
- ii. Verify eligibility with National Association Insurance Commissioners  
[https://naic.org/cis\\_consumer\\_information.htm](https://naic.org/cis_consumer_information.htm).
- iii. Enter the first surety company's name into the search field.
- iv. Verify that the surety company is licensed in the State of Texas. If it is, the company will be marked as "Active" or "Eligible."
- v. Click on the company's name. This will take you to a detailed information page that includes contact information, financial status, complaint history, etc.
- vi. Print all pages and attach to the official contract file.
- vii. Verify the underwriting limitation does not exceed the bonding capacity by the "Required 10%."
- j. The total dollar amount on the bonds must be less than the "Required 10%." If not, then the bonds and insurance are rejected and shall be escalated to the CQC Insurance Analyst with supporting documentation, including the contract.
- k. Once reviewed and verified, the original bond package, due diligence paperwork, and any correspondence should be placed in the official contract file.

#### 15.6.1 Bid Bonds

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

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

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

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

15.6.1.1 Acceptable Bid Bond Submission

Acceptable methods for submitting a bid bond are:

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

15.6.1.2 Bid Bond Forfeiture

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

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

15.6.2 Construction Performance and Payment Bonds

Texas Government Code [Chapter 2253](#) governs performance and payment bonds in public works projects. Section [2253.001\(4\)](#) defines a “public work contract” to mean “a contract for constructing, altering, or repairing a public building or carrying out or completing any public work.” Section [2253.002](#) expressly exempts from the requirements of this chapter the following public works contracts: those associated with actions relating to (i) cleanup of certain hazardous waste facilities, Health and Safety Code Chapter 361, [Subchapter E](#); (ii) enforcement of orders under the Solid Waste Disposal Act, Health and Safety Code Chapter 361, [Subchapter I](#); and (iii) underground and aboveground storage tanks, Water Code Chapter 26, [Subchapter I](#).

15.6.2.1 General Requirements

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

15.6.2.2 Additional Requirements

Texas Government Code [Section 2253.021](#) requires bonds to be executed by a corporate surety in accordance with Chapter 3503, Subchapter A of the Texas Insurance Code, made

payable to the state, and written on a form that the Attorney General has approved, Texas Government Code Section [2253.021\(d\)](#),<sup>120</sup> [\(e\)](#). Section [2253.021](#) also specifies the contents that must be displayed on the face of the bond or in an attachment, such as: “(1) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or (2) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number,” Texas Government Code Section [2253.021\(f\)](#). Finally, Section [2253.021\(g\)](#) prohibits a governmental entity from requiring that a contractor obtain the required surety bond from a particular insurance or surety company, agent, or broker.

Moreover, [Section 2253.022](#) extends these bond requirements to an insurance company that is fulfilling its obligation by arranging for loss replacement, rather than by a cash payment directly to the governmental entity; these requirements, however, do not extend to a surety company who is complying with an obligation under a bond that had been issued for the benefit of the governmental entity. In the event a state agency does not obtain a payment bond as required by the chapter, the agency essentially takes on the liability of a surety. Section [2253.027\(a\)\(1\)](#) expressly provides that the state agency assumes the same liability that a surety would have if the payment bond had been issued and presented to the entity. Also, Section [2253.027\(a\)\(2\)](#) permits a payment bond beneficiary to assert a lien on money due to the prime contractor in the same manner and to the same extent as liens asserted under [Chapter 53](#) of the Texas Property Code governing mechanic’s, contractor’s, or materialman’s lien.

#### 15.6.2.3 Third Party Right to Copy of Payment Bond and Contract

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

<sup>120</sup> Article 7.19–1, Vernon’s Texas Insurance Code was repealed in 2005 and codified as Subchapter A of Chapter 3503, Texas Insurance Code. Acts 2005, 79th Leg., ch. 727, §§ 3 (adding ch. 3503), 18(a)(5) (repealed), 2005 Tex. Gen. Laws 1752, 2156–57, 2187.

## 15.7 Prevailing Wage Rates

Texas Government Code [Chapter 2258](#), construction of a public work, including a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction. The chapter does not apply to work done directly by a public utility under an order of a public authority. [Subchapter B](#) of Chapter 2258 addresses the payment of prevailing wage rates, including workers' rights, determinations of prevailing wage rates depending on the geographic location of the work site, payment of prevailing wage rates by subcontractors, and recordkeeping. An agency contracting for the construction of a public work — including a building, highway, road, excavation, and repair work or other project development or improvement paid for in whole or in part from public funds — must determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract (including the prevailing rate for legal holiday and overtime work). An agency may make its prevailing wage rate determination by conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the political subdivision of the state in which the public work is to be performed, or by using the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.) and its subsequent amendments. [Chapter 2258](#) includes specific requirements for determining prevailing wage rates for a public work located in a county bordering the United Mexican States or in a county adjacent to a county bordering the United Mexican States. Any solicitation related to a contract for construction of a public work project and the contract itself must include the appropriate wage rate determination for the project. The bidder to whom the contract is awarded, and all of its subcontractors are required to pay wages of at least the rates contained within the wage rate determination for the project.

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

## 15.8 Uniform General Conditions for Construction

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

### 15.8.1 Texas Facilities Commission

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

### 15.8.2 HHSC Construction Documents

For HHSC construction projects solicited under the authority of Texas Government Code [Chapter 2269](#), HHSC incorporates the UGC into a contract document titled "Texas Uniform Conditions for Construction Projects with HHSC Supplementary Conditions." This contract document not only

incorporates the State of Texas UGCs, but also includes a required section for specifying liquidated damages and/or any other agency-required or agency-specific supplementary conditions.

## 15.9 Grant Awards

A grant is a financial award provided by the state or federal government to an eligible grantee (subrecipient or recipient). It is the policy of HHS that the HHSC Federal Funds Manager review and approve all federal funding plans for HHS services in Texas.

The State of Texas is the prime recipient of federal funds, and the subrecipient (contracted entity) is a non-federal entity that expends pass-through federal funds from the state. In some instances, the Texas Legislature appropriates state general revenue to an agency to award in grants. In those instances, the organization receiving grant funds is the recipient.

HHSC is responsible for establishing business processes to coordinate and monitor the use of federal funds received by HHS agencies. This includes ensuring that HHS agencies have access to federal funds information for their programs.

Grantees are responsible for the administration and financial management of all funds and resources received from HHS. Grantees are to comply with and follow all applicable federal and state laws, rules, and regulations in the administration of grant awards from federal or state sources.

Grantees must also comply with HHS rules, policies, and procedures, including any specified terms in the contract. The executed contract between HHS and a grantee, including all attachments, exhibits, and resources referenced in the contract, govern the grant agreement between the parties.

### 15.9.1 Required Information

Pursuant to UGG, grant awards that award federal funds are required to include the following information in the executed grant document. Grant agreements awarding state funds should generally include the same information, with the exception of non-applicable federal information.

- a. Grantee Data Universal Numbering System (DUNS) Number or Unique Entity Identifier (UEI)
- b. Federal Award Identification Number (FAIN)
- c. Catalog of Federal Domestic Assistance (CFDA) Name and Number (list all that apply)
- d. Federal Award Date
- e. Federal Award Period
- f. Name of Federal Awarding Agency
- g. Awarding Official Contact Information
- h. Indirect Cost Rate Details
- i. Identification of whether the award is for research and development
- j. Options for recovery
- k. Identify any prohibition or restrictions on indirect costs

### 15.9.2 Federal Uniform Grant Guidance (UGG)

In December 2013, the Office of Management and Budget (OMB) published [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200](#). This Uniform Grant Guidance (UGG) consolidated grant-related guidance and implemented efficiency and effective grant reforms. The reforms are the result of several executive orders to reduce administrative burdens and increase flexibility, while targeting improper payments and improving program performance.

Effective December 2014, UGG applies to HHS federal grants as grant terms expire and new grants are issued. The UGG has implications for all aspects of HHS agency operations including accounting, budgeting, information technology, and grant monitoring and oversight. The UGG covers administrative requirements, cost principles, and audit requirements, among others.

Key elements of UGG include:

- a. Integrating and streamlining eight OMB circulars into one set;
- b. Providing a set of uniform definitions for federal assistance;
- c. Creating exceptions for innovative programs;
- d. Replacing "vendor" with, "contractor;"
- e. Requiring pre-award consideration of merit and risk;
- f. Providing consistency on negotiated indirect cost rates;
- g. Streamlining and clarifying guidance on subrecipient monitoring;
- h. Strengthening internal controls while providing administrative flexibility;
- i. Using a risk-based approach towards single audits and raising audit threshold to \$750K;
- j. Strengthening audit follow-up by requiring greater accountability; and
- k. Simplifying reporting requirements while strengthening internal controls.

### 15.9.3 State Uniform Grant Management Standards

State funded grants must be administered according to the State's Uniform Grant Management Standards (UGMS) or its successor, published by CPA. UGMS was established to promote efficient use of public funds through a standardized set of financial management procedures and definitions. The CPA develops and maintains UGMS.

### 15.9.4 HHS Grant Technical Assistance Guide

PCS has published a Grant Technical Assistance Guide (GTAG) to aid grantees in managing their grant awards. The GTAG offers guidance on financial administration topics to clarify the applicable laws, rules, and regulations, including HHS policy and procedures pertaining to the administration and financial management of HHS grant awards. The GTAG can be found on the HHS external website under [Doing Business with HHS/Grants Page](#).

## 15.10 Coordination and Preparation of Contract Documents

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

### 15.10.1 Contract Manager Responsibilities

The contract manager will:

- a. Coordinate with System Contracting to ensure the mandatory terms and conditions are incorporated into the contract, coordinating as necessary with agency SMEs and appropriate OCC attorneys.
- b. Coordinate with the OCC Data Governance Legal to determine whether the contractor will access confidential information if uncertain and ensure the Data Use Agreement (DUA) or OCC Data Governance attorney approved language has been incorporated into the contract.
- c. Coordinate with PCS to ensure:
  - i. Necessary procurement documents like responses, negotiations, SOW, performance measures, and any other pertinent documents, are included in the contract;
  - ii. For major information technology projects with a maximum potential contract value of at least \$10 million, that the proposed terms of the contract before starting negotiations and the final negotiated unsigned contract are provided to QAT for review; and
  - iii. OAG review for contracts equal to or greater than \$250 million (see [PCS Operating Procedure 211](#), Request for Office of the Attorney General “880” Review).
- d. Upon award of the contract (applicable to contracts that mandated the inclusion of a HUB Subcontracting Plan (HSP) with the solicitation response), the HUB Program Office will contact the contract manager to accomplish the following prior to the contract manager initiating or providing the Notice-to-Proceed to the contractor.
- e. Schedule a HUB-Post-Contract-Award Meeting with the contractor within 10 days of the contract award notification.
- f. Provide a copy of the 34 TAC §20.285 outlining HUB compliance requirements throughout the duration of the contract and require the contractor to implement the HSP in good faith.
- g. Ensure the contractor notifies all of the HSP subcontractors (both HUB and Non-HUB) within 10 days of the contract award and provides supporting documentation of the notifications for the contract file.
- h. Ensure any needed updates to the HSP are done in accordance with 34 TAC §20.285 and are reflected on the [Form PCS 510](#).
- i. Provide guidance to the contractor for any future changes to the HSP that requires compliance with the good faith effort requirements and must obtain prior approval from the agency (HUB Program and Program Area) prior to engaging a new subcontractor. Note, engaging a contractor without prior approval may be considered a breach of contract.

- j. Provide guidance to the contractor on the submission of the Progress Assessment Report (PAR) with the invoice as required as condition of payment. This includes submitting a copy to the [HUB\\_PAR@hhsc.state.tx.us](mailto:HUB_PAR@hhsc.state.tx.us) mailbox for tracking and reporting.
- k. Solidify the HSP Contract Provision on the PCS 510 - HUB Post Contract Award Form and require the contractor's signature. Obtain HHS signatures: The HUB Coordinator signs the Form PCS 510 and submits to the contract manager for signature.
- l. Upload the documents in SCOR: The HUB Coordinator forwards all the HUB Post Contract Award documents to the contractor manager to upload in SCOR under the "HUB Subcontracting Plan" document type.
- m. Upload all the contract documents as an attachment for the contract. (If the file sizes are large, compress the documents into a zip file). Then upload the requisition, request document, and [Form PCS 515](#) as separate files. Within the zip folder, the files should still adhere to the file naming convention. The file order in CAPPs should be as follows:
  - i. Contract Signature Document
  - ii. Contract attachments
  - iii. Completed Form PCS 515
  - iv. Request Document
  - v. Requisition
  - vi. Other supporting documentation (such as legal approval email)
- n. Ensure the contract addresses concerns or issues raised during review.

#### 15.10.2 Review of Draft Contract

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

- a. Contractor name: The contractor name on the contract and all required forms is the complete and correct legal name of the entity;
- b. Signature authority: The individual designated to sign the contract on behalf of the contractor and the HHS agency are authorized to bind the party in contracting decisions;
- c. Contract attachments/forms: All required attachments/forms are included with the contract, as applicable:
  - i. The appropriate affirmations and contract terms and conditions
  - ii. The solicitation document
  - iii. The contractor's response
  - iv. Any negotiated changes
  - v. Required budget documents

- vi. A Data Use Agreement (DUA) and complete Security and Privacy Inquiry
- vii. Other required forms (e.g., the Certification Regarding Lobbying form required for contracts, grants, loans, and cooperative agreements that utilize federal funds.)
- d. Payment and invoicing information: If there is a total dollar amount it must be correct, and budgets must be calculated accurately and include invoicing information approved by the HHS Accounts Payable; and
- e. Effective dates: The effective begin and end dates are specified and correct.

#### 15.11 Certification Regarding Lobbying

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

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

#### 15.12 Required Screening for Potential Contractors

##### 15.12.1 Vendor Checks

HHS agencies must demonstrate due diligence to ensure potential contractors (inclusive of grantees, subrecipients, and recipients) are eligible to do business with the State of Texas before contract award. This policy also applies to entities before an HHS agency enters a revenue generating contract. Governmental entities and institutions of higher education are excluded from HHS screening requirements. Procedural information is available on the Vendor Checks Job Aid Screening Guide.

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

- a. Texas Identification Number (TIN) – Texas Comptroller of Public Accounts;
- b. Warrant/Payment Hold – Texas Comptroller of Public Accounts;
- c. Franchise Tax Account Status - Texas Comptroller of Public Accounts;
- d. Texas Debarred Vendor List - Texas Comptroller of Public Accounts;
- e. System for Award Management (SAM) - Federal Exclusions;
- f. Federal HHS OIG List of Excluded Individuals and Entities - Federal Exclusions;
- g. Texas Office of Inspector General Exclusions Database – Texas Exclusions;
- h. Texas Legislative Prohibitions – Texas Comptroller of Public Accounts; and
- i. Vendor Performance Tracking System (VPTS).

### 15.12.2 Additional Vendor Screening

Additional screening may be required as per program rule or contract requirement, such as:

- a. Criminal History Check: If applicable, verify the owners and related parties associated with a legal entity do not have a criminal conviction that would prohibit the HHS agency from contracting with the legal entity;
- b. Employability Status Check: If licensed by HHSC Regulatory Services, verify each owner or partner/board member/managing employee/controlling person is not identified in the Nurse Aide Registry as revoked or the Employee Misconduct Registry. The check can be conducted at the Department of Aging and Disability Services Employability Status Check Search; and
- c. Licensure/Certification: If the legal entity is required to be licensed or certified, verify the license/facility identification number, license/certification expiration date. If the result of any of the above checks identifies an issue with the potential vendor's eligibility, contract staff must consult program management to determine the appropriate action. HHS staff must maintain documentation to support the outcome of the required checks and applicable escalation communication in the procurement file.

### 15.13 Disclosure of Interested Parties

In accordance with Texas Government Code [Section 2252.908](#), disclosure of interested parties applies to a contract with a value of \$1 million or more, a contract that requires an action or vote by the governing body or a contract that is for services that would require a person to register as a lobbyist under Texas Government Code [Chapter 305](#).<sup>121</sup>

Exemptions to the requirement are:

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

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

<sup>121</sup> Texas Government Code Section [2252.908\(b\)](#) was amended during the 86<sup>th</sup> Legislative Session to apply disclosure of interested parties to a contract for services that would require a person to register as a lobbyist under [Chapter 305](#) of the Texas Government Code. The amendment was effective June 14, 2019. (The section was amended by both House Bill 1495 and Senate Bill 65. [House Bill 1495](#) was effective June 14, 2019 and [Senate Bill 65](#) was effective September 1, 2019.)

Form 1295 - Certificate of Interested Parties, it must be filed with the TEC and acknowledged by the contracting agency before the agency may sign the contract.

The information reported by a contracting entity on the Certificate of Interested Parties form submitted in support of an HHS contract may require revision during the term of the HHS contract. If a change to the disclosure of interested parties should occur or if an amendment or extension of a contract would require disclosure, the contractor must complete Form 1295 - Certificate of Interested Parties to reflect the updated information. The new Form 1295 is submitted to the HHS contract manager, who must acknowledge receipt of the form using the TEC online acknowledgement within 30 calendar days from HHS receipt of the filed 1295, and upload it into the SCOR Contract module, Document submodule.

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

## 15.14 Contract Award

### 15.14.1 Notification of Contract Award

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

- a. ESB: If the maximum potential contract value exceeds \$25,000.00, the notice of award is posted to the ESB. Proof of the ESB posting is maintained in the procurement file.
- b. QAT: If an award of a major information resources project, notice is provided to the QAT within 10 business days of award.
- c. LBB:<sup>122</sup> Contracts which meet a certain threshold, unless exempt, are reported through the LBB Contracts Database, subject to specific timelines:
  - i. Maximum potential contract value greater than \$14,000.00 for construction, professional services or consulting services contracts;
  - ii. Maximum potential contract value greater than \$50,000.00 for all other contract types;
  - iii. Maximum potential contract value greater than \$100,000.00 for major information systems;
  - iv. Maximum potential contract value greater than \$1 million for non-competitive/sole source or emergency procurements; and
  - v. Maximum potential contract value greater than \$10 million for all other contract types.
- d. HHS Website:
  - i. For contracts not posted to the LBB contracts database, HHS System Agencies must post each DIR SOW<sup>123</sup> entered into by HHS and contracts for the purchase of goods or services from a private vendor with a maximum potential contract value greater than \$0.
  - ii. State law requires Texas state agencies to publish the purpose of each grant exceeding \$25,000 awarded from state appropriations on their websites. The CPA's office must post a list of links to the grant information displayed on the agencies' websites.

<sup>122</sup> Additional information is available on the [LBB Website](#).

<sup>123</sup> Tex. Gov't Code [§ 2157.0685](#); 1 TAC [§ 212.41\(c\)](#).

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

*NOTE: Different oversight agencies may not use the same standard for determining contract value. For example, the contract value for SPD reporting, review, and delegation requirements (see Section 8.5 regarding Contract Value Estimate) is defined differently than for LBB reporting purposes, or IT commodity purchases under DIR contracts.*

#### 15.14.2 LBB Notification—Attestation Letters

HHSC is required to provide notification to the LBB pursuant to Article IX, Section 7.12 of the GAA by submission of an attestation letter and contract documents for certain contracts in the format required by the LBB. For purposes of Section 7.12 of the GAA, a contract is defined as, "a contract, grant or agreement, including a revenue generating contract, an interagency or interlocal grant or agreement, purchase order or other written expression of terms of agreement or an amendment, modification, renewal, or extension of such for the purchase or sale of goods or services that was entered into or paid for, either in whole or in part, by a state agency or institution of higher education."<sup>124</sup>

##### 15.14.2.1 LBB Contracts Database

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

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

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

##### 15.14.2.2 LBB Attestation Letter Procedure

As applicable, HHS program staff must complete the appropriate [Form PCS 805](#), [Form PCS 806](#), [Form DSHS 807](#), or [Form DSHS 808](#) (LBB Attestation Letter) and initiate routing it when the contract or amendment is routed for signature. A new contract may not move forward to execution if the LBB Attestation Letter form routing has not been initiated.

Forms PCS 805, PCS 806, DSHS 807 and DSHS 808 are power forms accessed and routed from the HHS Connection intranet site. Each provides:

<sup>124</sup> [GAA](#), H.B. 1, 86<sup>th</sup> Leg., R.S., art. IX, sec. 7.12(a).

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

Separate certifications are required for contract award and contract management when separate HHS divisions and agencies are responsible for procurement, contracting functions, and contract management. However, when a single HHS division is responsible for procurement, contracting functions and contract management, one certification is required to satisfy the requirements of Article IX, Section 7.12 of the GAA. Certification is made by provision of the Deputy Executive Commissioner (DEC) signature(s) and date of the attestation letter.

#### 15.14.3 LBB Notification—Bridge Extension Contracts<sup>125</sup>

##### [PCS Operating Procedure 754](#)

An extension to an existing contract beyond the period of performance (including any renewals or optional extensions provided in the contract), to address immediate operational or service delivery needs caused by a delay in awarding a new contract, must be reported to the LBB at least 30 days prior to the execution of the bridge extension contract. Notice is provided by uploading the action memo approved by the HHS Executive Commissioner, and the same documentation required for an attestation letter in the LBB Contracts Database. Some bridge extensions may not have an attestation letter. *Reference Section 15.14.2.1 LBB Contracts Database and Section 16.18.1 regarding Bridge Extensions.*

#### 15.14.4 Contract Award Certification

##### 15.14.4.1 PCS Procurement Process

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

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

##### 15.14.4.2 Non-PCS Procurement

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

- a. Provider enrollments;
- b. Affiliation agreements;
- c. Interagency agreements; and

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<sup>125</sup> [GAA](#), H.B. 1, 86<sup>th</sup> Leg., R.S., art. IX, sec. 17.10(e)(2), (3).

d. MOAs/MOUs.

15.14.5 Contract Management Certification

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

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

If the responsible DEC or Commissioner is unable to make certification, they must work with System Contracting to determine if the requirements of Article IX, Section 7.12 of the GAA are inapplicable or if a legal justification exists for the alternative process. If a legal justification is identified, the DEC will certify the alternative process used, identify the individual(s) directing the use of that alternative process, and document this in the attachment to the attestation letter.

The DEC for PCS and the program area or agency commissioner responsible for the contract will work together to provide any other information requested by the LBB.

It is the responsibility of PCS to upload the solicitation, contract, and the required attestation letter (*Reference Section 15.14.2 regarding LBB Notification—Attestation Letters*) into the LBB Portal before the first payment under a contract will be made, but no later than 30 calendar days after the date the contract is awarded. For an emergency procurement, the solicitation, contract, and [Form PCS 805](#) must be uploaded within 48 hours of making a payment.

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

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

15.14.6 Other Certifications

[Form PCS 08](#) is used to document certification of the following by the procurement director, or designee:

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

*See also, Section 14.2.3.5 regarding Certification of Vendor Assessment Process.*

The completed PCS 08 must be included with supporting documentation attached to [Form PCS 515](#) used for contract review, approval, and execution. The approved Form PCS 08 must be maintained in the procurement file, and is uploaded into the SCOR, Procurement module.

#### 15.14.7 Delegated Signature Authority

Pursuant to [Chapter 531](#), Texas Government Code, and [Chapter 1001](#), Texas Health and Safety Code, the HHSC Executive Commissioner is responsible for all HHS agencies' purchasing and contracting. Both chapters [531](#) and [1001](#) authorize the Executive Commissioner to delegate specific powers and duties relating to contracts in order to facilitate HHS agency operations.

This policy applies to all HHS agencies' binding and non-binding commitments reduced to writing, including but not limited to:

- a. Contracts, including when the HHS agency is the performing agency or recipient of funds (revenue generating);
- b. MOUs;
- c. MOAs;
- d. IACs;
- e. Grants and grant applications;
- f. Amendments (e.g., renewals, extensions, budget adjustments, etc.);
- g. POs not associated with a signed contract; and
- h. Binding and non-binding commitments that require the execution of an agreement, contract or amendment.

[HHS Circular C-046, Approval and Signature Authority for HHS Agency Contracts](#), defines and clarifies delegation of approval and signature authority and threshold limits for HHS agency contracts.

PCS maintains a copy of the HHS agency delegated signature authority and related approval documentation and posts the HHS agency delegated signature authority matrices on the [HHS Procurement and Contracting](#) page of the HHS Connection.

#### 15.14.8 Changes to Signature Authority

It is important to maintain a current list of names of persons with signature authority at all times. When a staff change occurs in a specific job position that has signature authority, the management authority over the vacated position must email a notice of the change to PCS Level 1 at [PCS\\_Level\\_1\\_Support@hhsc.state.tx.us](mailto:PCS_Level_1_Support@hhsc.state.tx.us).

Notice of the change is sent as soon as possible, preferably at least five business days before the effective date of the proposed change, and must include the:

- a. Name and job title of the person who no longer has the job title/position;
- b. Name and job title of the person assuming the job title/position; and
- c. Effective date of the change.

#### 15.14.9 Form PCS 515 Routing Request and Electronic Signature of Contracts

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

Program staff must complete [Form PCS 515](#).<sup>126</sup> The purpose of the PCS 515 form is to direct HHS contracts, work orders, amendments, renewals, and extensions through approval routing of the proposed contract documents. This form is completed for any document requiring CAPPs Financials approval routing and for all DocuSign signature routing. The requester shall adhere to any HHS Circular-046 requirements ([HHS Circular C-046, Approval and Signature Authority for HHS Agency Contracts](#)) in addition to consulting with program to complete the form prior to submission to Procurement and Contracting Services Quality Assurance (PCS QA). The information provided on the routing request form will be used by PCS QA to create the document routing approval path in CAPPs Financials as well as creating the DocuSign path for contractor signatory and HHS signatory execution.

To contact PCS regarding DocuSign, send an email to: [PCS\\_DocuSign@hhsc.state.tx.us](mailto:PCS_DocuSign@hhsc.state.tx.us).

#### 15.15 Vendor Debriefing

##### [PCS Operating Procedure 578](#)

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

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

#### 15.16 Bid Protests

Bid protests filed by a vendor who is allegedly aggrieved in connection with a solicitation, evaluation or award of a contract by HHSC shall follow the requirements set forth in Title 1, Part 15, Chapter 391 of the TAC.

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<sup>126</sup> Form PCS 515 meets the requirements of Tex. Gov’t Code § 2261.254(c), (d).



# Contract Management

## 16. CONTRACT MANAGEMENT

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

### 16.1 System of Contract Operation and Reporting (SCOR)

On September 5, 2017, the HHS Contract Administration and Tracking System (HCATS) was replaced by the System of Contract Operation and Reporting (SCOR). Prior to September 5, 2017, HCATS or other contract management systems served as the official source of record for HHS agency contract information. As of September 5, 2017, SCOR is the database for all general administrative and client services procurement and contract documentation. SCOR is a single system of record for the management and reporting of contract information. SCOR is also the system of record for the final, electronic procurement file. (Procurement documents related to contracts with an effective date before May 1, 2019 remain in CAPPs or a separate file, including some paper files.)

Actions related to contract establishment, contract amendments, and contract termination begin in CAPPs Financials with contract details merging into SCOR in “real-time.” SCOR serves as the official electronic repository for HHS System Agency procurements and contracts. Information pertaining to contracts with an end date before September 5, 2017 is available in agency-specific instances of HCATS. Procurement documents related to contracts with a begin date before May 1, 2019 remain in CAPPs or a separate file.

Prior to gaining access to SCOR, HHS employees or contracted staff must complete [Form PCS 130](#) and become familiar with the [SCOR User Guide](#).

HHS staff request access to SCOR through the HHS Portal. HHS staff should consult their supervisor to determine the appropriate SCOR security role before submitting a request to the [HHS Enterprise Portal](#). For more information, refer to the SCOR User Guide.

The [SCOR Contract Manager Guide](#) is a resource developed for contract managers to promote consistent use of SCOR and compliance to this Handbook. HHS contract managers are required to adhere to the SCOR Contract Manager Guide.

HHS program areas are required to document business processes related to data entry and document upload to SCOR. Program areas should have additional business processes in place to not only verify information migrated from CAPPs to SCOR, but to make sure contract managers are complying with the requirements within SCOR in order to ensure integrity of the data.

To contact the SCOR Administrator or SCOR Team, send an email to [PCS\\_SCOR@hpsc.state.tx.us](mailto:PCS_SCOR@hpsc.state.tx.us).

### 16.2 Contract Manager Responsibilities

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

The primary responsibilities of a contract manager include:

- a. Being involved throughout each stage of the procurement and contract lifecycle;

- b. Serving as the primary point of contact for agency communication with the contractor regarding all matters pertaining to the contract;
- c. Being well versed in the contract terms, including its purpose, scope, requirements, deliverables, and milestones and ensuring the contractor is held accountable for performance, including timeliness;
- d. Providing training and technical assistance, as needed;
- e. Promoting the use of best practices throughout the contract lifecycle;
- f. Establishing specific, time-bound performance measures and requirements to ensure contractor accountability;
- g. As needed, hosting a post award contractor conference to ensure all parties are aware of the performance requirements and administrative procedures agreed in the contract;
- h. Verifying completion of data entry into the SCOR Contract Detail sub-module and uploading contract documents into the SCOR Contract History or Documents sub-module within 10 days from the contract effective date;
- i. Maintaining thorough and up to date documentation in SCOR;
- j. Assessing level of risk and establish a contract monitoring plan;
- k. Monitoring and documenting the contractor's performance and entering results into SCOR;
- l. Reviewing and recording deliverables status into the SCOR Deliverables sub- module;
- m. Verifying the accuracy of invoices and authorizing payments consistent with the contract terms;
- n. Consulting System Contracting to address legal concerns or issues;
- o. Managing, approving, and documenting changes to the contract through the amendment process authorized by the terms of the contract;
- p. Identifying and resolving disputes with the contractor in a timely manner;
- q. Elevating to management in a timely manner disputes or deficiencies with the contractor's performance;
- r. Exercising remedies, as appropriate, when a contractor's performance is deficient;
- s. Confirming services and deliverables are complete prior to the expiration date of the contract or in accordance with the terms;
- t. Monitoring HUB Subcontracting Plan, if applicable;
- u. Completing contract closeout processes to include, as applicable, submission of a vendor performance report ([Form PCS 147](#)) to [PCS\\_VPTS@hhsc.state.tx.us](mailto:PCS_VPTS@hhsc.state.tx.us); and
- v. Complying with record retention requirements.

### 16.3 Contractor Training and Technical Assistance

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

#### 16.3.1 Training for Contractors

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

The contract manager must ensure training is adequately documented to include the following items and uploaded into the SCOR Documents sub-module:

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

#### 16.3.2 Technical Assistance for Contractors

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

- a. Turnover in key agency or contractor staff;
- b. Difficulty with following contract terms and conditions, policies and procedures, or reporting requirements;
- c. Clarification of HHS agency policies;
- d. Clarification of monitoring and oversight requirements;
- e. Billing or payment issues; or
- f. Other identified needs.

##### 16.3.2.1 Mitigating Minor Contractor Issues

Contract managers may determine that specific contractors would benefit from technical assistance in instances when the contractor:

- a. Has minor non-compliance issues that do not warrant formal actions;
- b. Has technical problems or issues with billings; or
- c. Has difficulty in determining an approach to correct a problem or issue.

#### 16.3.2.2 Documentation

The contract manager must ensure technical assistance is adequately documented to include the following items and are uploaded into the SCOR Documents sub-module:

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

#### 16.3.2.3 Audits

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

### 16.4 Contract Oversight

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

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

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

### 16.5 Oversight of Grant Performance

Contract managers who manage grant-funded contracts must ensure grants are managed properly and that federal and state dollars are spent in accordance with the specifics of each grant as well as applicable laws and regulations. Grants should be managed in accordance with UGG, UGMS (or its successor), and the same contract management requirements and best practices in this Handbook. As always, federal and state requirements take precedence if any conflict exists between the Handbook and federal or state requirements.

#### 16.5.1 Grantee Accountability

The contract manager is responsible for grantee accountability in meeting grant requirements and must ensure that the grantee has policies in place to oversee and monitor their subcontractors. The grantee must:

- a. Maintain effective control over, and accountability for all grant funds, property, and other assets;

- b. Safeguard all assets and assure that they are used solely for authorized purposes;
- c. Evaluate and monitor compliance with statutes, regulations, and the terms and conditions of the awards;
- d. Take prompt and appropriate action when instances of noncompliance are identified; and
- e. Take reasonable measures to safeguard protected personally identifiable information and other information designated as or considered sensitive.

#### 16.5.2 Overseeing Grant Performance

In overseeing grant performance, program staff and contract managers must ensure grantees achieve goals and complete deliverables. HHS agencies oversee grant performance by conducting programmatic and fiscal monitoring. Contract managers must strive to ensure fiscal and program compliance by reviewing the results of fiscal and programmatic monitoring. Fiscal monitoring may include reviewing internal controls, indirect costs and expenditures for allowability, reconciling expenditures with service delivery, and monitoring the overall fiscal compliance of the grantee. Programmatic monitoring may include monitoring performance measures and reporting requirements.

By closely monitoring performance throughout the grant period, potential problems can be addressed to keep grantees on course. Monitoring can be done through formal methods such as reporting, on-site reviews, and desk reviews. Grant management includes:

- a. Use of management systems and site visits to monitor effectively by providing timely and accessible information on performance and deliverables.
- b. Identifying, prioritizing, and managing potential at-risk grantees. Higher risk contracts and grantees may require more frequent and intensive monitoring and technical assistance to ensure overall success.
- c. Sharing monitoring results with grantees to assist with improving performance.
- d. Reviewing reports for timeliness, quality, and accuracy on an ongoing basis, including data entered into reporting systems.
- e. Measuring effectiveness to determine if reported results are satisfactory.
- f. Reviewing data to determine if funding is over or under what is subscribed.

### 16.6 Contract Risk Assessment

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

#### 16.6.1 Purpose

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

- a. Strengthen contract management activities to mitigate risk;

- b. Help identify the potential for fraud and abuse;
- c. Prioritize contracts for the contract monitoring plan; and
- d. Determine the highest risk contracts across the HHS System.

#### 16.6.2 Exceptions

This policy does not apply to transactional purchase orders (TPOs), revenue generating contracts, MOUs or MOAs that have no monetary value, administrative contracts less than \$25,000, or Texas SmartBuy purchase orders through the CPA term contracts and TXMAS contracts. Term contracts through the CPA utilize the following Purchase Category Codes (PCC):

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

#### 16.6.3 SCOR — Risk Submodule

The Risk submodule in SCOR displays the Baseline Risk Level for each contract with a completed Baseline Risk Assessment. The Baseline Risk Assessment is comprised of six indicators; three are assessed at the contractor level and three are assessed at the contract level. To enter information into the Risk sub-module, staff generate and use the Risk Baseline Evaluation Report. The Baseline Risk Assessment is completed at a “point in time” and can be completed at any time, especially as a part of contract monitoring.

Within 60 days from the contract begin date, the contract manager or designee must generate the SCOR Risk-Baseline Evaluation report, enter the results into the SCOR Risk sub-module, and upload the report into the SCOR Documents sub-module.

Risk must also be assessed on an ongoing basis in order to identify changes that may require an adjustment in the prioritization of contract oversight activities.

Subsequently, within 60 days from the contract amendment date to increase the contract amount or extend the contract term, the contract manager or designee must generate and review the SCOR Risk-Baseline Evaluation report to determine impact, if any, to the contract monitoring plan. The contract manager ensures the results of the SCOR Risk-Baseline Evaluation report are entered into the SCOR Risk sub-module and uploaded into the SCOR Documents sub-module.

#### 16.6.4 Program-specific Risk Assessment Instrument (PRAI)

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

entered into the SCOR Risk sub-module and the completed PRAI uploaded to the SCOR Documents sub-module. The PRAI results are utilized to determine the monitoring schedule.

### 16.7 Contract Monitoring

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

The goals of contract monitoring are to:

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

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

### 16.8 Contract Monitoring Plan

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

The contract monitoring plan must:

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

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

A fiscal monitoring plan may also be developed by the fiscal monitoring unit of an HHS agency, division or program, as applicable, for certain subrecipient or recipient contractors based on level of risk.

Once a contract monitoring plan has been developed, it should be entered into the SCOR Monitoring sub-module. The SCOR Monitoring sub-module allows contract managers to document contract monitoring activities. See the SCOR Contract Manager Guide for more information.

## 16.9 Contractor Screening

HHS agencies must demonstrate due diligence to ensure every individual and entity with whom HHS contracts is and remains eligible to do business with the State of Texas.

Vendor compliance verification is completed prior to contract award, renewal, extension, and in conjunction with a scheduled contract monitoring event.

Vendor screening is completed by accessing and searching various databases and verifying results. Contract managers must maintain documentation in the contract file to support the outcome of the required checks and applicable escalation communication in the SCOR Documents sub-module or secondary contract management file. *Reference Section 15.12 regarding Required Screening for Potential Contractors.*

## 16.10 Contract Monitoring Activities

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

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

### 16.10.1 Examples of Monitoring Activities

#### 16.10.1.1 Billing Validation

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

#### 16.10.1.2 On-Site Visit

On-site visits are conducted at the contractor's location or service delivery site to review information and documents, personnel, physical facilities, live operations, service

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

#### 16.10.1.3 Desk Review

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

#### 16.10.1.4 Third Party Monitoring

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

#### 16.10.1.5 Process Improvement Monitoring

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

#### 16.10.1.6 Team Approach

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

#### 16.10.1.7 Inspection and Testing

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

### 16.10.2 Monitoring Types

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

TYPES OF MONITORING		
Monitoring Type	Description	Possible Actions
<b>Fiscal Monitoring</b>	<p>A review of a contractor's financial operations, which may include review of internal controls for program funds in accordance with state and federal requirements, an examination of principles, laws and regulations, and a determination of whether costs are reasonable and necessary to achieve program objectives.</p> <p>(This activity involves assessment of financial statements, records, and procedures. It is similar to an audit, but with a lesser degree of detail and depth, and usually a higher degree of frequency.)</p>	<ul style="list-style-type: none"> <li>Review the terms of their contracts, accounting systems, billings to the funding agency appropriately, and submitted reports for compliance with state and federal laws, rules and regulations;</li> <li>Report on the grantee's compliance with HHS contract terms and provisions in regard to fiscal requirements;</li> <li>Review, accept, and verify Cost Allocation Plans;</li> <li>Review, reconcile, and accept Grantees' Property Inventory Reports.</li> <li>Verify that goods and services billed were actually delivered according to contract requirements</li> </ul>
<b>Programmatic Monitoring</b>	<p>A review of a contractor's service delivery system to determine if it is consistent with contract requirements including outputs, outcomes, quality and effectiveness of programs. In programmatic monitoring, service-related information is reviewed for compliance with process and outcome expectations as identified in standards, rules and contracts. This activity assesses the degree to which the identified need is being met and the quality of the service being provided.</p>	<ul style="list-style-type: none"> <li>Review the provisions of the contract to determine desired outputs and outcomes</li> <li>Review materials to determine if goods or services are being provided appropriately</li> </ul> <p>Interview agency personnel, contract staff, individuals receiving services, or others to determine if the services are being performed according to the contract</p>

TYPES OF MONITORING		
Monitoring Type	Description	Possible Actions
<b>Administrative Monitoring</b>	A review of a contractor’s internal controls and operating processes.	<ul style="list-style-type: none"> <li>• Review personnel files and records</li> <li>• Verify required training and licensure</li> <li>• Verifying background check requirements</li> <li>• Verify contractor insurance coverage</li> <li>• Review compliance with subcontractor requirements</li> <li>• Validate internal control processes, such as adherence to contractor's written policies/processes or application of information security protections</li> <li>• Review of complaints and resolution</li> </ul>
<b>Goods</b>	Activities to determine whether the delivered goods comply with the contract under which they were purchased	<ul style="list-style-type: none"> <li>• Inspection of goods</li> <li>• Testing using standard industry testing methods</li> <li>• Verify the invoice is correct</li> </ul>

16.10.3 Sampling

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

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

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

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

16.10.4 Grantee Single Audit Requirement

Grantees who spend \$750,000 or more in federal awards or \$750,000 or more in state awards during that entity’s fiscal year must have a single audit performed by an independent, third-party auditor. A copy of the single audit report is submitted to the CQC Single Audit Unit (SAU) and uploaded into the SCOR Contractor module, Single Audit sub-module.

As established in [HHS Circular C-041, Grantee Contractors Guidelines to Re-procure Single Audit Services](#), grantees required to obtain a single audit must re-procure single audit services every six years. The contract manager must verify the recipient or subrecipient is compliant with this requirement through the use of a tracking system or attestation of compliance from the contractor.

A grantee not meeting the \$750,000 threshold is not required to undergo a single audit but must provide financial statements to the SAU and abide by UGG on cost principles and administration.

#### 16.10.5 Single Audit Desk Reviews

The SAU will conduct a desk review of the single audit report. Findings included in the single audit report that impact HHS programs should be addressed by the HHS division within the requested timeframe and should ensure the grantee takes appropriate and timely action on all single audit findings.

The SAU reviews the single audit report via a desk review and forwards the report to the PCS SCOR administrator for upload to the single audit sub-module in SCOR.

- a. If the single audit report does not contain any findings that impact HHS, SAU notifies the grantee in writing of the results of the desk review.
- b. If the single audit report contains findings that impact HHS:
  - i. SAU forwards the Funding Agency Notification Letter and relevant information to the HHS program's point of contact and Fiscal Monitoring Unit(s) for review and approval of any corrective action plan included in the report.
  - ii. HHS program management response should be provided to SAU within 15 business days from the date SAU provided the notification letter to program and will be uploaded into the single audit sub-module in SCOR.
  - iii. SAU reviews the management response provided by the program and notifies the grantee in writing of the results of the desk review and whether the corrective action plan included in the single audit report is accepted or is subject to further evaluation.

#### 16.11 Assessing Internal Controls

Internal controls are necessary to promote efficiency, reduce risk, and help ensure the reliability of financial information. A well-planned and operational internal control system provides reasonable assurance that an entity can achieve goals and objectives as set in the contract terms and conditions.

##### 16.11.1 Effective Internal Controls

Effective internal controls include the following components:

- a. Control environment: Sets the tone of an organization, and includes factors such as integrity, ethical values, management's philosophy, and operating style.
- b. Risk assessment: The identification and analysis of relevant risks to achieving objectives and determining how the risks should be managed.
- c. Control activities: The policies and procedures that help ensure management directives are adhered to.

- d. Information and communication: Pertinent information must be identified, captured and communicated in a form and timeframe that enable employees to carry out responsibilities.
- e. Monitoring: Internal control systems must be monitored to assess the quality of the system's performance over time.

#### 16.11.2 Generally Accepted Control Activities

If a program area requires submission of a contracted agency's internal controls, contract managers may coordinate with other agency staff as needed to assess the adequacy of the agency's internal controls by using the five generally accepted control activities shown below with examples:

##### 16.11.2.1 Segregation of Duties

Different individuals are assigned responsibility for different elements of related activities. For example, the same individual should not receive cash, deposit the cash, record the receipt of the cash, and be responsible for purchasing goods and services and subsequently disbursing funds through the accounts payable system.

##### 16.11.2.2 Proper Authorization

Transactions and activities should include the proper authorization that will help ensure that all company activities adhere to established guide lines unless responsible managers authorize another course of action. For example, a fixed rate sheet may serve as an official authorization of price for staff. A properly stated control should be in place for authorized deviations from this rate sheet.

##### 16.11.2.3 Adequate Documents and Records

Controls designed to ensure adequate recordkeeping include the creation of invoices and other documents that are easy to use and sufficiently informative; use of pre-numbered, consecutive documents; and timely preparation.

##### 16.11.2.4 Physical Control Over Assets and Records

Helps protect the organization's assets. These control activities may include electronic or mechanical controls, such as employee ID cards, fences, a safe, cash registers, fireproof files, and locks. They may include computer-related controls dealing with access privileges or established backup and recovery procedures. When evaluating controls for the safeguarding of assets it is important to consider the various types of assets that tend to be more vulnerable, such as cash at hand or easily accessible in the form of cash deposits, checks, loans, accounts receivable, and marketable securities (bonds, notes, shares, stocks) that an organization owns.

##### 16.11.2.5 Independent Checks

Independent checks are carried out by employees who did not perform the work being checked. For example, a supervisor verifies the accuracy of an employee's petty cash drawer at the end of the day.

#### 16.12 HSP Monitoring and Progress Assessment Report (PAR)

The contract manager should be aware that the contractor is required to submit, if applicable, a completed HSP Prime Contractor PAR monthly as a condition of payment. The completed PAR is required to include the subcontracting payments the prime contractor paid to each subcontractor for the reporting (month) period the report covers. The PAR is required to monitor the prime contractor's HSP to ensure the contractor is

utilizing only the subcontractors stated on the approved HSP, and that new subcontractors are not being utilized without prior approval from the HUB Coordinator and in compliance with the good faith effort requirements for subcontracting (*Reference Section 15.10 regarding Coordination and Preparation of Contract Documents*). *NOTE: Utilizing an unapproved subcontractor may be considered breach of contract.*

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

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

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

#### 16.13 Monitoring DUA Compliance

[HHS Circular C-049](#), HHS System Office of the Chief Data Officer, established the Office of Chief Data Officer (OCDO) for managing data and creating a governance structure for data created, managed, or maintained with the HHS System.

A contract manager may include an assessment of compliance with DUA requirements when monitoring contracts that contain confidential information [Appendix G – DUA Confidential Information Protection](#), provides an assessment that may be used in conjunction with existing monitoring processes.

#### 16.14 Monitoring of Staff Augmentation Contractors

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

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

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

#### 16.15 Contract Monitoring Documentation and Follow-Up Activities

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

Once the monitoring review is concluded, a monitoring report is developed. The final monitoring report identifies, documents and communicates to the contractor the facts, findings, and conclusions resulting from

the review. The report should be clear and concise. In addition, confidential sample or employee identifying information must not appear in the report.

Monitoring documentation should include:

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

Monitoring information is entered in the SCOR Monitoring sub-module and the completed monitoring tool, or as applicable, final report, is uploaded into the SCOR Documents sub-module unless prohibited from view by state or federal rules or regulations.

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

16.16 Enhanced Contract and Performance Monitoring

State agencies are required to establish enhanced monitoring protocols for high-dollar and high-risk contracts. As defined by the Comptroller's Guide, enhanced monitoring is an increased level of monitoring, beyond the regular monitoring typically used to assess progress of the contractor toward meeting identified goals and outcomes established in response to an assessment of unsatisfactory performance.

HHS agencies consider a high-dollar contract to be a contract with a value of \$10 million or more, regardless of the contract begin date. Enhanced monitoring is also applicable to \$0 contract agreements with expenditures that reach the \$10 million threshold in actual expenditures. MOUs, MOAs, interagency contracts and interlocal agreements are exempt from enhanced monitoring requirements.

HHS agencies may expand the scope of contracts that require enhanced monitoring beyond the \$10 million threshold as defined above for their respective agency based on legislative, federal, and state requirements. For example, GAA, Article IX, Section 17.10 was amended by the 86th Legislature (2019) to allow HHS to request to exempt managed care contracts in the Medicaid and CHIP program from the requirement to seek competitive bids before extending or renewing a contract that has been in effect for more than five fiscal years as of August 31, 2019. The request must be submitted to the LBB, outline the justification for the exemption, and state that HHS agrees to enhanced oversight of the contract upon LBB approval of the exemption and LBB-determined level of enhanced oversight, unless waived. If the LBB determines the requirements have not been met, corrective actions may apply.

When a contract has a value or expenditure reach of \$10 million, the contract manager must review the contract to assess the prescribed monitoring protocol to include, as applicable, the schedule of deliverables, to determine if the specified protocol is sufficient to assess ongoing performance. In addition, the contract must include a provision for enhanced monitoring in response to an assessment of unsatisfactory performance.

#### 16.16.1 Implement Enhanced Monitoring

To implement enhanced monitoring, the contract manager must:

- a. Develop an enhanced monitoring plan (i.e., monitoring frequency, key requirements, noted areas that will be monitored and monitoring activities). Enhanced monitoring activities may include, but are not limited to:
  - i. Training and technical assistance (provider meetings);
  - ii. Submission of contractor reports of status or progress toward meeting identified goals and outcomes established in response to assessments of unsatisfactory performance; or
  - iii. Additional HHS reviews of the contract (desk or onsite) with documented follow-up requirements for any significant findings.
- b. Notify the contractor in writing (letter or e-mail) that enhanced monitoring protocols have been activated for the remaining contract period unless this provision was contained within the contract terms and conditions. The notice should include:
  - i. Reference to Texas Government Code Section [2261.253\(c\)](#);
  - ii. Contract number; and
  - iii. Components of the enhanced monitoring plan.
- c. The contract manager is required to complete enhanced monitoring activities as per the enhanced monitoring plan and upload the enhanced monitoring plan and monitoring documents into the SCOR Contract module, Documents sub-module.

#### 16.16.2 Enhanced Monitoring Reporting and Compliance

Contract managers must report any serious issues or risks identified with respect to contracts requiring enhanced monitoring to their management who should report such identified issues and risks to HHS executive staff.

### 16.17 Review for Amendment, Renewal or Re-procurement

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

### 16.18 Contract Amendments, Bridge Extensions and Renewals

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

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

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

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

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

#### 16.18.1 Bridge Extensions

[PCS Operating Procedure 754](#)

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

HHS must not use appropriated funds to pay for an extension to an existing contract beyond the base term and optional extensions provided for in that contract unless certain conditions are met. The duration and cost of the extension is limited to not more than one additional option period as defined

in the contract to address immediate operational or service delivery needs. If the contract does not contain a defined option period, the extension is limited to one year.<sup>127</sup>

The HHS Executive Commissioner must approve the use of a bridge extension through the agency's action memo process. To ensure compliance with Article IX, Sections 7.12(d) and 17.10(e)(2), (3) of the GAA, HHS agency staff must follow the process provided in the procedure.

#### 16.18.2 Major Information Resource Project (MIRP) Contract Amendments

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

#### 16.18.3 Contract Renewals

##### [PCS Operating Procedure 645](#)

A contract with expenditures exceeding \$5 million cannot be amended to exercise a renewal option until a vendor performance report has been completed and entered into the CPA's Vendor Performance Tracking System.<sup>128</sup> *Reference Section 19.1 regarding Vendor Performance Reporting.*

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

##### 16.18.3.1 Bilateral Amendment

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

##### 16.18.3.2 Tracking Contract

A tracking contract is entered to track allowable renewals in a procurement. To exercise a renewal for this type of contract requires a CAPPs requisition for the PCS Purchaser to execute a signed [Form PCS 135](#) - POCN Contract Amendment.

#### 16.18.4 Revenue-Generating Contract Amendments

To amend a revenue-generating contract, the contract manager must update the record in SCOR. A new procurement is required if the proposed change is outside of the scope of the executed contract. Consult System Contracting as needed to determine if a change requires an amendment to the contract or a new procurement.

<sup>127</sup> [GAA](#), H.B. 1, 86<sup>th</sup> Leg., R.S., art. IX, sec. 17.10(e).

<sup>128</sup> Tex. Gov't Code [§2155.089\(b-1\)](#)

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

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

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

16.18.5.1 Form 1295 Required When Not Previously Submitted

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

16.18.5.2 New Form 1295 Required When Previously Submitted

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

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

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

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

*Reference Section [15.13](#) regarding Disclosure of Interested Parties.*

16.18.6 HUB Program Office Notification

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

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

If the HUB Program Office determines additional HUB subcontracting opportunities exist, the assigned HUB coordinator and contract manager will work with the contractor to assist them with

developing and revising an adequate HSP. Once evaluated, the HUB Program Office will submit the conclusion to the contract manager, who will ensure its inclusion in the contract file.

Additional HUB information can be found on the [Historically Underutilized Business Opportunities Program Page](#); and *Section 15.10.1.d regarding Coordination and Preparation of Contract Documents*; and *Section 16.12 regarding HUB Subcontracting Plan Monitoring and Progress Assessment Report*.

#### 16.18.7 Ownership or Name Change

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

In the event of any change, the contract manager should review applicable provisions of the Comptroller's Guide, review the terms of the contract, and consult program management and, if necessary, System Contracting to determine the appropriate action.

##### 16.18.7.1 Name Change

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

Because the Legal Entity name in SCOR comes directly from CAPPs through a daily file from the CPA, a request to HHS Accounts Payable needs to be made to update the Legal Entity name in CAPPs, which will then update SCOR. To request a name change in the CAPPs supplier name field:

- a. DSHS: The contract manager will notify the Contract Management Unit of the name change.
- b. HHSC: The contract manager will complete CPA Form PCR 74-157, Payee Change Request and send it to HHSC Vendor AP at: [vendorap@hhsc.state.tx.us](mailto:vendorap@hhsc.state.tx.us).

##### 16.18.7.2 Payee Change Request Form PCR 74-157

Payee Change Request Form PCR 74-157 can be found on the HHS External Webpage. To use this link, a FMX User ID is required.

When completing Form PCR 74-157, please note the following additional instructions for completing Section 3:

- a. Item 9: Enter the 11-digit Texas Identification Number (TIN).

- b. Item 10: Do not enter the mail code (leave blank). This is only needed when it is a location change.
- c. Item 11: indicate the incorrect name that is appearing.
- d. Item 12: Enter the correct name you want Vendor Maintenance to change to.

#### 16.18.7.3 New TIN

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

#### 16.18.7.4 Assignment

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

### 16.19 Contractor Performance Issues and Contract Remedies

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

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

Contract managers and program staff should be familiar with remedy provisions in the contract and should consult PCS CMS and System Contracting as needed to determine the correct response to a contractor's performance issues.

### 16.20 Escalation of Contract Issues

HHS agencies must develop an escalation process to communicate significant or serious contract related issues to agency executive management, program leadership, System Contracting, and PCS as appropriate and depending on the severity of the issue.

Contract managers must ensure agency executive management, program leadership, System Contracting, and PCS and other applicable staff are notified immediately when they become aware of serious contract issues or risks. Although contractor noncompliance issues are often identified during monitoring, contract managers must maintain an awareness of a contractor's performance throughout the duration of the contract. Routine contract management activities can also alert staff to noncompliance issues.

Examples of significant issues for escalation include:

- a. Loss or misuse of agency funds;
- b. Risk the contract will exceed budget limitations or timeframes;
- c. Harm or risk of serious harm to individuals;
- d. Repeated non-compliance;
- e. Publicized or political concerns;
- f. Patterns of complaints or high-profile complaint;
- g. Appearance of impropriety or potential conflict of interest; and
- h. Suspicion of fraud, waste, or abuse.

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

In cases where an HHS agency has a committee or other entity that is responsible for sanctioning contractors for non-performance, the agency's escalation process takes precedence over committee timeframes and procedures.

## **17. CONTRACT EXPIRATION, TERMINATION, CLOSEOUT, AND SETTLEMENT**

### **17.1 Contract Expiration**

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

### **17.2 Contract Termination**

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

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

Each HHS agency must develop and document procedures for processing contract terminations. The procedures must outline the process based on the type and value of the contract.

#### **17.2.1 Termination Decision**

The contract manager must review the contract terms and conditions, agency policy, and applicable laws and regulations to ensure termination is allowed and to determine the basis for termination. The contract manager must consult with the HHS agency's management and System Contracting regarding an HHS determination to terminate.

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

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

#### 17.2.2 Written Notice of Termination

A written notice of termination must be sent to a contractor prior to the contract termination date.

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

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

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

#### 17.2.3 Types of Contract Terminations

##### 17.2.3.1 Termination — Mutual Agreement

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

##### 17.2.3.2 Termination — For Convenience

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

##### 17.2.3.3 Termination for Non-Appropriations — Excess Obligations Prohibited

The Uniform Terms and Conditions refer to this type of termination as “Excess Obligations Prohibited.” This termination provision is subject to availability of state funds and occurs without penalty to the HHS agency, either in whole or in part. This termination may occur if the HHS agency becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either the HHS agency's or contractor's delivery or performance impossible or unnecessary. The HHS agency will not

be liable to the contractor for any damages that are caused or associated with the termination, and the HHS agency is not required to give prior notice.

17.2.3.4 Termination for Cause

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

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

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

The notice must contain the following, at a minimum:

- a. The effective date of the termination;
- b. The reason for the termination;
- c. Contract citation that allows the termination;
- d. Record retention requirements; and
- e. A description of the closeout procedure.

#### 17.2.5 Notice of Termination for Cause

The notice must be approved by the HHS agency's management and System Contracting and must contain the following at a minimum:

- a. The effective date of the termination;
- b. A statement of all contract provisions that the contractor failed to meet;
- c. Any related materials demonstrating contractor failures;
- d. Contract citations that allow the termination;
- e. Notice of the contractor's rights of recourse, if any;
- f. Record retention requirements; and
- g. A description of the closeout procedure.

### 17.3 Contract Closeout

The contract manager should initiate closeout activities when there is a reasonable certainty that the terms and conditions of the contract have been met and the contract will not be renewed or extended. Unless otherwise stated in the contract, the closeout process must be completed and entered in the SCOR Close-Out sub-module within 90 days of the contract end date, unless extenuating circumstances exist. If contract closeout is delayed for extenuating circumstances, the contract manager should enter a brief explanation of the delay into the comment field in the SCOR Close-Out sub-module. If a contract is closed out in error, contact the SCOR Administrator at [PCS\\_SCOR@hsc.state.tx.us](mailto:PCS_SCOR@hsc.state.tx.us) to change the status in SCOR.

#### 17.3.1 End of the Contract Lifecycle

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

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

#### 17.3.2 Contract Closeout Process

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

- a. Completion of all administrative actions;
- b. Assignment of a status to each deliverable in the SCOR Contract module, Deliverable sub-module;
- c. Settlement of contract disputes, claims, and agreements;

- d. Protection of any HHS and HHS agency confidential information;
- e. Settlement of financial claims;
- f. Audit of any records or payments;
- g. Cancellation of any goods or services not yet received;
- h. Transferring of caseloads and files;
- i. Transferring of equipment, hardware, software and goods;
- j. Transferring access to any information or reporting systems;
- k. Disposition of equipment;
- l. Review of HSP and submitted PAR forms in coordination with HUB Program in accordance with [Section 16.12](#) regarding *HSP Monitoring and Progress Assessment Report (PAR)*; and
- m. Vendor performance (VPTS reporting).

#### 17.4 Grant Closeout

In addition to the activities identified above in [Section 17.3](#) regarding *Contract Closeout*, a recipient or subrecipient must submit all financial, performance, and other reports required in the grant no less than 45 days and no later than 90 days after grant expiration or termination. Final reports and invoicing requirements are subject to grant record retention and access requirements.

#### 17.5 Contract Settlement

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

##### 17.5.1 Contract Manager Responsibilities

The contact manager must:

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

### 17.5.2 Settlement Procedures

Each HHS agency must have documented settlement procedures that include required documentation and approval, taking into account the type, complexity and value of the agency's contracts. These procedures must include, at a minimum:

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

### 17.5.3 Reimbursement of Allowable Expenses

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

### 17.5.4 Contractor Obligations

The contractor is responsible for the prompt resolution of any claims for its subcontractors and vendors. A subcontractor may have no contractual rights against the HHS agency on termination. Each claim must be documented by the contractor or the contract manager. The contractor may submit bills, records, affidavits, audit reports, and other documents to support contract invoices within a reasonable period of time, up to 90 days after termination. Contract managers should inspect a subcontractor's records if needed for the contract closeout.

## 17.6 Provide Contractor with Settlement

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

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

Contractor notices are uploaded into the SCOR Documents sub-module.

## 18. CONTRACT RECORDS

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

### 18.1 System of Contract Operation and Reporting (SCOR)

SCOR HHS contracts and agreement (including agreements such as MOUs and MOAs) must be uploaded into the SCOR Contract History submodule. Supporting documents are uploaded to the SCOR Contract Documents submodule. HHS staff must not upload documents with protected health information, such as copies of social security cards, copies of voided checks, etc. Staff should consult with the Chief Privacy Officer as needed to determine if contract documents require protection. If a contract document has been determined to require protection, prohibiting the document from being viewed, staff must request assistance from the SCOR Administrator through the SCOR Mailbox at [PCS\\_SCOR@hpsc.state.tx.us](mailto:PCS_SCOR@hpsc.state.tx.us). The request must include approval to protect the document. The SCOR Administrator will assign and manage password protection for the document.

Contract managers must ensure the contract information in SCOR is updated throughout the contract lifecycle and is accurate and complete. If corrections to information in SCOR are required, contract staff either make the necessary correction or submit a request to the SCOR Mailbox. Supplemental contract records, including automated systems, electronic files, and paper records, may also be maintained to complete the contract record. Examples of documents uploaded to SCOR include:

- a. Solicitation;
- b. Executed contract;
- c. Contract amendments;
- d. Formal correspondence;
- e. Disclosures and conflict of interest forms;
- f. Risk assessments;
- g. Deliverables;
- h. Monitoring documents;
- i. Performance outcomes and reports;
- j. Single audits;
- k. HUB subcontracting plan and progress assessment reports;
- l. Data Use Agreement (DUA) and Security and Privacy Inquiry (SPI) forms;
- m. Closeout documentation;
- n. VPTS reports ([Form PCS 147](#)); and
- o. Legislative, statutory, or federal required documentation (i.e., Disclosure of Interested Parties, Attestations, federal Assurances and Certification Regarding Lobbying, etc.).

## 18.2 Contract File Checklists

### [PCS Policy 355](#)

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

Purchasers and the SCOR-designated contract manager will complete and upload into SCOR the appropriate checklist for each phase of the procurement and contracting lifecycle. PCS Procurement will complete checklists for the procurement and award phases of contracts in which Procurement is involved. For contracts established without PCS procurement involvement, the contract manager is responsible for completing, certifying, and uploading into SCOR the [Form PCS 150-N](#) to document the solicitation phase. The contract manager is responsible for completing, certifying, and uploading a [Form PCS 170-F](#) and/or [Form PCS 170-M](#) into SCOR to document completeness of the contract file at the appropriate contract phase or at certain contract events (i.e., amendments, monitoring, closeout).

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

## 18.3 Disclosure or Audit of Contract Records

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

Additionally, most government contract documents are public and must be released upon request, unless disclosure is expressly prohibited or confidential under law. All requests for public information must be handled in a timely fashion, and specific, formal protocols apply to requests made under the Public Information Act, Texas Government Code Chapter 552.

Other than routine communication with staff, external stakeholders, or members of the public, only HHS Open Records Division staff in the Office of Chief Counsel are permitted to respond to public information or other external requests for information. If contract staff receive an information request, refer the requester to [Openrecordsrequest@hsc.state.tx.us](mailto:Openrecordsrequest@hsc.state.tx.us). The HHS Open Records Division will coordinate the development of the response and release the response to the requester.

## 18.4 Records Retention

In accordance with the Texas Government Code Section [441.1855](#), all contracts and related documents, including solicitation documents, must be retained for a minimum of seven years after a contract is complete (expired, terminated, or otherwise closed), or all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents are resolved, whichever is later. A contract solicitation document that is an electronic document must be retained in the document's electronic form. A state agency may print and retain the document in paper form only if the agency provides for the preservation, examination, and use of the electronic form of the document, including any formatting or formulas that are part of the electronic format of the document. Pursuant to Section 441.1855, "contract solicitation document" includes any document, whether in paper form or electronic form that is used by a state agency to evaluate responses to a competitive solicitation for a contract issued by the agency. HHS also requires contractors to adhere to the same retention provision.

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

## 18.5 Absent Contract Records Requirements

### 18.5.1 Absent Records Definition

For purposes of this section, “absent records” refers to a contractor’s records that are:

- a. Lost;
- b. Destroyed by fire, natural disaster or other cause;
- c. Damaged beyond access or use; or
- d. No longer in the contractor’s possession for any other reason (e.g., stolen) before the retention period has been met.

### 18.5.2 Absent Record Impact to the Contract Monitoring Plan

The contract manager is responsible to assess the impact of absent records on the scheduled monitoring of the contractor’s performance. The contract manager will determine the need for revisions to the contract monitoring plan. The original contract monitoring plan should proceed if no revisions are necessary. Necessary revisions to the contract monitoring plan require approval of the Deputy Associate Commissioner. Whether or not the monitoring plan is revised, the contract manager must fulfill the duties outlined below.

### 18.5.3 Contract Manager Duties upon Notification or Discovery of Absent Records

If a contract manager is notified of, or otherwise discovers, absent records, the contract manager must take the following actions:

- a. Obtain the following information from the contractor regarding the absent records and the circumstances giving rise to the absence:
  - i. A summary of the circumstances causing the absence of the records;
  - ii. If deemed necessary or reasonable under the circumstances, copies of relevant photographs or other documentation;
  - iii. A listing (as specific as possible) of the absent records to include a description of the contents and the time period covered by the records;
  - iv. A copy of all correspondence, including claims filed with the contractor’s insurance company, if applicable; and
  - v. Certification that the reported information is true, complete, and correct. The certification may be in any written form, including an email. The certification is not required to be notarized but should be completed by an individual with authority to provide the certification on behalf of the contractor.
- b. Confirm the contractor followed all records safeguarding, storage, and reporting requirements as set forth in the contract. To determine whether there are contractual storage or reporting requirements, the contract manager should review the contract and submit questions to System Contracting regarding contractual requirements that remain after contract review.

If the contract manager determines the contractor has not complied with the requirements, they must consult with program management and PCS to determine if additional action will be taken (e.g., notification to Privacy Office, adverse action review due to breach).

- c. Send the contractor written correspondence (letter or email) instructing the contractor to provide written notification within 48 hours to both the contract manager and the HHS Privacy Office of either of the following events:
  - i. Discovery by the contractor that records previously reported as destroyed were not destroyed, but lost, stolen, or otherwise absent in such a form that the records may still exist; or
  - ii. The contractor has obtained copies of the absent records.
- d. Upload all submitted documentation and correspondence to the SCOR Contract module, Documents sub-module, and notify the HHS Privacy Office that the information has been uploaded into SCOR.
- e. Provide a copy of the incident summary and listing of absent records to the HHS Records Management Office via email at [records@hhsc.state.tx.us](mailto:records@hhsc.state.tx.us). The HHS Records Management Office will determine if any additional reporting to the Texas State Library and Archives Commission is required and will complete such reporting if necessary.

#### 18.5.4 Contract Manager Duties upon Notification Records are No Longer Absent

If a contract manager receives notification from the contractor that the contractor has either determined that records previously thought to be absent may still exist (e.g., contractor initially thought records were destroyed, but later learned they were stolen) or that copies of the records have been located, the contract manager must:

- a. Consult with program management to determine what additional action, if any, will be taken including, but not limited to, whether a new monitoring event should be scheduled; and
- b. Confirm with the HHS Privacy Office that the contractor notified the HHS Privacy Office of the event.

Questions regarding privacy, confidential information, or related issues should be directed to the HHS Privacy Office at [Privacy@hhsc.state.tx.us](mailto:Privacy@hhsc.state.tx.us).

## 19. REQUIRED REPORTING

### 19.1 Vendor Performance Reporting

#### 19.1.1 Vendor Performance Tracking System (VPTS)

Texas Government Code [Section 2262.055](#) requires the CPA to track and evaluate vendor performance based on information reported by state agencies. State agencies must consider vendor performance information and ratings contained in the VPTS when determining whether to award a contract to a particular contractor. *Reference Section 15.12 regarding Required Screening for Potential Contractors.*

HHS System Agencies are required to accurately report contractor performance to the VPTS to allow state agencies to share vendor information and facilitate better oversight of contracts. Pursuant to

Texas Government Code Section 2155.089, vendor performance reporting is required for all contracts, including TPOs (except for contracts listed in *Section 19.1.2 regarding Exemptions from VPTS Reporting*):

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

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

#### 19.1.2 Exemptions from VPTS Reporting

- a. Open enrollment contracts (exemption applies to reporting at close-out only)
- b. Intrasystem contracts
- c. Interagency contracts
- d. Interlocal agreements
- e. Interstate contracts
- f. MOUs
- g. MOAs
- h. Sub-contracts issued by a company with which the state has a contract
- i. Grants

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

#### 19.1.3 Vendor Performance Report Requirements

Vendor performance reports must:

- a. Be documented on [Form PCS 147](#);
- b. Be based on solid, well-documented contract management and monitoring activities;
- c. Include supporting documents for reports of negative vendor performance (Grade of D or F);
- d. Be reviewed and approved by the supervisor of the HHS staff completing Form PCS 147; and

- e. Be submitted with any necessary documentation to the VPTS Mailbox at [PCS\\_VPTS@hpsc.state.tx.us](mailto:PCS_VPTS@hpsc.state.tx.us).

PCS is responsible for reviewing and submitting vendor performance information to the CPA VPTS on behalf of the HHS System. After the vendor performance report has been accepted by the CPA and published into the VPTS, the vendor performance report (Form PCS 147) is uploaded by PCS into the SCOR Contractor module.

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

## 19.2 Federal Funding Accountability and Transparency Act (FFATA) Reporting

The FFATA requires any person or entity receiving contract or grant funds directly from the federal government to report certain information regarding those funds through a centralized FFATA Subaward Reporting System (FSRS) at [www.USASpending.gov](http://www.USASpending.gov).

In brief, FFATA requires the following:

- a. Subrecipient contract awards totaling \$25,000 or more must be reported.
- b. Prime awardees (those agencies or entities receiving funds directly from the federal government) must report certain information regarding those funds.
- c. If certain criteria apply, the compensation of the top five executives within a subrecipient's organization must also be reported.
- d. Grant information reported for American Recovery and Reinvestment Act (ARRA) grants is not required to be reported in FFATA.

FFATA and subsequent rules published on the OMB require subrecipients to have a Data Universal Numbering System (DUNS) number and to register its organization in the System for Award Management (SAM). To request a DUNS number, vendors go to the [Dun & Bradstreet website](#). Questions regarding the DUNS number should be directed to Dun & Bradstreet.

According to federal guidelines, a FFATA form is required once a year per contractor. HHS System forms regarding FFATA Reporting include: [Form PCS 804](#), FFATA Reporting Guidance Letter and Forms for Subrecipient and [Form PCS 804a](#), Attachment C–FFATA Reporting Instructions/Template. These forms are available in the CAPPs Financials template library.

Exemptions to FFATA reporting requirements include sub-awards valued at less than \$25,000 and funds received by entities with gross incomes of less than \$300,000 in previous tax year. Questions regarding FFATA requirements or reporting are to be sent to the FFATA Administrator at [FFATA\\_Admin@hpsc.state.tx.us](mailto:FFATA_Admin@hpsc.state.tx.us).

## 19.3 WorkQuest Exception Reporting — Monthly Report on Set Aside Exceptions

If an HHS agency determines that a product/service offered by WorkQuest needs to be purchased from another source, an exception justification must be included in the file. Texas Human Resources Code Section 122.016 requires PCS to file a WorkQuest exception report to CPA. The report is due the fifth working day of each month.

The Texas Human Resources Code Section 122.016(b) requires the CPA to provide a monthly report to the Texas Workforce Commission (TWC) listing all items/services purchased as exceptions to Texas Human Resources Code Section 122.016(a) and Texas Government Code Section 2155.138(a). In order for CPA to

provide this information to TWC, each state agency must provide to CPA all delegated purchases made as exceptions to the set-aside contracts.

19.4 Reporting HHS Contracts<sup>129</sup>

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

Select HHS Contract Reporting and/or Notification Requirements Table <sup>130</sup>					
Type	Required Report and/or Notification	Mandated By	Responsible Party	Receiving Body	Due Date
<b>Administrative - Procurement Plan</b>	Agency Procurement Plan	Tex. Gov’t Code <a href="#">§ 2155.132</a> ; 34 TAC pt. 1, ch. 20, subch. B, div. 3, <a href="#">§ 20.132(b)</a> ; <a href="#">Comptroller’s Guide</a>	PCS	CPA	November 30
<b>Consulting Contracts - Notice of Intent and Finding of Fact (FOF)</b>	Major Consulting Contracts (exceeds \$15,000)—Notice of Intent and Request for FOF from Office of Governor (also applies to renewal, amendment, or extension)	Tex. Gov’t Code §§ <a href="#">2254.028(a)</a> , <a href="#">2254.031</a>	Program ( <a href="#">Form PCS 405</a> , initiated and completed by) and CPRO, Policy and Rules Division (Form PCS 405, routed for signatures and submitted by)	Governor’s Budget & Planning Office; LBB	Before entering the contract
<b>Consulting Contracts - Publication</b>	Major Consulting Contracts (exceeds \$15,000) -- Publication in ESBD invitation for offers of consulting services (also applies to renewal, amendment, or extension)	Tex. Gov’t Code §§ <a href="#">2254.029</a> , <a href="#">2254.031</a>	PCS	ESBD	Not later than 30 days prior to entering into a major consulting services contract
<b>Consulting Contracts -Conflict of Interest</b>	Report on Conflict of Interest in Consulting Services Contract	Tex. Gov’t Code <a href="#">§ 2254.032</a>	PCS	Executive Commissioner	Not later than 10 <sup>th</sup> day after offer submitted by private consultant

<sup>129</sup> MIRPs have specific reporting and notification requirements associated with the amendment of existing contracts. Tex. Gov’t Code §§ [2054.1181\(j\)](#), [2054.160\(c\)](#), [\(d\)](#); [GAA](#), H.B. 1, 86th Leg., R.S., art. IX, sec. 9.01(e) – (g).

<sup>130</sup> Always refer to actual governing law (e.g., statutes and other referenced authorities) for specific requirements.

Select HHS Contract Reporting and/or Notification Requirements Table <sup>130</sup>					
Type	Required Report and/or Notification	Mandated By	Responsible Party	Receiving Body	Due Date
<b>Consulting Contracts -Contract Notification</b>	Contract Notification— Consultant Services Exceeding \$14,000 (including amendment, modification, renewal, or extension)	Tex. Gov't Code <a href="#">§ 2254.0301</a>	PCS	LBB	Not later than 10 days after contract execution
<b>Consulting Contracts -Archives</b>	Archives—copies of documents, films, recordings, or reports compiled by the consultant under the contract	Tex. Gov't Code <a href="#">§ 2254.036</a>	Program and Records Management	Texas State Library	After contract end
<b>Consulting Contracts - Budgetary Hearing</b>	Report of Actions Taken in Response to Consultant Recommendations	Tex. Gov't Code <a href="#">§ 2054.037</a>	Program and Government Relations	LBB and Governor's Budget and Planning Office	As part of the biennial budgetary hearing process
<b>Contract Notification</b>	Contract Notification-Posting of contract and solicitation documents (includes POs), as redacted pursuant to statute	Tex. Gov't Code <a href="#">§ 2261.253</a>	PCS	Agency Website	Upon contract execution (may post monthly for contracts valued at less than \$15,000)
<b>Contract Notification - Attestation Letter</b>	Contract Notification- Filing of attestation letter and documents for contracts exceeding \$10 Million or \$1 Million for emergency or sole source contracts (includes amendments and extensions)	<a href="#">GAA</a> , H.B. 1, 86th Leg., R.S., art. IX, sec. 7.12	PCS	LBB	Prior to date on which first payment will be made, but no later than 30 calendar days after contract award; within 48 hours of making payment if emergency contract
<b>Contract Notification -Bridge Extension</b>	Contract Notification- Notice of extension beyond the base term and any optional extensions provided in a contract	<a href="#">GAA</a> , H.B. 1, 86th Leg., R.S., art. IX, sec. 17.10(e)	PCS	LBB	At least 30 days prior to execution of contract extension

Select HHS Contract Reporting and/or Notification Requirements Table <sup>130</sup>					
Type	Required Report and/or Notification	Mandated By	Responsible Party	Receiving Body	Due Date
<b>Contract Notification - Construction</b>	Contract Notification– Construction Contracts exceeding \$14,000 (including amendment modification, renewal, or extension)	Tex. Gov't Code <a href="#">§ 2166.2551</a>	PCS	LBB	Not later than 10 days after contract execution
<b>Contract Notification - Consulting Contracts</b>	Contract Notification– Consultant Services exceeding \$14,000 (including amendment, modification, renewal, or extension)	Tex. Gov't Code <a href="#">§ 2254.0301</a>	PCS	LBB	Not later than 10 days after contract execution
<b>Contract Notification - Contracts Exceeding \$50,000</b>	Contract Notification- Contracts exceeding \$50,000 (includes amendment, modification, renewal, or extension that increases contract value from less than or equal to \$50,000 to greater than \$50,000)	<a href="#">GAA</a> , H.B. 1, 86th Leg., R.S., art. IX, sec. 7.04	PCS	LBB	Before the 30th day after awarding the contract or granting an amendment, modification, renewal, or extension
<b>Contract Notification - Interagency Contracts</b>	Interagency Contracts exceeding \$10 Million	<a href="#">GAA</a> , H.B. 1, 86th Leg., R.S., art. IX, sec. 17.13	PCS	Agency Website and LBB	Not later than the 30th day after the end of each fiscal year
<b>Contract Notification -Major Information System</b>	Contract Notification- Major Information System Contracts Exceeding \$100,000	Tex. Gov't Code <a href="#">§ 2054.008</a>	PCS	LBB	10 days after contract execution

Select HHS Contract Reporting and/or Notification Requirements Table <sup>130</sup>					
Type	Required Report and/or Notification	Mandated By	Responsible Party	Receiving Body	Due Date
<b>Contract Notification - Professional Services Contracts</b>	Contract Notification- Professional Services Contracts (excluding physician or optometric services) Exceeding \$14,000 (including amendment, modification, renewal, or extension)	Tex. Gov't Code <a href="#">§ 2254.006</a>	PCS	LBB	Not later than 10 days after contract execution
<b>Contract Notification - Vendor Contracts</b>	Vendor Contracts Exceeding \$100,000	Tex. Gov't Code <a href="#">§ 2054.126(d)(4)</a>	PCS	Agency Website	During the biennium
<b>GAA - Compliance</b>	Compliance with State Procurement Requirements	<a href="#">GAA</a> , H.B. 1, 86th Leg., R.S., art. IX, sec. 17.10(f)	PCS	Office of the Governor and LBB	9/30/2020 (for activities undertaken in FY 2020)  8/31/2021 (summary report for 2020-21 biennium)
<b>HUB Report - Annual and Semi-annual</b>	Annual and Semi-Annual HUB Report	34 TAC pt. 1, ch. 20, subch. D, div. 1, <a href="#">§ 20.287</a>	PCS, HUB Program	CPA	March 15 and September 15
<b>HUB Report- Internal Assessment; Policy Compliance</b>	HUB Participation/ Internal Assessment/ Expenditure Analysis	<a href="#">GAA</a> , H.B. 1, 86th Leg., R.S., art. IX, secs. 7.06, 7.07	PCS	CPA and LBB	December 1 every other year after a legislative session
<b>HUB Report – Legislative Appropriation Request (LAR)</b>	Report on Compliance with HUB Goals (included with LAR, detailed report of compliance with HUB statute)	Tex. Gov't Code <a href="#">§ 2161.127</a>	PCS	LBB	Submitted with agency LAR

Select HHS Contract Reporting and/or Notification Requirements Table <sup>130</sup>					
Type	Required Report and/or Notification	Mandated By	Responsible Party	Receiving Body	Due Date
<b>HUB Report - Progress Report</b>	State Agency Progress Report (submitted with agency non-financial report)	Tex. Gov't Code <a href="#">§ 2161.124</a>	PCS	Governor's Budget & Planning Office, Lieutenant Governor, and the Speaker of the House of Representatives	December 31
<b>Major Contracts – CAT Review</b>	Review of Major Contracts of \$5 Million or More (Solicitation and Contract Documents)	Tex. Gov't Code <a href="#">§ 2262.101(a)(1); Comptroller's Guide</a>	PCS	CAT	Prior to advertising the solicitation
<b>Major Contracts – Internal Reporting</b>	Major Contracts exceeding \$1 Million (Internal Contract Reporting Requirements)	Tex. Gov't Code <a href="#">§ 2261.254</a>	PCS	Internal to Governing Body	As needed
<b>Medical / Health Services Contracts– OAG Review</b>	OAG "880" Review of Contract of \$250 Million or More Related to Goods or Services in Connection with the Provision of Medical or Health Care Services, Coverage, or Benefits (form and terms of the proposed contract)	Tex. Gov't Code <a href="#">§ 531.018</a>	Office of Chief Counsel	OAG	At the time the agency initiates the planning phase of the contracting process (typically prior to solicitation publication). Required before a contract may be entered into.
<b>MIRP - Acquisition Plan</b>	Acquisition Plan (MIRPs with a value of \$10 Million or more)	Tex. Gov't Code <a href="#">§ 2054.305</a>	IT, Federal State Coordination Team	QAT	Before issuing solicitation
<b>MIRP - Notice of Award</b>	Notice of Completed Contract (MIRPs with value of \$10 Million or more)	<a href="#">GAA</a> , H.B. 1, 86 <sup>th</sup> Leg., R.S., art. IX, sec. 9.02(c)(3)	IT, Federal State Coordination Team	QAT	Within 10 business days of contract award
<b>MIRP - Post-Implementation</b>	Post-implementation Review	Tex. Gov't Code <a href="#">§ 2054.306</a>	IT, Federal State Coordination Team	Agency Executive Director and QAT	After implementation

Select HHS Contract Reporting and/or Notification Requirements Table <sup>130</sup>					
Type	Required Report and/or Notification	Mandated By	Responsible Party	Receiving Body	Due Date
<b>MIRP - Project Plan</b>	Major Information Resources Project Plan	Tex. Gov't Code <a href="#">§ 2054.304(b)</a>	IT, Federal State Coordination Team	QAT	Before spending 10% of allocated funds for the project
<b>MIRP - QAT Review</b>	Draft Contract containing Proposed Contract Terms (MIRPs with value of \$10 Million or more)	Tex. Gov't Code <a href="#">§ 2054.160(a)(1)</a> ; <a href="#">GAA</a> , H.B. 1, 86th Leg., R.S., art. IX, sec. 9.01(d)	IT, Federal State Coordination Team	QAT	Prior to negotiations
<b>MIRP - QAT Review</b>	Final Negotiated, Unsigned Contract (MIRPs with value of \$10 Million or more)	Tex. Gov't Code §§ <a href="#">2054.158(b)(4)</a> , <a href="#">2054.160(a)(2), (b)</a> ; <a href="#">GAA</a> , H.B. 1, 86th Leg., R.S., art. IX, sec. 9.01(d)	IT, Federal State Coordination Team	QAT	After final negotiations
<b>MIRP - QAT Solicitation Notice</b>	Notice of Solicitation (must include requisition number)	<a href="#">GAA</a> , H.B. 1, 86th Leg., R.S., art. IX, sec. 9.02(c)(2)	IT, Federal State Coordination Team	QAT	Upon public notice of solicitation (advertisement)
<b>MIRP - Texas Project Delivery Framework</b>	Texas Project Delivery Framework documents (Business Case and Statewide Impact Analysis)	Tex. Gov't Code §§ <a href="#">2054.158(b)(2)</a> , <a href="#">2054.303</a>	IT, Federal State Coordination Team	QAT	Before project initiated concurrent with filing of agency legislative appropriations request
<b>MIRP – Amendment Notification</b>	Notice of Amendment if the total value of the amended contract exceeds or will exceed the initial contract value by 10 percent or more; or the amendment requires the contractor to provide consultative services, technical expertise, or other assistance in defining project scope or deliverables.	Tex. Gov't Code §2054.160(c), (d) and <a href="#">GAA</a> , H.B. 1, 86th Leg., R.S., art. IX, 9.01(e) – 9.01(i)	Program (IT)	Governor, Lieutenant Governor, Speaker of the House of Representatives, presiding officer of the standing committee of each house of the legislature with primary jurisdiction over appropriations, and QAT	Before amending the contract

<b>Select HHS Contract Reporting and/or Notification Requirements Table<sup>130</sup></b>					
<b>Type</b>	<b>Required Report and/or Notification</b>	<b>Mandated By</b>	<b>Responsible Party</b>	<b>Receiving Body</b>	<b>Due Date</b>
<b>Statutory - Cybersecurity Training</b>	Contractor Cybersecurity Training Compliance Report	Tex. Gov't Code <a href="#">§ 2054.5192</a>	PCS	DIR	Upon occurrence
<b>Statutory - ESBD</b>	Notice Regarding Procurements Exceeding \$25,000	Tex. Gov't Code <a href="#">§ 2155.083(g)-(i)</a>	PCS	CPA / ESBD	Upon the posting, a minimum of 14 or 21 days as required by statute
<b>Statutory - ESBD</b>	Notice Regarding Awarded Procurements Exceeding \$25,000 (including TXMAS awards)	Tex. Gov't Code §§ <a href="#">2155.083(k)</a> , <a href="#">2155.509</a>	PCS	CPA / ESBD	Upon award for procurements and after PO has been placed for TXMAS contracts
<b>Statutory –Historic Building</b>	Repair exceeding \$100,000 to a building with historic designation must submit a copy of all bids and evaluation of bidder qualifications	Tex. Gov't Code <a href="#">§ 2166.254</a>	Agency Staff Involved with the Purchase (Facilities Staff)	Texas Historical Commission (THC)	Prior to contract award
<b>Statutory - IT Commodity Items</b>	Planned Procurement Schedule (PPS) for IT Commodity Items and notice of substantive changes to PPS	Tex. Gov't Code <a href="#">§ 2054.1015(b), (d)</a>	IT	DIR; notice of substantive changes to PPS must be provided to DIR and LBB	Must be provided before the agency's operating plan may be approved; Based on a rolling 12-month reporting period
<b>Statutory – State Building</b>	Notification of intent to alter, renovate, or demolish any building possessed by the state that was constructed at least 50 years before the alteration, renovation, or demolition and that has not been designated a landmark by THC	Nat. Res. Code <a href="#">§ 191.098</a>	Agency Staff Involved with the Purchase (Facilities Staff)	THC	60 days prior to work
<b>Statutory - State Use Program</b>	State Use Program Exception Report	Tex. Hum. Res. Code <a href="#">§ 122.0095(a)(2)</a>	PCS	CPA and TWC	15th of each month

## 20. VERSION HISTORY OF THE HANDBOOK

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

### 20.1 Revision History Log

Revision Date	Version	Description of Revisions
10/1/2020	1.0	Publication date of the HHS Procurement and Contract Management Handbook

# Appendices

<a href="#">Appendix A:</a>	Glossary of Terms
<a href="#">Appendix B:</a>	Acronyms and Abbreviations
<a href="#">Appendix C:</a>	PCS Policies and Procedures (Only accessible by HHS staff)
<a href="#">Appendix D:</a>	PCS Forms (Only accessible by HHS staff)
<a href="#">Appendix E:</a>	CPA Delegated Purchases Table
<a href="#">Appendix F:</a>	System Contracting Intake Information Template
<a href="#">Appendix G:</a>	DUA Confidential Information Protection

**Note:** This Handbook contains references to links that are only accessible by HHS staff. If you are not HHS staff, you can submit a Public Information Act request to [OpenRecordsRequest@hsc.state.tx.us](mailto:OpenRecordsRequest@hsc.state.tx.us).

## APPENDIX A

### GLOSSARY OF TERMS

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

**Amendment:** Written addition or change to a contract.<sup>131</sup>

**Assignment:** Transfer of contractual rights from one party to another party.<sup>132</sup>

**Assignee:** The person to whom an assignment is made.

**Assignor:** The person who makes the assignment.

**Biennium (State of Texas):** A period of 24 consecutive months, beginning on September 1 of each odd numbered year: For example, September 1, 2017 through August 31, 2019.<sup>133</sup>

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

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

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

**Centralized Master Bidders List (CMBL):** An online directory, maintained by SPD, containing contact information and product categories of vendors registered to receive procurement opportunities from public entities.<sup>134</sup>

**Client Services Contract:** A contract to provide goods or services that is primarily for the direct benefit of an individual receiving services from an HHS agency and is for the purpose of carrying out one or more of the HHS agency's programs.

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

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

**Contract Period:** 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, including any hard-copy or electronic files and any contract information contained in other systems. The term may also be referred to as contract file.

**Contractor:** A business entity or individual that has a contract to provide goods or services to HHSC.<sup>135</sup>

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

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

<sup>131</sup> *Comptroller's Guide, Appendix 1: Glossary.*

<sup>132</sup> *Comptroller's Guide, Appendix 1: Glossary.*

<sup>133</sup> *Comptroller's Guide, Appendix 1: Glossary.*

<sup>134</sup> *Comptroller's Guide, Appendix 1: Glossary.*

<sup>135</sup> *Comptroller's Guide, Appendix 1: Glossary.*

**Customer Organizations:** the agencies, offices, divisions, departments, sections, and units that receive procurement and contracting information, guidance, and services from HHSC PCS, including departmental groups within PCS. These customer organizations are components of the following agencies/areas: HHSC, Department of State Health Services (DSHS), Department of Protective Services (DFPS), Office of Inspector General (OIG), Texas Civil Commitment Office (TCCO), and other governmental entities that the HHSC PCS supports.

**Electronic State Business Daily (ESBD):** An online directory, administered by SPD, that publishes solicitations for the purpose of informing vendors of procurement opportunities and provides public notice of contract awards.<sup>136</sup>

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

**Federal Award:** Federal financial assistance that a non-federal entity receives directly from a federal awarding agency or indirectly from a pass-through entity. (2 CFR § 200.38(a)(1).)

**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.<sup>137</sup>

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

**Grant:** An award of financial assistance, including cooperative agreements, in the form of money, property in lieu of money, or other financial assistance that is paid or furnished by the state or federal government to carry-out a program in accordance with rules, regulations, and guidance provided by the grantor agency. The term does not include technical assistance that provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, for which the grantee to carry out a program in accordance with the terms of the grant is not required to account. See 2

CFR § 200.51 and the [Uniform Grant Management Standards](#).

**Handbook:** HHS Procurement and Contract Management Handbook.

**Health and Human Services Commission:** The state agency with primary responsibility for ensuring the delivery of state health and human services in a manner that uses an integrated system to determine client eligibility; maximizes the use of federal, state, and local funds; and emphasizes coordination, flexibility, and decision-making at the local level.

**Health and Human Services:** Includes Health and Human Services Commission and Department of State Health Services.

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

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

**Indirect Cost Allocation Plan:** Document prepared by an entity to substantiate its request for the establishment of an indirect cost rate in accordance with the federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200. Approval of the plan indicates authorization for a contractor to recover administrative costs associated with the operation of a program through the application of an indirect cost rate approved by the contractor’s coordinating agency or included in the contractor’s independent annual audit report.

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

**Major Information Resources Project (MIRP):** Any information resources technology project identified in a state agency’s biennial operating plan whose development costs exceed \$5 million and that: (i) requires one year or longer to reach operations status; (ii) involves more than one state agency; or (iii) substantially alters work methods of state agency personnel or the delivery of services to clients; and

<sup>136</sup> *Comptroller’s Guide, Appendix 1: Glossary.*

<sup>137</sup> *Comptroller’s Guide, Appendix 1: Glossary.*

any information resources technology project designated by the legislature in the GAA as a MIRP. See Texas Government Code Section 2054.003(10).

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

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

**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 subrecipients (2 CFR § 200.86). Recipient may also refer to a solely state-funded grantee.

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

**System of Contract Operation and Reporting (SCOR):** The agency's system of record for contracts, contract management, and contract monitoring activities. SCOR is also the system of record for the final electronic procurement file.

**Single Audit:** An audit that includes both the entity's financial statements and the federal awards in accordance with the federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200) and Section IV of the Uniform Grant Management Standards (UGMS) or its successor, which sets forth standards for obtaining consistency and uniformity among federal agencies for the audits of states, local governments, and nonprofit organizations expending federal funds.

**State Award:** The state financial assistance that recipients receive directly from state awarding agencies.

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

**Subrecipient:** A non-federal entity that receives a subaward from a pass-through entity to carry out part of 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. (2 CFR § 200.93.)

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

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

**Unit Price:** The price for a good or service in accordance with the unit of measure provided in the solicitation,<sup>138</sup> (e.g., price per ton, per labor hour, or per foot).

**Vendor:** A potential provider of goods or services to the State.<sup>139</sup>

<sup>138</sup> *Comptroller's Guide, Appendix 1: Glossary.*

<sup>139</sup> *Comptroller's Guide, Appendix 1: Glossary.*

## APPENDIX B

## ACRONYMS AND ABBREVIATIONS

<b>AES</b>	HHSC Access and Eligibility Services
<b>AIS</b>	Automated Information Systems
<b>BAFO</b>	Best and Final offer
<b>CAPPS</b>	Centralized Accounting and Payroll/Personnel System
<b>CAT</b>	Contract Advisory Team
<b>CCTS</b>	Capitol Complex Telephone System
<b>CFDA</b>	Catalog of Federal Domestic Assistance
<b>CFR</b>	US Code of Federal Regulations
<b>CMBL</b>	Centralized Master Bidders List
<b>CMS</b>	Pcs Contract Management Support
<b>CPA</b>	Comptroller of Public Accounts
<b>CRP</b>	Community Rehabilitation Programs
<b>CTCD</b>	Certified Texas Contract Developer
<b>CTCM</b>	Certified Texas Contract Manager
<b>CTPM</b>	Certified Texas Procurement Manager (Replaced by CTCD)
<b>D&amp;B</b>	Dun & Bradstreet
<b>DBITS</b>	Deliverables-Based It Services
<b>DCS</b>	Data Center Services
<b>DFPS</b>	Department of Family and Protective Services
<b>DIR</b>	Department of Information Resources
<b>DOT</b>	US Department of Treasury
<b>DSHS</b>	Department of State Health Services
<b>DUA</b>	Data Use Agreement
<b>DUNS</b>	Data Universal Numbering System
<b>EIR</b>	Electronic and Information Resources
<b>ERP</b>	Enterprise Resource Planning

<b>ESBD</b>	Electronic State Business Daily
<b>FAIN</b>	Federal Award Identification Number
<b>FFATA</b>	Federal Funding Accountability and Transparency Act
<b>FOF</b>	Finding of Fact
<b>FSRS</b>	FFATA Subaward Reporting System
<b>GAA</b>	General Appropriations Act
<b>GAGAS</b>	Generally Accepted Government Auditing Standards
<b>GTAG</b>	Grant Technical Assistance Guide
<b>HCATS</b>	HHSC Health and Human Services Contract Administration and Tracking System
<b>HDIS</b>	Health Developmental and Independence Services
<b>HHS</b>	Health and Human Services
<b>HHSC</b>	Health and Human Services Commission
<b>HSP</b>	HUB Subcontracting Plan
<b>HUB</b>	Historically Underutilized Business
<b>IAC</b>	Interagency Contract
<b>IDD-BHS</b>	HHSC Intellectual and Developmental Disabilities and Behavioral Health Services
<b>IDIQ</b>	Indefinite Delivery Indefinite Quantity
<b>IFB</b>	Invitation for Bids
<b>IR</b>	Information Resources
<b>IT</b>	Information Technology
<b>ITBO</b>	HHS IT Business Operations
<b>ITPP</b>	Information Technology Purchasing Plan
<b>ITSAC</b>	IT Staff Augmentation Contract
<b>IV&amp;V</b>	Independent Verification and Validation

<b>LAR</b>	Legislative Appropriations Request
<b>LBB</b>	Legislative Budget Board
<b>M&amp;C</b>	HHSC Maintenance and Construction Division
<b>MIMS</b>	Material Inventory Management System
<b>MIRP</b>	Major Information Resources Project
<b>MOA</b>	Memorandum of Agreement
<b>MOU</b>	Memorandum of Understanding
<b>MSI</b>	Multi-Sourcing Service Integrator
<b>NOFA</b>	Notice of Federal Award
<b>NOGA</b>	Notice of Grant Award
<b>OAG</b>	Office of The Attorney General
<b>OMB</b>	Office of Management and Budget
<b>PAR</b>	Prime Contractor Progress Assessment Report
<b>PCC</b>	Purchase Category Codes
<b>PCS</b>	Procurement and Contracting Services Division of HHSC
<b>PCS CST</b>	PCS Customer Service Team
<b>Procard</b>	Procurement Card
<b>PO</b>	Purchase Order
<b>POCN</b>	Purchase Order Change Notice
<b>POD</b>	Procurement Oversight & Delegation
<b>PPS</b>	Planned Procurement Schedule
<b>PRAI</b>	Program-Specific Risk Assessment Instrument
<b>QAT</b>	Quality Assurance Team
<b>RACI</b>	Responsible, Accountable, Consulted, and Informed
<b>RFA</b>	Request for Applications
<b>RFI</b>	Request for Information
<b>RFO</b>	Request for Offers
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Qualifications

<b>RFQIT</b>	Request for Quotes for Information Technology
<b>RFx</b>	Complex Procurement Methods that Include RFAs, RFOs, RFPs, AND RFQs
<b>SAO</b>	State Auditor’s Office
<b>SCOR</b>	System of Contract Operation and Reporting
<b>SOW</b>	Statement of Work
<b>SPD</b>	Statewide Procurement Division
<b>SSLCs</b>	State Supported Living Centers
<b>STS</b>	Shared Technology Services
<b>TAC</b>	Texas Administrative Code
<b>TCCO</b>	Texas Civil Commitment Office
<b>TCI</b>	Texas Correctional Industries
<b>TDCJ</b>	Texas Department of Criminal Justice
<b>TEC</b>	Texas Ethics Commission
<b>TEX-AN</b>	Texas Agency Network
<b>TFC</b>	Texas Facilities Commission
<b>THC</b>	Texas Historical Commission
<b>TIN</b>	Texas Identification Number
<b>TLDM</b>	Three Lines of Defense Model
<b>TPO</b>	Transactional Purchase Order
<b>TWC</b>	Texas Workforce Commission
<b>TXMAS</b>	Texas Multiple Award Schedule
<b>UGC</b>	State of Texas Uniform General Conditions for Construction Contracts
<b>UGG</b>	Uniform Grant Guidance
<b>UGMS</b>	Uniform Grant Management Standards
<b>VPTS</b>	Vendor Performance Tracking System

## APPENDIX C

### PCS POLICIES AND OPERATING PROCEDURES

*(Only accessible by HHS staff)*

Number	Name
PCS Operating Procedure 210	<a href="#">Response Handling</a>
PCS Operating Procedure 211	<a href="#">Request for Office of Attorney General "880" Review</a>
PCS Operating Procedure 400	<a href="#">Emergency Purchases</a>
PCS Operating Procedure 401	<a href="#">Proprietary Purchases</a>
PCS Operating Procedure 442	<a href="#">Spot Purchases</a>
PCS Operating Procedure 444	<a href="#">Informal Open Market Purchases</a>
PCS Operating Procedure 446	<a href="#">Formal Open Market Purchases</a> Coming Soon
PCS Operating Procedure 537	<a href="#">Solicitation Advertisement</a> Coming Soon
PCS Operating Procedure 538	<a href="#">Respondent Notice Procedures/Tentative Awards</a>
PCS Operating Procedure 570	<a href="#">RFQ Process</a>
PCS Operating Procedure 571	<a href="#">RFP Contract Process</a>
PCS Operating Procedure 572	<a href="#">RFA Contract Process</a>
PCS Operating Procedure 574	<a href="#">Vendor Conferences</a> Coming Soon
PCS Operating Procedure 576	<a href="#">Consulting Service Contracts</a> Coming Soon
PCS Operating Procedure 578	<a href="#">Solicitation Debriefings</a>
PCS Operating Procedure 645	<a href="#">Renewals or Extensions of Contracts</a>
PCS Operating Procedure 753	<a href="#">CQC Review Process</a>
PCS Operating Procedure 754	<a href="#">Bridge Extensions</a>
PCS Operating Procedure 755	<a href="#">Tie Bids-Policy/Procedure</a> Coming Soon
PCS Policy 355	<a href="#">Contract File Checklist Policy</a>
PCS Policy 403	<a href="#">Non-Disclosure, Conflict of Interest, and Nepotism Certification</a>

**APPENDIX D****PCS FORMS***(Only accessible by HHS staff. For best results, use Internet Explorer)*

<b>Number</b>	<b>Name</b>
Form PCS 01	<a href="#">HHS Justification for Emergency Purchases</a>
Form PCS 02	<a href="#">HHS Justification for Proprietary Purchases</a>
Form PCS 08	<a href="#">HHS Vendor Selection Justification</a>
Form PCS 117	<a href="#">HHS Procurement Specific Non-Disclosure and Conflict of Interest Certification</a>
Form PCS 130	<a href="#">HHS Employee Non-Disclosure and Conflict of Interest Certification</a>
Form PCS 135	<a href="#">POCN Contract Amendment</a>
Form PCS 145	<a href="#">Vendor Reference Survey</a>
Form PCS 147	<a href="#">Vendor Performance Report</a>
Form PCS 148	<a href="#">Procurement Risk Assessment</a>
Form PCS 150-N	<a href="#">Procurement File Checklist for Non-Competitive/Open Enrollment Amendments or Renewals</a>
Form PCS 170-F	<a href="#">HHS Contract File Checklist - Contract Formation, Contract Renewal or Amendment</a>
Form PCS 170-M	<a href="#">HHS Contract File Checklist – Contract Management Contract Closeout</a>
Form PCS 405	<a href="#">Consultant Contract Finding of Fact Request (Need access to CAPPs Financials to Complete form)</a>
Form PCS 406	<a href="#">HHS HUB Subcontracting Determination</a>
Form PCS 415	<a href="#">HHS HUB Subcontracting Plan Review</a>
Form PCS 438	<a href="#">HHS Contractor or Subrecipient Determination</a>
Form PCS 510	<a href="#">HUB Post-Contract Award Meeting</a>
Form PCS 515	<a href="#">Approval and Routing Request of Proposed Contract</a>
Form PCS 804	<a href="#">Federal Funding Accountability Act Reporting Guidance Letter Attachments A and B</a>
Form PCS 804a	<a href="#">FFATA Reporting Instructions and Template Attachment C</a>
Form PCS 805	<a href="#">LBB Attestation Letter</a>
Form PCS 806	<a href="#">LBB Attestation Letter – Non-Competitive Procurements</a>
Form DSHS 807	<a href="#">DSHS LBB Attestation Letter</a>
Form DSHS 808	<a href="#">DSHS LBB Attestation Letter – Non-Competitive Procurements</a>

**APPENDIX E**

**CPA DELEGATED PURCHASES TABLE**

(See [Comptroller's Guide v.1.3](#), Procurement Method Determination, Summary of Minimum Requirements for Delegated Purchases)

MINIMUM REQUIREMENTS FOR SPD DELEGATED PURCHASES*								
Contract Value	Purchases of Goods**	Purchases of Services**	Direct Publication Purchases	Perishable Goods Purchases	Distributor Purchases	Fuel, Oil, and Grease Purchases	Internal Repair	Emergency Purchases**
\$0 - \$5,000	Competitive Process Not Required PCC E	Competitive Process Not Required PCC E	Competitive Process Not Required PCC K	Competitive Process Not Required PCC L	Competitive Process Not Required PCC M	Competitive Process Not Required PCC P	Competitive Process Not Required PCC E	Competitive Process Not Required PCC E
\$5,000.01 - \$25,000	Informal Competitive Solicitation PCC F	Informal Competitive Solicitation PCC Q	Competitive Process Not Required PCC K	Informal Competitive Solicitation PCC L	Informal Competitive Solicitation PCC M	Informal Competitive Solicitation PCC P	Informal Competitive Solicitation PCC Q	Informal Competitive Solicitation PCC Q
\$25,000.01 - \$50,000	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC L	Formal Competitive Solicitation PCC M	Formal Competitive Solicitation PCC P	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC T
\$50,000.01 - \$100,000	Non-Delegated PCC S	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC L	Formal Competitive Solicitation PCC M	Formal Competitive Solicitation PCC P	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC T
Over \$100,000	Non-Delegated PCC S	Non-Delegated PCC S	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC L	Formal Competitive Solicitation PCC M	Formal Competitive Solicitation PCC P	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC T

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

\*\*Purchases for printing must comply with the Printing Services and In-House Copy Centers procedures.

## APPENDIX F

### SYSTEM CONTRACTING INTAKE INFORMATION TEMPLATE

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Copy the template, paste into e-mail body, complete and forward to the HHS System Contracting Intake

E-mail: [SystemContracting@hhsc.state.tx.us](mailto:SystemContracting@hhsc.state.tx.us).

*Please do not email this document as an attachment.*

#### **Individual Submitting this Email**

Name:  
Title:  
Telephone Number:  
Email Address:

#### **Procurement/Contract Information**

Requisition Number:  
Solicitation Number:  
Contract Number:

Purchaser Name:  
Title:  
Telephone Number:  
Email Address:

Contract Manager Name:  
Title:  
Telephone Number:  
Email Address:

#### **Project Type:**

- Solicitation; Identify Type:
- New Contract
- Contract Amendment; Identify No:
- SCOR – Are Contract documents available (Yes or No):  
If no, attach documentation to e-mail
- If Other, Specify:

#### **Project Description:**

Total Procurement or Contract Value:  
Funding Source(s) (for example: "Medicaid," "Medicaid and Title XX," "General Revenue"):  
If there are any established deadlines, identify them and state the bases for the deadlines:

#### **Program Information:**

Requesting Agency:  
Requesting Division/Department:  
Requesting Program:  
Program Contact Name, Phone Number, and Email Address:

**NOTE:** If Request is for Review of Documents, the Draft(s) of the Document(s) for Which Review is Requested **must** be Attached to this Request.

**APPENDIX G**

**DUA CONFIDENTIAL INFORMATION PROTECTION**

**Questions for DUA Confidential Information Protection**

Category	Monitoring Questions	Response
<b>Policies &amp; Procedures</b>	<ul style="list-style-type: none"> <li>Does the contractor have written policies and procedures regarding the protection of confidential information?</li> </ul>	Yes No
<b>Policies &amp; Procedures</b>	<ul style="list-style-type: none"> <li>Do the contractor's policies and procedures include limitations on the use and disclosure of confidential information.</li> </ul>	Yes No
<b>Policies &amp; Procedures</b>	<ul style="list-style-type: none"> <li>Do the contractor's policies and procedures include protocols for responding to a breach?</li> </ul>	Yes No
<b>Training</b>	<ul style="list-style-type: none"> <li>Does the contractor have a training curriculum regarding protection of confidential information?</li> </ul>	Yes No
<b>Training</b>	<ul style="list-style-type: none"> <li>Have all staff authorized to access confidential information taken the training?</li> </ul>	Yes No
<b>Training</b>	<ul style="list-style-type: none"> <li>Was the training taken in a timely manner by all authorized staff (within 30 days of hire for new staff, annually for existing workforce)?</li> </ul>	Yes No
<b>Sub-contractors</b>	<ul style="list-style-type: none"> <li>Does the contractor have a signed Subcontractor Agreement Form (DUA Attachment 1) for all subcontractors?</li> </ul>	Yes No
<b>Safeguards for Protection of Confidential Information (Paper, Oral, &amp; Electronic)</b>	<ul style="list-style-type: none"> <li>Can the contractor demonstrate compliance with minimum safeguards for protecting confidential information?</li> </ul> <p>Consider the following, as applicable:</p> <ul style="list-style-type: none"> <li>Secured physical premises (building, locked file cabinets)</li> <li>Unique computer login/password for each authorized user</li> <li>Secured Wi-Fi (Password-Protected; Not Public) Records destruction (shredder v. trash can)</li> </ul>	Yes No
<b>Safeguards for Protection of Confidential Information (Paper, Oral, &amp; Electronic)</b>	<ul style="list-style-type: none"> <li>Encryption software</li> </ul>	What encryption software (brand/ version) does the contractor use?