

TEXAS HIGHER EDUCATION
COORDINATING BOARD

CONTRACT MANAGEMENT
HANDBOOK



THECB Office of General Counsel

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Introduction

Contract management is the coordination and management of four core processes:

1. Planning;
2. Procurement;
3. Contract Formation
 - ✓ Rate
 - ✓ Price Establishment and other relevant terms and conditions; and
4. Contract Administration.

Texas law governs certain aspects of contracting for state agencies. Various types of purchases and contracts may be subject to different statutory requirements, practices, processes, and strategies for successful implementation. The suggestions, comments, techniques, examples and recommendations included in this Handbook are **NOT** appropriate for every type of contract. The nature and level of risk associated with each of these elements vary depending on the nature of the business relationship.

The purpose of the Contract Management Handbook (CMH) is to offer THECB Contract Managers assistance on improving existing contract management processes and practices. The CMH is not designed to relieve the staff and contractors of their obligation or responsibility to ensure compliance with laws, rules, and regulations related to their specific programs and funding sources.

A Contract Manager is responsible for coordinating the processes required for effective contract management. Contract Management is about planning, forming, and administering contracts.

Contract management may involve a variety of distinct disciplines and roles including:

- Executive Management;
- Organization Management;
- Project Management;
- Planning;
- Program Staff (subject matter experts and monitors);
- Contractor Management;
- Purchasers;
- Accounting/Budget;
- Legal;
- Audit

Further guidance, in addition to the Handbook, is available in the Comptroller's Contract Management Guide. Additional guidance is available in the THECB's Policies and Procedures – Chapter U – 01. Contract and Grant Policies and in Chapter E – Ethics and Standards of Conduct Policy.

Definitions

Automated Information Systems (AIS) - Computers and computer devices on which an information system is automated, including computers and computer devices, service related to the automation of an information system, including computer software or computers, a telecommunications apparatus or device that serves as a component of a voice, data, or video communications network for transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on the network, and services related to telecommunications.

Business Management System (BMS) - THECB's contract routing and invoicing system. The system is maintained and updated, as necessary and appropriate, by ISS.

Comptroller of Public Accounts (CPA) - Texas Comptroller's office is the state's chief tax collector, accountant, revenue estimator and treasurer.

Contractor - A business entity or individual that has a contract to provide goods or services to the State of Texas. Used interchangeably with the term "vendor".

Council on Competitive Government (CCG) - The Council on Competitive Government (CCG) was created by legislation in 1993 to bring together key members of the Texas state leadership to transform the business of government. The CCG consists of the following seven council members: Texas Governor (Council Chair), Comptroller of Public Accounts, Lieutenant Governor, Speaker of the House of Representatives, General Land Office Commissioner, Commissioner of Labor from the Texas Workforce Commission, Texas Facilities Commission Executive Director. Each council member may appoint a designee with full power to represent the member in his/her absence. The CCG falls under the authority of Texas Government Code Chapter 2162.

Deliverables-Based IT Services (DBITS) – Developed by DIR, DBITS contracts provide deliverables-based, outsourced systems integration or application development projects. Benefits state agencies by shortening the lead times to procure and contract information technology (IT) related services.

Department of Information Systems (DIR) – Texas state agency for automated information systems and IT related services

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

Historically Underutilized Business (HUB) - A historically underutilized business as defined by Government Code, Chapter 2161 and 34 TAC §20.282. Additional information may be found at [Comptroller HUB Information](#).

Invitation for Bids (IFB) -

A procurement process consisting of a written request for submission of a bid used when the requirements are clearly defined, price is the major determining factor for selection and negotiations are not necessary. However, negotiations are allowed if only one response is received. The IFB uses the competitive sealed bid method and is also referred to as a bid invitation.

Request for Application (RFA) - Type of solicitation notice in which an organization announces that grant funding is available, and allows researchers and other organizations to present applications on how the funding could be used. RFA's will typically outline what type of programs are eligible, what the expectations are and how applications are submitted and reviewed.

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

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

Request for Proposal (RFP) - A solicitation requesting submittal of a proposal in response to the required scope of services and usually includes some form of a cost proposal. The RFP process allows for negotiations between a proposer and the issuing agency.

Request for Qualifications (RFQ) - A solicitation document requesting submittal of qualifications or specialized expertise in response to the scope of services required. No pricing is solicited with an RFQ.

Texas Industries for the Blind and Handicapped (TIBH) – is the central non-profit agency that links community's rehabilitation centers and the Texas Council on Purchasing from People with Disabilities (TCPPD) in support of the Texas State Use Program.

Texas Procurement and Support Services Division (TPASS) – A division within the Texas Comptroller providing an assortment of contract development, contract management operations and customer service that is core to State of Texas purchasing, including administering the HUB program and the Centralized Master Bidders List (CMBL) and the TxSmartBuy on-line ordering system. In addition, TPASS Contract Development processes hundreds of solicitations and awards for the statewide Term, Managed, TXMAS and open market contracts and TPASS Contract Management Office (TCMO) manages those contracts.

Vendor – See Contractor definition.

Statutory Purchasing Authority:

To support state operations and shorten the procurement cycle for purchasers, state law grants purchasing authority to TPASS, the Council on Competitive Government (CCG) and the Department of Information Resources (DIR) to establish contracts for commonly used goods and services for state agency and local government use.

Statewide contracts include DIR's Information and Communications Technology (ICT) Cooperative Contracts for IT goods and services and TPASS TxSmartBuy (term), Managed (Includes CCG) and TXMAS contracts for other goods and services.

For items not on an existing statewide contract, Texas Government Code §§ 2155-2161 and 34 Texas Administrative Code Chapter 20 provide additional detail on TPASS purchasing oversight and contract responsibilities as well as the purchasing authority delegated to state agencies.

If the Commodity of Service	Then
is available through a Council on Competitive Government (CCG) contract,	purchase it according to the instructions in the CCG contract.
is available through TIBH Industries, Inc. meets the specification(s) and other requirements,	the state agency or university must purchase it from TIBH through TxSmartBuy for commodities and direct with TIBH for services.
is available through the Texas Correctional Industries (TCI) and meets the specification(s) and other requirements,	the state agency must purchase it from TCI through TxSmartBuy for commodities and direct with TCI for services.
is qualified as Automated Information System (AIS) or IT	consider purchasing from Information and Communications Technology (ICT) cooperative contracts through DIR. Contact DIR for more information.
a TPASS TxSmartBuy Term Contract	order through the TxSmartBuy on-line system.
a TPASS Managed Contract	Order directly from the contractor(s) by issuing an internal agency purchase order.
is available through a Texas Multiple Award Schedules (TXMAS) contract	obtain a price quote from as many TXMAS contractors as are necessary to provide a best value determination.

Determining Procurement Method

It is important to determine the procurement method as it will be a major factor in the planning process. For example, the procurement lead time for an IFB and a RFP differ significantly.

The following table is provided to assist in making the appropriate choice in selection of a procurement method. As a reminder, program staff should first refer to any applicable statutory requirements which may direct them to use a specific procurement method.

Procurement Method	Use When	Advantages	Disadvantages
Competitive Bids (IFB)	Lots of competition exists. The product or service is available from more than one source.	Award process is simpler. Award is made to the lowest responsive, responsible bidder providing the best value to the State.	Defined specifications may be difficult to develop. Does not encourage innovative solutions.
Competitive Proposals (RFP's/RFO's)	When factors other than just price are evaluated. When negotiations are desired. Vendor is expected to provide innovative ideas.	Allows factors other than price to be considered. Allows for customized proposals suggesting different approaches to the same business need. Allows for negotiations in order to obtain the best value for the state.	Lead times for procurement are much greater. Evaluations are more complex and subjective.
Request for Information (RFI)	There is insufficient information to write specifications for any procurement method.	Provides information to prepare a complete bid or proposal document. Allows the business community to have input into the agency's solicitation document based on current industry practices and market factors. Informs agency of any potential problems early in the procurement.	
Request for Qualifications (RFQ) [This method is usually required by statute (e.g., Professional Services)]	Selection is made solely on the skills and qualifications of the contractor. Price is not a factor until after a vendor is selected.	Emphasizes the competency of the proposed contractors.	Contractor is tentatively selected before price is negotiated.

Procurement Procedures: Non-IT Related

34 Texas Administrative Code §20.41

Amount	Process to Follow
Under \$5000	If the estimated purchase price is \$5,000 or less, statute does not require a competitive process. Follow THECB's internal procedures and policies for procuring commodities or services in an amount of \$5,000 or less. (Time permitting, we will solicit to more than one vendor to include HUBs)
Exceeding \$5,000 and not over \$25,000	<p>Agencies are required to:</p> <ul style="list-style-type: none"> Obtain three informal bids with a minimum of two (2) bids from HUBs Allow 5 business days for responsive bids <p>Purchasing decides who to award based on best value for the state.</p>
Exceeding \$25,000	<p>In accordance with Texas Government Code §2155.083 and 34 Texas Administrative Code §20.214, the requirement to advertise solicitations by posting on the ESDB applies to all purchases exceeding \$25,000 regardless of source of funds used for the procurement. This requirement includes delegated purchases, emergency, construction projects, professional or consulting services, proprietary purchases or purchases exempt from TPASS's purchasing authority.</p> <p><u>Posting</u> – you must post a solicitation in ESDB for the appropriate period. Why? Posting a solicitation puts the vendor community on notice of procurement opportunities. There is no exemption from §2155.083 (the ESDB posting requirement) and failure to meet the posting requirements of §2155.083 results in the <u>procurement being VOID</u> (§2155.083(j)).</p> <p><u>ESDB Minimum Posting Timelines:</u> 34 Texas Administrative Code §20.214</p> <p>If documents or attachments related to the procurement must be obtained from another source, then a procurement notice must be posted for the latest of:</p> <ol style="list-style-type: none"> 1) a minimum of 21 calendar days after the date that the notice is first posted; 2) the date the state agency will no longer accept bids, proposals, or other applicable expressions of interest for the procurement; 3) or the date the state agency decides not to make the procurement. If the state agency decides not to make the procurement, the state agency must amend the posting to indicate the effective date of the cancellation within two business days of canceling the procurement. <p>If the state agency posts the entire bid or proposal solicitation package, including attachments, the procurement contract opportunity must be posted for the latest of:</p> <ol style="list-style-type: none"> 1) 14 calendar days after the date the bid or proposal solicitation package is first posted; 2) the date the state agency will no longer accept bids, proposals, or other applicable expressions of interest for the procurement; 3) or the date the state agency decides not to make the procurement. If the state agency decides not to make the procurement, the state agency

Amount	Process to Follow
	<p>must amend the posting to indicate the effective date of the cancellation within two business days of canceling the procurement.</p> <p>Emergency procurement requirements over \$25,000 must be posted to the ESBD, but the minimum posting times within 34 TAC §20.214 do not apply. The ESBD posting requirements are in addition to existing Commission procedures governing emergency procurement requirements in 34 TAC §20.41 (relating to Delegated Purchases).</p> <p>Goods over \$50,000: TPASS handles solicitation for items not on an existing statewide contract, Texas Government Code Sections §§2155-2161 and 34 TAC Chapter 20, Subchapter B, Division 1, 20.82 provide additional detail on TPASS purchasing oversight and contract responsibilities as well as the purchasing authority delegated to state agencies.</p> <p>Vendor Performance Report: is required to be completed for all purchases exceeding \$25,000. See Vendor Performance Report subsection below at pages 7 and 8.</p>
Exceeding \$100,000	<p>Same as “Exceeding \$25,000”, with the addition of the following: State Agencies purchasing services over \$100k, must submit the solicitation to the Statewide Procurement Division (SPD) within CPA to seek review and delegation of purchasing authority. Submit request through the Contract Advisory Team Review and Delegation (CATRAD) portal.</p>
Exceeding \$1 Million	<p>Same as “Exceeding \$25,000”, with the addition of the following: - CATRAD contract authority required. Submit request through the CATRAD portal</p> <p>In accordance with to TGC §2261.254 a state agency shall develop and implement contract reporting requirements that provide information on;</p> <ol style="list-style-type: none"> 1. Compliance with financial provisions and delivery schedules under the contract 2. Corrective action plans required under the contract and the status of any active correction action plan; and 3. Any liquidated damages assessed or collected under the contract <p>TGC §2261.254 also requires that each state agency verify:</p> <ol style="list-style-type: none"> 1) The accuracy of any information reported under Subsection (a) that is based on information provided by a contractor; and 2) The delivery time of goods or services scheduled for delivery under the contract. <p>34 TAC §20.511: Contracts exceeding \$1 million must also be approved by the governing officer or governing board, if applicable, and signed by the governing officer or board chair, if applicable, unless this signature authority has been</p>

Amount	Process to Follow
	<p>delegated by the governing board to the executive director of the agency (i.e., the Commissioner of Higher Education).</p> <p>Contracts that require approval by the agency’s governing body or that have a value of at least \$1 Million must comply with the “Disclosure of Interested Parties” requirements in accordance with TGC §2252.908 and as implemented by the Texas Ethics Commission. THECB may not execute a contract for grant for goods or services exceeding \$1 million until the vendor completes and notarizes FORM 1295 “Certificate of Interested Parties”.</p> <p>House Bill 1, Article IX, Rider 7.12 A state agency must notify the Legislative Budget Board (LBB) prior to making a payment on a contract/purchase order if the amount is expected to exceed \$1 million or \$10 million if the contract was a result of an emergency purchase or was awarded without a formal solicitation or competitive process.</p> <p>LBB Attestation Letter: Per GAA, Article IX, Section 7.12, contracts over \$1 million, if awarded non-competitively or as result of an emergency, require an Attestation Letter signed by the Commissioner. A state agency or institution making payments on or after September 1, 2015, must have a signed attestation letter on file with the LBB for the contract for which payment is being made.</p>
Exceeding \$5 Million	<p>Same as “Exceeding \$25,000”, with the addition of the following: <i>CATRAD contract authority required. Submit request through the CATRAD portal</i></p> <p>In accordance with to TGC §2261.255 and 34 TAC §20.218for each state agency contract for the purchase of goods or services that has a value exceeding \$5 million, the contract management office or procurement director of the agency, must:</p> <ol style="list-style-type: none"> 1. Verify in writing that the solicitation and purchasing methods and contractor selection process comply with state law and agency policy; and 2. Submit to the governing body of the agency, or governing official of the agency if the agency is not governed by a multimember governing body, information on any potential issue that may arise in the solicitation, purchasing, or contractor selection process. <p>LBB Attestation Letter: Per GAA, Article IX, Section 7.12, contracts over \$5 million, if awarded non-competitively or as result of an emergency, require an Attestation Letter signed by the Commissioner. A state agency or institution making payments on or after September 1, 2015, must have a signed attestation letter on file with the LBB for the contract for which payment is being made.</p>

Amount	Process to Follow
Exceeding \$10 Million	<p>Same as “Exceeding \$25,000”, with the addition of the following: <i>CATRAD contract authority required. Submit request through the CATRAD portal.</i></p> <p>LBB Attestation Letter: Per GAA, Article IX, Section 7.12, contracts over \$10 million require an Attestation Letter signed by the Commissioner. A state agency or institution making payments on or after September 1, 2015, must have a signed attestation letter on file with the LBB for the contract for which payment is being made.</p>

Procurement Card: If the vendor is providing services regularly during any time within the fiscal year and (estimated) costs will exceed \$5,000, the above requirements still apply.

Allowable Purchases:

- Small dollar items that are not available via DIR and Smart buy Term Contracts
- Registrations
- Memberships
- Software under 1k that has been approved by IT for compatibility

Note: See Purchasing staff for authorization. Any exceptions to the requirements above, would be determined by the Office of General Counsel.

State of Texas Procurement Manual, §2.23: Interagency Contracts (IACs) are with entities of governments, are not subject to TPASS authority, including ESBD posting and are not competitively procured contracts. Interagency and Inter-Local contracts are in a separate title of the Government Code which is outside of TPASS purview. Interagency Contracts are covered in Chapter 771, Texas Government Code, also called the Interagency Cooperation Act. Inter-Local contracts are covered in Chapter 791 of the Texas Government Code.

Procurement Procedures: IT Related

Texas Government Code, §2157.068

IT commodities include commercial software, hardware, or technology services, other than telecommunication service. Through its Cooperative Contracts Program, DIR offers a streamlined cooperative purchasing program with Master Contracts (MCs) for technology products and services. MCs cover offerings for hardware, software, staffing services, maintenance, and other services – such as managed services and technology training.

DIR Exemptions:

If, for any reason, a state agency wants to procure an item available from DIR's Cooperative Contracts program through an avenue other than a DIR contract, the agency must first obtain an exemption from DIR. State agencies are not required to utilize DIR contracts to purchase IT commodities less than \$1,000.

DIR's Cooperative Contract Program Guidelines:

Procurement Value	Applicable Guidelines
Procurement value of \$50,000 or less	An agency contracting to purchase a commodity with a procurement value of \$50,000 or less can directly award the contract to a vendor included on the list without submission of a request for pricing to other vendors on the list.
Procurement value of more than \$50,000 but not more than \$150,000	If the state agency purchase has a value of more than \$50,000 but not more than \$150,000, the agency must submit a request for pricing to at least three vendors included on the list in the category to which the contract relates. *DIR must approve Statement of Work
Procurement value of more than \$150,000 but not more than \$1 million	If the purchase has a value of more than \$150,000 but not more than \$1 million, the agency must submit a request for pricing to at least six vendors included on the list in the category to which the contract relates or all vendors on the schedule if the category has fewer than six vendors. *DIR must approve Statement of Work
Over \$1 million	A state agency may not enter into a contract to purchase a commodity item through the Cooperative Contracts Program if the value of the contract exceeds \$1 million

DIR Cooperative Contracts Program Statement of Work (SOW) Development and Execution

For the purchase of services in the Cooperative Contracts Program that requires the purchasing state agency to develop and execute a “statement of work” (SOW) in order to initiate service under the

contract, the state agency must consult with DIR before submitting the SOW to the vendor, and post the SOW on the purchasing agency's web site. Texas Government Code §2157.0685. For the purpose of this section, a "statement of work" means a document that states the requirements for a contract of more than \$50,000, including deliverables, performance specifications, and other requirements, specific to the vendor under that contract that are not specified in DIR's cooperative contract. A statement of work executed by a state agency under a contract awarded by the department under §2157.068 is not valid and money may not be paid to the vendor under the terms of the statement of work unless the department first signs the statement of work.

Verification of use of Best Value Standard

The best value selection of a contractor is based on a determination of which proposal offers the best trade-off between price and performance, where quality is considered an integral performance factor. The award decision is made based on multiple factors, including; total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the vendor's proposal; the vendor's past performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance.

Texas Government Code §2155.0755 Verification of Use of Best Value Standard

- (a) The contract manager or procurement director of each state agency shall:
 1. Approve each state agency contract for which the agency is required to purchase goods or services using the best value standard;
 2. Ensure that, for each contract, the agency documents the best value standard used for the contract; and
 3. Acknowledge in writing that the agency complied with the agency's and comptroller's contract management guide in the purchase.
- (b) For each purchase of goods or services for which a state agency is required to use the best value standard, the comptroller shall ensure that the agency includes in the vendor performance tracking system established under §2262.055 information on whether the vendor satisfied that standard.

Proprietary Procurements

(Texas Government Code, §2155.067; 34 TAC, §20.209)

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

When the specification requirement limits consideration to one vendor, a written justification signed by the agency head must be provided and is subject to review by CPA. The justification letter must include:

- An explanation of the need for the specification, specifically what restricts the specification to one manufacturer or provider;
- Why competing products are not satisfactory, justifying the proprietary purchase; and
- Any other information and details as requested by the CPA.

Vendor Performance Reporting

TPASS administers a vendor performance program for use by all ordering entities per 34 Texas Administrative Code §20.115 and Texas Government Code, §2262.055.

The Vendor Performance Program relies on participation by ordering entities to gather information on vendor performance. THECB shall report vendor performance on purchases over \$25,000. Please provide supporting documentation. A Vendor Performance Report (VPR) is submitted electronically, by Office of General Counsel, utilizing the TPASS Web Applications Portal.

Vendor Performance Tracking System (VPTS) helps agencies evaluate vendor performance and reduce risk in the contract award process by doing the following:

- Identifying vendors that have exceptional performance
- Aiding purchasers in determining the best value based on vendor past performance
- Protecting the state from vendors with unethical business practices
- Identify vendors with repeated delivery and performance issues
- Provide performance scores in four measurable categories for CMBL vendors
- Track vendor performance for delegated and exempt purchases.

In addition to the legal requirements, Comptroller's office auditors routinely check agency procurement files for VPTS entries.

Texas Government Code §2262.055

State agencies shall use the VPTS to determine whether to award a contract to a vendor reviewed in the tracking system. Comptroller shall establish an evaluation process that rates vendors on an A through F scale, with A being the highest grade.

Deadline for Vendor Performance Report

No later than 30 calendar days after the completion or termination of a purchase order or contract, each state agency shall submit a performance review to the vendor performance tracking system on the Comptroller's web page. Office of General Counsel will send staff an email requesting detailed information to reflect vendor's performance during contract period.

Risk Assessment Analysis:

THECB along with all other state agencies must develop and comply with a risk analysis procedure. Each state agency shall develop and comply with a purchasing accountability and risk analysis procedure. The procedures must provide for:

1. Assessing the risk of fraud, abuse, or waste in the contractor selection process, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts;
2. Identify contracts that require enhanced contract monitoring or the immediate attention of contract management staff; and
3. Establishing clear levels of purchasing accountability and staff responsibilities related to purchasing

Users will be required to complete the Risk Assessment Analysis for all Contracts, Grants, and PRQs.

Service Contracts

Consulting Services

Notice of Intent: Major Consulting Services. "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. "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.

Prior to entering into a major consulting services contract, a state agency is required to notify the Legislative Budget Board and Governor's Office of Budget, Planning, and Policy of its intent to contract with a consultant. The agency shall give information to the Legislative Budget Board and the governor's Budget and Planning Office to demonstrate the agency has complied or will comply with Texas Government Code, Section §§2254.028-2254.0318- and obtain a "finding of fact" from the governor's Budget and Planning Office that the consulting services are necessary. Solicitations for consulting services contracts of \$10 million or more must be submitted to the Contract Advisory Team (CAT) for review. Additional information can be found in Chapter §2254 of the Texas Government Code.

Texas Government Code, Chapter §2254.031, Subchapter B, establishes six (6) oversight requirements for state agencies using private consultants. Because different state entities oversee these requirements, the distinctions between them may not be obvious. The statutory guideline for each requirement is:

Requirement	Statutory Reference Government Code, Chapter 2254, Subchapter B	Contact Agency
Notification	Section 2254.028	Governor's Office of Budget Planning and Policy Legislative Budget Board
30-Day RFP Publication	Section 2254.029	Secretary of State
Finding of Fact	Section 2254.028	Governor's Office of Budget, Planning and Policy
20-Day Selection Publication	Section 2254.030	Secretary of State
Archives	Section 2254.036	Texas State Library
Payment	Section 2254.034 and 2254.039	Comptroller of Public Accounts

A contract entered into in violation of §2254.029 through §2254.033 is void. A void contract means that it cannot be enforced to be performed and cannot be enforced to receive payment.

A state agency may contract with a consultant only if: (1) there is a substantial need for the consulting services; and (2) the agency cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with a state governmental entity. (Texas Government Code, §2254.026)

The governor may grant a state agency a limited waiver from the requirements of the consulting statute because of an unforeseen emergency. (Texas Government Code §2254.026) An “unforeseen emergency” means a situation that suddenly and unexpectedly causes the agency to need the services of a consultant and there is insufficient time to comply with the statute’s requirements, e.g., the issuance of a court order, new legislation, or a natural disaster. An “unforeseen emergency” does not mean that you are short on time due to the press of other business.

Professional Services

Contracts for professional services are governed by Subchapter A, Chapter §2254, Texas Government Code.

- Chapter §2254, Subchapter A. “Professional services” means: services, within the scope of the practice, as defined by state law, of: accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; professional nursing; or
- provided in connection with the professional employment or practice of a person who is licensed or registered as: 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.

Contracted services provided by the above professionals that fall outside their scope of practice may be governed by other procurement requirements. For instance, management consulting services provided by a certified public accountant would not be exempt as a professional service. In order to contract for such services, an agency would follow the consulting services contract requirements.

Grants

What is a grant?

Expendit defines **Grant** as “an expenditure of funds from the State Treasury to a person or entity that does not directly provide consideration or a benefit to the state in exchange for the funds. This includes a grant-in-aid.” State agencies may impose limitations and requirements on how a recipient spends grant money without converting the grant into a service contract or other agreement. The test for determining if an expenditure is a grant is if the state directly receives any consideration or benefits from the person or entity receiving the money. Appropriation year determination procedures apply to grants paid with appropriated funds.

Uniform Grant Management Standards (UGMS) Definition: **Grant:** 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 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 which 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 subrecipient is not required to account.

[Federal: Office of Management and Budget \(OMB\) Uniform Guidance](#)

[State: Uniform Grant Management Standards \(UGMS\)](#)

Advertising a Grant Announcement

In addition to the UGMS published by the Texas Comptroller of Public Accounts, agencies should follow any applicable federal or state grant-funding source laws or regulations. Grant opportunities should be open and accessible to the public. Competitive grants opportunities should be posted on Texas.gov, the eGrants system established under Texas Government Code §2055, if required. In addition to eGrants, program staff may also announce grant opportunities in the *Texas Register*, via distribution list of interested parties, and/or by posting to the “Agency Info” section of the THECB website.

Elements of Contracts and Grants

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

- An Offer;
- An Acceptance in strict compliance with the terms of the offer;
- Legal Purpose/Objective;
- Mutuality of Obligation – also known as the “meeting of the minds”;
- Consideration;
- Competent Parties

Clauses and Provisions:

Essential

- Introduction
- Scope of Work
- Indemnification/Damage Claims
- Price
- Specifications
- Funding Out Clause
- Antitrust
- Payment
- Affirmation Clauses
- Technology Access Clause
- Dispute Resolution
- Term of Conduct
- Confidential Information
- Abandonment or Default
- Right to Audit
- Force Majeure
- Independent Contractor
- Termination
- Buy Texas
- Ownership/Intellectual Property, including Rights to Data, Documents and Computer Software

Recommended

- Notice
- Drug Free Workplace Policy
- Order of Precedence
- Patent and Copyrights
- Assignments
- Insurance
- Proprietary Information
- Substitutions
- Taxes
- Public Disclosure
- Security/Parking Access
- Smoking Policy

If THECB determines that the circumstances of a proposed contract require more protection for the state than the above provisions provide, the agency shall include provision(s) in the contract providing for that protection.

Required Posting of Certain Contracts

In accordance with TGC §2261.253, relating to the purchase of goods and services from a private vendor, each state agency shall post the following information on the agency's website:

- Each contract the agency enters into until the contract expires or is completed, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor;
- For contracts that are not competitively bid or are entered into without compliance with competitive bidding procedures, the statutory or other authority under which the contract was awarded and executed;
- For contract that were the subject of competitive procurement, the request for proposals or bids until the contract expires or is completed.

Monitoring of Contracts and Grants

THECB expects the Program Areas to handle the operation and fulfillment of their contracts and grants.

Internal Administration or Operations will handle those contracts that involve acquiring products.

There are 2 methods for monitoring:

1. Contract Compliance
2. Contract Management

Contract Compliance

- Compliance is either a state of being in accordance with established guidelines, specifications, or legislation or the process of becoming so. Compliance in an oversight or regulatory context is a

prevalent concern, perhaps because of an ever-increasing number of directives and a lack of understanding about what is required for an agency to be in compliance with new legislation.

- Contract Compliance is the process of regularly reviewing and managing contracts and agreements that bind the THECB to commitments with outside parties and the policies that determine how these documents are processed at THECB.

Contract Management

“**Contract management** is the management of contracts made with customers, vendors, partners, or other state agencies.

- Contract management includes negotiating or offering suggestions during negotiations regarding the terms and conditions in contracts and ensuring compliance with the terms and conditions, as well as documenting and agreeing on any changes or amendments that may arise during its implementation or the life of the contract.
- It can be summarized as the process of systematically and efficiently managing contract creation, execution, and analysis for the purpose of maximizing financial and operational performance and minimizing risk to the agency.

Responsibilities of a Contract Manager

- What should the contract cover?
- What does the contract require?
- Does the contract have clear goals and objectives?
- What are the requirements for THECB to supply to the vendor?
- Who has ownership for the contract? Explain “ownership”, who owns?
- Who is accountable to THECB Executive Management to provide contract updates?
- Does the Program have a THECB Contract Team assembled?
- Has sufficient time been factored into contract development?
- Have milestones been identified? Are they included in the Contract?
- Submit information for Vendor Performance Report within 30 calendar days of contract completion

Legal Templates for Contracts and Grants

Contact the Office of General Counsel’s Contract Management Administration for the latest contract and grant templates.

Signed or Executed Documents

THECB will accept electronic signatures. An electronic signature on an electronic document is valid if it has been created through means such as facsimile transmittal, scanning of the original signed physical document, or electronic manipulation where a separate image of a hand-made signature has been overlaid onto the electronic document in place of a physical hand-made signature and the authorized representative submitting the electronic signature is an individual who is authorized to sign the document by virtue of his or her legal status or his or her relationship to the entity on whose behalf the signature is executed.

34, TAC Rule, §20.3

THECB's Delegated Authority

Texas Education Code, Chapter 61

- §61.067. CONTRACTS. In achieving the goals outlined in this chapter and in performing the functions assigned to it, the board may contract with any other state governmental agency as authorized by law, with any agency of the United States, and with corporations and individuals. The board shall propose, foster, and encourage the use of interagency contracts among the institutions of higher education to reduce duplication and achieve better use of personnel and facilities.
- §61.028. COMMISSIONER OF HIGHER EDUCATION; PERSONNEL; CONSULTANTS. (a) The board shall appoint a commissioner of higher education, who shall select and supervise the board's staff and perform other duties delegated to him by the board.

19 Texas Administrative Code §1.16

Ethics

State 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 any obligation of any nature that is in substantial conflict with the proper discharge of the officer's or employee's duties in the public interest.

State officials and employees are responsible for protecting the safety and welfare of the public's money. All state officials and employees should endeavor to pursue a course of conduct that does not raise suspicion among the public. Therefore, they shall avoid acts which are improper or give the appearance of impropriety. This conduct is particularly important for state purchasing personnel and contract management personnel who are charged with the disposition of state funds.

State purchasing personnel must adhere to the highest level of professionalism in discharging their official duties. The nature of purchasing functions makes it critical that everyone in the purchasing process remain independent and free from the perception of impropriety. Any erosion of public trust or any shadow of impropriety is detrimental to the integrity of the purchasing process. Consequently, the credibility of a purchasing program requires that a clear set of guidelines and rules be established. Such guidelines are designed to prevent actual and potential vendors from influencing state officers or employees in discharging their official duties. Furthermore, these guidelines will help prevent state officials' and employees' independent judgment from being compromised.

Therefore, with these principles in mind and in accordance with state law, the following policies and procedures should be adhered to by all state agency employees, contractors and potential contractors. Also, see below at [Conflict of Interest](#) for the policy at THECB for maintaining high ethical standards as listed on the website.

Collusion

Collusion occurs when two persons or representatives of an entity or organization make an agreement to deceive or mislead another. Such agreements are usually secretive, and involve fraud or gaining an unfair advantage over a third party, competitors, consumers or others with whom they are negotiating. The collusion, therefore, makes the bargaining process inherently unfair. Collusion can involve promises of

future benefits, price or wage fixing, kickbacks, or misrepresenting the independence of the relationship between the colluding parties.

Standards of Conduct

Please see Texas Ethics Commission,

“Part I. Standards of Conduct and Conflict of Interest”, “The Should Nots”

Link: <https://www.ethics.state.tx.us/guides/Go-e.htm>

Prohibition of Economic Benefit

In accordance with the Texas Constitution, an officer or employee of the state may not, directly or indirectly, profit by or have a pecuniary interest in the preparation, printing, duplication, or sale of a publication or other printed material issued by a department or agency of the executive branch (such as THECB). A person who violates this section shall be dismissed from state employment.

Disclosure of Potential Conflicts of Interest

THECB employees and officers are considered public servants who owe a responsibility to the people of Texas in the performance of their official duties. THECB employees and officers should act fairly and honestly and avoid even the appearance of impropriety. THECB’s Ethics Policy is found in Chapter E. Ethics and Standards of Conduct and Policy of the THECB’s Agency Policies and Procedures.

A more extensive discussion of ethics laws is contained in the Texas Ethics Commission’s publication *A Guide to Ethics Laws for State Officers and Employees*. The Texas Ethics Commission’s publication [*Can I Take It?*](#) provides an overview of gifts or benefits that may be offered to state employees which may present legal and/or ethical problems.

Texas Government Code §2261.252 and 34 TAC §20.158 require each state agency employee or official who is involved in procurement or in contract management for a state agency to disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency.

34 Texas Administrative Code §20.158

(b) A state agency may not enter into a contract for the purchase of goods or services with a private vendor with whom any of the following agency employees or officials have a financial interest:

- (1) a member of the agency's governing body;
- (2) the governing official, executive director, general counsel, chief procurement officer, or procurement director of the agency; or
- (3) a family member related to an employee or official described by paragraph (1) or (2) of this subsection within the second degree by affinity or consanguinity.

34 Texas Administrative Code §20.156

A former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the officer’s or employee’s service or employment with the state agency ceased.

H.B. 1295 Form

Pursuant to Texas Government Code Section 2252.908, the Contractor agrees to submit a disclosure of interested parties to the THECB at the time Contractor submits the signed contract to the THECB. This

section applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million.

If THECB employees have questions about ethics laws or issues, they are encouraged to contact their supervisor (unless the supervisor is a potential part of the ethical challenge confronting the employee) or the agency's Ethics Officer. William Franz, General Counsel, is the THECB's Ethics Officer.

THECB's Conflict of Interest Form

All appropriate staff, i.e., those who are or may be involved in contracting and/or procurement, must read and sign the below memo which is available OGC's intranet site. Your Assistant Commissioner and/or head of department must also read and sign the second page of attached memo. Should you have any questions, please contact the Office of General Counsel.

Appropriations and Encumbrances Policy

Appropriation determination Sources: Purchase Policies and Procedures Guide, Section 8.006

34 Texas Administrative Code §5.56, and the General Appropriations Act

Appropriation Year: September 1 – August 31

An encumbrance: A fully executed contract, agreement, or other action that legally obligates state funds where the goods or services have neither been received nor the invoice paid

Federal Fiscal Year: October 1 – September 30

Appropriations:

At any given time, there are exactly three appropriation years open. For example:

On 9/1/14, the following AYs are open:

- AY15 – 9/1/14 – 8/31/15
- AY14 – 9/1/13 – 8/31/14
- AY13 – 9/1/12 – 8/31/13

Consumables: Divisions must charge a purchase of consumable goods to the appropriation year (AY) in which the delivery of the consumables is expected to occur and are reasonably expected to be consumed. In most cases, the AY will be the year goods are ordered. At year end, the business office will evaluate what has been/has not been received and change the AY based on the delivery status. If a good has been ordered in the current AY but not received by 8/31/CY, then the AY will change to the next AY.

Service Contracts: Services must be charged to the AY in which the services are rendered.

Grants: Grant payments must be charged to the AY in which they are obligated. So, a grant may be carried out in AY14 and AY15, but paid from AY13 funds (as long as it was encumbered prior to 8/31/13).

It is very important to properly determine if an obligation is a service or grant.

Encumbrances:

Amounts obligated through contractual means should be encumbered. An encumbrance is for actual contracts awarded, not anticipated contracts or contracts under negotiation.

Agencies must obligate (encumber) an appropriation during the appropriation year (AY) for which the appropriation is made.

Contract Ratification - Authorization for Payment

Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter E, § 5.51

If the contract is not signed by THECB and the Contractor prior to the services being rendered, and if an emergency does not exist, the agency head shall certify the specific conditions and circumstances and describe the actions taken to prevent recurrence of such noncompliance.

Complete an “Authorization for Payment” and upload as supporting documentation in the file.

[Most Common Post-Payment Audit Errors](#)

Contract Retention:

Texas Government Code §441.1855, Retention of Contract and Related Documents of State Agencies. Notwithstanding Section 441.185 or 441.187, a state agency:

- (1) Shall retain in its records each contract entered into by the state agency and all contract solicitation documents related to the contract; and
- (2) May destroy the contract and documents only after the seventh anniversary of the date:
 - a. The contract is completed or expires; or
 - b. All the issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents are resolved.

Federal and State Transparency Statutes

Item	Statute	Description
Contracts	<u>TGC§2054.126 (d)(4)</u>	<u>List and description of all contracts with vendors that have a value exceeding \$100,000 that the agency has entered into and that are currently being performed or for which performance has not yet begun</u>
Grants	<u>TGC §403.0245</u>	<u>List of all state grants exceeding \$25,000 (HB 1487)</u>
No-Bid	Governor’s Directive	<u>Directive requiring public disclosure of all no-bid contracts</u>
Federal Grants	<u>Federal Funding</u>	Federal grants above \$25,000

Item	Statute	Description
	Accountability and Transparency Act	

References

Texas Government Code §2262 Statewide Contract Management
Texas Government Code §2262.053 Training for Contract Managers
Texas Government Code §2262.0535 Training for Governing Bodies
Texas Government Code §2262.055 Vendor Performance Tracking System
Texas Administrative Code 34, Chapter 20 Statewide Procurement and Support Services

Consult the THECB Office of General Counsel

If you have questions or concerns about contracts or procurement efforts, do not hesitate to contact the Office of General Counsel for assistance. Here is a list of the following THECB staff:

Name	Title	Phone Extension	Email Address
Bill Franz	General Counsel	76143	William.Franz@theeb.state.tx.us
Kathy Cordova	Assistant General Counsel	76144	Kathleen.Cordova@theeb.state.tx.us
April Griffin	Assistant General Counsel	76135	April.Griffin@theeb.state.tx.us
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Theresa Lopez	Director, Procurement/HUB Coordinator, CTPM, CTCM,	76142	Theresa.Lopez@theeb.state.tx.us
Linda Natal	Director, Grants and Contracts, CTCM, CTPM	76141	Linda.Natal@theeb.state.tx.us
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