

**Procurement and Contract  
Management Handbook**



# **Procurement and Contract Management Handbook**

**April 2019**

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## Introduction

The Texas Higher Education Coordinating Board (THECB), in compliance with Texas Government Code § 2261.256(b), developed the THECB Procurement and Contract Management Handbook (PCMH) to assist staff in the areas of ethics, procurement of goods and services, and the contract management process.

The Texas Comptroller of Public Accounts' Statewide Procurement Division (SPD) is the central authority for state agency procurement guidance, education, and statewide contract development services. SPD is the successor to TPASS. Consequently, any reference to the TPASS division in forms, templates, or other publications held by an agency is now a reference to SPD.

Further guidance, in addition to the Handbook, is available in the [Comptroller's State of Texas Procurement and Contract Management Manual](#).

## Purpose

The purpose of this Procurement and Contract Management Handbook (PCMH) is to offer THECB Contract Managers assistance on improving existing contract management processes and practices and to assist staff in the procurement of goods and services. The PCMH 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.

This PCMH will be a guide for the THECB staff involved in the development and management of contracts that commit the agency. It does not attempt to address all issues that may need to be considered in a particular circumstance. For complex or unusual contracts, staff should seek specific legal assistance as early as possible in the contracting process.

## Ethics and Standard of Conduct Policy

**A significant responsibility is imposed on everyone who is entrusted with the awarding and expenditure of state funds. As a state employee and staff member of the THECB, you should avoid any appearance of impropriety when interacting with contractors, potential contractors, grantees, and students. All THECB employees must act in an ethical, transparent, and professional manner at all times.**

### State Ethics Policy

Authority: TGC §§ 572.001 (a), and 572.051 (c).

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 prudent expenditure 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 improperly 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 the section below on [Conflicts of Interest](#) for the policy at THECB for maintaining high ethical standards as listed on the website.

### **THECB Ethics Policy**

Authority: TGC §§ 572.051 (a), 572.051 (c), and Tex. Penal Code §§ 39.06, and 39.02 (a)(2).

The THECB's policy and procedures manual details nine standards of conduct. The policy states that an employee will not:

1. Accept or solicit any gift, favor, or service that might reasonably tend to influence the employee in the discharge of official duties, or that the employee knows or should know is being offered with the intent to influence the employee's official conduct;
2. Intentionally or knowingly solicit, accept or agree to any benefit for having exercised official power or in the performance of official duties in favor of another;
3. Disclose confidential information;
4. Accept other employment, including self-employment, or compensation or engage in a business, charity, nonprofit organization, or professional activity that could reasonably be expected to impair judgement in performance of official duties;
5. Make personal investments, or have a personal or financial interest that could reasonably be expected to create a substantial conflict between private and public interest;
6. Utilize state time, property, facilities or equipment for any purpose other than official state business, unless such use is reasonable and incidental;
7. Utilize an official position or state issued items, such as a badge, indicating such position for financial gain, obtaining privileges, or avoiding consequences of illegal act;
8. Knowingly make misleading statements, either oral or written, or provide false information in the course of official state business; or

9. Engage in any political activity while on state time or utilize state resources for any political activity.

## **Nepotism**

Authority: TGC §§ 573, and 573.041.

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

- A relationship by consanguinity is one established through bloodlines. The consanguinity relationship may be either lineal (persons in a direct line of descent) or collateral (persons not in a common line of descent but with a common ancestor).
- Relationship by affinity arises by virtue of marriage. A relationship by affinity exists between an individual and either the blood relatives of the individual's spouse or the spouses of the individual's blood relatives. Stated simply, if at least two marriages are required to establish a link between two persons, they are not related by affinity.

For information on if specific relationships could violate nepotism provisions, please see Chapter 573 of the Texas Government Code.

## **Appearance of Impropriety**

Authority: TGC § 572.

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

A public servant's ethical dilemma may often be resolved by following this simple criterion: if it *feels* wrong, it probably *is* wrong.

## **Bribery**

Authority: Tex. Penal Code § 36.02.

Bribery is a criminal offense. Bribery occurs if a person intentionally or knowingly *offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept* any benefit as consideration for a violation of a public servant's legal duty or a public servant's decision, opinion, recommendation, vote, or any other exercise of discretion. A salary is a benefit. A state employee, therefore, is subject to criminal prosecution if the employee accepts; e.g. employment as consideration for an official act.

## **Suspected Fraud, Waste, or Abuse**

Authority: TGC §§ 2261.256, 321.013, and 321.022 (a).

Each agency must develop and comply with a purchasing accountability and risk analysis procedure that includes an assessment of the risk of fraud, abuse, or waste in the contracting process, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts. The State Auditor's Office (SAO) investigates allegations of fraud, waste, or abuse. Administrative heads of agencies who have reasonable cause to believe that money was lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred are required to report this information to the SAO. A reasonable cause to believe exists when a set of facts would lead a reasonable and prudent person to believe that an offense may have been committed. Employees and vendors who become aware of a situation that involves suspicious activities or fraudulent acts may also report the allegations to SAO.

Criminal offenses investigated by SAO include, but are not limited to, the following:

- theft,
- forgery,
- tampering with a governmental record,
- securing execution of document by deception,
- misapplication of fiduciary property,
- conversion of funds,
- abuse of official capacity,
- gift to a public servant by a person subject to his or her jurisdiction, and
- bribery.

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

## **Collusion**

Collusion occurs when two persons or representatives of an entity or organization make an agreement, implicit or explicit 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 Ethics

["Part I. Standards of Conduct and Conflict of Interest", "The Should Nots"](#)

### **Prohibition of Economic Benefit**

Authority: Tex. Penal Code § 39.06 (a)(1)

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.

### **Conflict of Interest**

#### **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 Policy of the THECB's Agency Policies and Procedures.

#### **Gifts Offered to THECB Employees**

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 offered to state employees that may present legal and/or ethical problems. Penal Code prohibition on gifts > \$50.

#### **Employees Involved in Procurement or Contract Management**

Authority: TGC § 2261.252 and 34 TAC § 20.158.

Each state agency employee or official who is involved in procurement or in contract management for a state agency is required 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.

#### **Financial Interest**

Authority: TGC § 2261.252, and 34 TAC § 20.158.

A state agency may not enter into a contract with a private vendor for the purchase of goods or services solicited through a PO if the amount of the PO exceeds \$25,000 and any of the following agency employees or officers have a financial interest in the vendor:

- a member of a state agency's governing body,



- the governing official, executive director, general counsel, chief procurement officer, or procurement director; or
- a family member related to one of the persons described in items (1) or (2) within the second degree of kinship by affinity or consanguinity.

An agency employee or official has a financial interest in a vendor if the employee:

- owns or controls, directly or indirectly, an ownership interest of at least 1 percent in the person, including the right to share in profits, proceeds, or capital gains or
- could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.

### **Conflict of Interest Certification**

Authority: TGC §§ 2261.252 (a), and 2261.252 (a-1).

All appropriate staff, i.e., those who are or may be involved in contracting and/or procurement along with heads of departments, must read and sign [Appendix C](#) (Conflict of Interest Certification for Contract Developers and Purchasers) and [Appendix B](#) (Governor's Directive, Conflict of Interest Certification).

Should you have any questions, please contact the Office of General Counsel.

### **Restrictions for a Current Employee**

Authority: TGC §§ 572.001 (a), and 572.051 (a).

- Participate in any work on a contract knowing that the employee, or member of that employee's immediate family, has an actual or potential financial interest in the contract, including, but not limited to, prospective employment. The term "participate" includes, but is not limited to, decision making, approval, disapproval, recommendation, giving advice, investigation or similar action.
- Accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;
- accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
- accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;
- make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or

- intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.

### **Restrictions for a former employee**

Authority: TGC §§ 2252.901, 2254, and 34 TAC § 20.156.

Agencies may not enter into employment contracts, professional services contracts, or consulting services contracts with former or retired employees before the first anniversary of the last date on which the individual was employed by the agency, if appropriated funds are used to make payments under the contract.

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.

### **Violations**

When an actual or potential violation of any of these standards is discovered, the person involved shall promptly file a written statement concerning the matter with an appropriate supervisor. The person may also request written instructions for disposition of the matter.

If an actual violation occurs or is not disclosed and remedied, the employee involved may be reprimanded, suspended, or dismissed. The vendor or potential vendor may be barred from receiving future contracts and/or have an existing contract canceled.

If you wish to learn whether a specific action violates the ethics rules, please contact the Office of the General Counsel.

## **Purchasing Staff Accountability**

Authority: TGC § 2261.256 (a)(3), and 19 TAC § 1.16.

### **Delegation of Authority**

The Statewide Procurement Division (SPD) is authorized to delegate its purchasing functions to agencies. A delegation of authority may be:

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

A delegation of authority may be provided for a pre-approved class of procurements, such as particular procurement type or contract value, or obtained on a case-by-case basis upon request by the agency.

See [Procurement](#) section to determine delegation of authority.

### **THECB Purchasing Staff**

Purchase Orders: Goods, Commodities, Services, and IT-related goods or services.

A state agency purchaser must be certified as a Certified Texas Contract Developer (Formerly Certified Texas Procurement Manager).

Purchasing staff responsibilities include:

- the receipt and processing of requisitions;
- development of specifications;
- development of statement of work;
- the issuance of purchase orders;
- the issuance of purchase orders against existing statewide contracts; and cooperative or agency contracts.

### **Purchasing authority:**

<b>Training and Certification Requirements and Purchasing Authority</b>			
<b>Purchasing Authority</b>	<b>Course Title</b>	<b>Experience</b>	<b>Certification</b>
Zero to \$25,000 (Routine purchases)	Basic Texas Purchaser Course	None Required	None
Routine purchases and contract development	Texas Contract Developer Certification Training	None Required	CTCD Formerly CTPM

### **THECB Receiving Department**

The THECB's Receiving Department and/or Ordering Department ensures verification of the inspection of merchandise or receipt of services by the agency.

### **THECB Contracts and Grants Staff**

The Contracts and Grants Team reviews all contracts and grants for federal, state, and agency compliance prior to the execution of an award. The team is also responsible for the post-award reporting of all contracts and grants. Within the first year of hire, Contracts and Grants team members shall be CTCM and CTCD certified.

## Historically Underutilized Businesses (HUBS)

Authority: TGC § 2161.122, and 34 TAC § 20.284 (b).

The THECB actively supports the Historically Underutilized Business (HUB) Program by procuring goods and services from HUB vendors to support THECB operations. The THECB's Historically Underutilized Business (HUB) Program promotes full and equal business opportunities in an effort to remedy historical disparities in state procurement and contracting.

The THECB must maintain, and compile monthly, information relating to the agency's and each of its operating divisions' use of Historically Underutilized Businesses (HUBs), including information regarding subcontractors and suppliers. On a monthly basis, each agency must require its prime contractors to report to the agency the identity and amount paid to each HUB and non-HUB subcontractor to whom the prime contractor has awarded a subcontract for the purchase of supplies, materials and equipment. Prime contractors must report to the applicable agency the progress payments made to subcontractors and suppliers each month in which such payment is made.

Agencies are required to make a good faith effort to assist Historically Underutilized Businesses (HUBs) to receive a portion of the total contract value that the agency expects to award in a fiscal year in accordance with the following THECB-pertinent statewide goals:

- 23.7 percent for professional services contracts;
- 26.0 percent for all other services contracts; and
- 21.1 percent for commodities contracts.

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

## Vendor Communication

Communication between public procurement professionals and vendors is imperative and encouraged. However, steps must be taken to maintain a fair opportunity to compete for all vendors and 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. If there is any doubt about appropriate communications with vendors, consult with The Office of General Counsel.

### Dispute Resolution

Authority: TGC § 2260.004.

Disputes with vendors related to the purchase of goods or services are documented by notating the Business Management System (BMS) record, along with providing supporting documentation. Incorrect vendor invoices are primarily resolved through email correspondence. If there is a dispute, the THECB shall notify the vendor and request a corrected invoice.

Each agency that enters into a contract must include as a term of the contract a provision stating that, if necessary, the formal dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the contract. The objective of any dispute resolution process is to resolve problems before they escalate. To avoid escalation of problems to the next level and ensure the agency has not exacerbated potential problems, it is imperative that agency personnel respond promptly to all contractor inquiries.

Initial steps to be taken are:

- Identify the problem - many times what may appear to be a problem can be resolved by providing the contractor with information or clarification. The agency must follow internal escalation points and the Office of General Counsel must be included if a legal dispute arises.
- Research facts - the agency must obtain all the information regarding the potential problem from all relevant sources, including the project manager and the contractor.
- Evaluation - the agency must review all of the facts in conjunction with the requirements and terms and conditions of the contract. The agency must then determine the appropriate course of action.

## **Contracting and Procurement Life Cycle**

### **Major Stages in the Lifespan of a Contract**

**Planning**

**Procurement**

**Vendor Selection**

**Contract Development and Awarding**

**Monitoring and Reporting**

**Contract Close-out**

## Planning

### **Contract managers should, at a minimum, ask the following questions:**

- 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 it?
- 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?

### **Questions to ask prior to procuring goods or services:**

- Why do I/we need these goods/services?
- What is the intent of the service?
- Do these goods or services exist via a state operation?
- What deliverables are expected from grant recipients?
- What is the timeframe for procuring services?
- How will the contract be monitored?
- Reporting requirements and timeline.

### **Risk Assessment Analysis**

Authority: TGC § 2261.256.

THECB has developed a risk analysis procedure that:

1. Assesses 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. Identifies contracts that require enhanced contract or performance monitoring or the immediate attention of contract management staff; and

3. Establishes clear levels of purchasing accountability and staff responsibilities related to purchasing.

The Risk Assessment Analysis is required for all contracts, grants, and solicitations.

See [Appendix E](#).

## **Monitoring Plan**

Contract managers should develop a monitoring plan to ensure the contractor is adhering to the Terms and Conditions and meeting the deliverables specified in the contract.

When developing the scope of work, staff should consider the strategy they will utilize to monitor the quality of the contractor's performance. The methods used to monitor contractor performance should be clearly stated in the solicitation. Requiring a contractor, without prior notice, to produce time-consuming reports or maintain stringent testing standards outside normal industry parameters is grounds for legal challenge.

The monitoring activities chosen by the agency should be balanced in type, scope, and frequency to achieve the desired result for the particular procurement. Overly restrictive oversight may interfere with the contractor's ability to accomplish the work and may unnecessarily and inadvertently increase costs. Examples of monitoring activities which may be included in the scope of work include an established timeline for completion of major tasks, scheduled meetings, and submission of status reports. To the extent that particular vendor performance monitoring activities are mandated by an applicable funding source, such as federal funds, these must be specified in the scope of work.

## **Enhanced Contract or Performance Monitoring**

All purchases for goods and services are approved under 19 TAC § 1.16 and reviewed by the Office of General Counsel prior to awarding. Each contract, purchase order, and grant is required to have a risk assessment completed at the time of routing. A copy of a risk assessment form can be found in [Appendix E](#).

Agency staff shall utilize THECB's Procurement and Contract Management guidelines and the THECB's Risk Assessment tool to determine which contracts require enhanced contract or performance monitoring. The risk analysis is based on a risk factor assessment score. Cost, impact to public or agency, access to confidential data, time constraints, and contractor experience are scored. Any current or prior issues related to the contractor or grantee will also factor into the analysis.

Contracts considered high risk to the agency are identified as needing enhanced contract or performance monitoring. A list of high risk contracts can be found on the [THECB Contracts Report](#) on the THECB main website. Those with an asterisk by their description of work have been identified as needing enhanced contract or performance monitoring.

Enhanced contract or performance monitoring can include additional site visits, additional reporting requirements, contractor meetings with contract managers with leadership involvement, and meaningful access to the progress towards the identified goals and outcomes.

Those contracts identified as needing enhanced contract or performance monitoring shall be identified on the quarterly board reports to the Board.

## **Awards with a Value Exceeding \$1 Million**

Authority: TGC § 2261.254.

In accordance with to TGC §2261.254 a state agency shall develop and implement contract reporting requirements that provide information on;

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

TGC §2261.254 also requires that each state agency verify:

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.

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

The Grants and Contracts with a Value Exceeding \$1 Million Form is required to be completed for all contracts, grants, amendments, and PRQs exceeding \$1 million.

See [Appendix H](#).

## **Funding Source**

As part of the procurement planning activities, the agency should determine the funding source that will be used to pay the vendor. Sources of funding include: General Revenue, General Revenue-Dedicated accounts, Federal Funds, and Other Funds. The agency must ensure that the procurement complies with any laws, special regulations, restrictions or limitations applicable to the source of funding. Information regarding funds and accounts may be found in the [Texas Comptroller Manual of Accounts](#) and [THECB's Comptroller Manual of Accounts](#) posted on the CPA website.

## **Allowable Use of Appropriated Funds**

Authority: TGC §§ 2113.001 (2), 2113.101, 2113.102, 2113.104, 2113.105, 2113.106, and 2113.107 (b).

The agency must ensure that the procurement is not prohibited by law, including the General Appropriations Act. For example, agencies are prohibited from using appropriated funds for certain goods and services unless the procurement falls within a statutorily authorized exemption. This list contains the most common prohibitions, but it is not exhaustive. If you



have specific questions or concerns, please consult with Financial Services and/or the Office of General Counsel.

- food
- alcoholic beverages;
- tips;
- live or artificial indoor plants;
- an audit of the financial records or accounts of the agency, without delegation and approval from the State Auditor;
- postage stamps or a post office box from an entity other than the U.S. postal service;
- membership in or dues for professional organizations; unless the membership is for a public purpose and approved by Commissioner or Commissioner's designee.
- private facilities for meetings, conferences or exams; and
- generally informational, promotional, or educational periodicals and publications issued by the agency intended for use by the general public and not essential for achievement of a statutory objective of the agency.

NOTE: In certain cases, some expenditures for food or meetings may be allowable when conference funds are used. The use of appropriated funds for employee travel is ordinarily outside the purview of the procurement and contracting process. Please consult with your management team, who may need to consult with Financial Services and/or the Office of General Counsel.

## **Procurement**

### **State Agencies Must First Procure from the State Use Program**

Authority: TGC §§ 2155-2161, 34 TAC Chapter 20, and Texas Educ. Code §61.051.

- WorkQuest (Formerly TIBH)
- Texas Correctional Industries (TCI)
- Department of Information Resources (DIR)
- Term Contracts on TxSmartBuy online system

### **Emergency Purchases**

Authority: TGC § 418.

The Governor may by executive order or proclamation declare a state of disaster if a disaster has occurred or that the occurrence or threat of disaster is imminent. The Governor may

suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of an agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster. For example, the Governor may suspend enforcement of statutes and administrative rules regarding contracting or procurement that would impede any agency's emergency response that is necessary to protect life or property threatened by a declared disaster.

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

**Emergency Procurement:** If a purchase does not fall within the parameters of a Governor-declared disaster, agencies should check whether the purchase qualifies as an emergency purchase under the applicable procurement method.

## 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 ISS for compatibility

\*See [Appendix A](#) for list of [PCC Codes](#)

## Purchase of Services

Authority: TGC § 2155.132 (e).

\$5,000 or less- does not require a competitive process. Follow THECB's internal procedures and policies for procuring services in an amount of \$5,000 or less. Time permitting, we will solicit to more than one vendor to include HUBs.

\$5,000.01 to \$25,000- agencies are required to obtain three informal bids with a minimum of two (2) bids from HUBs. Allow 5 business days for responsive bids. Purchasing staff will decide whom to award based on best value for the state.

\$25,000.01 or above- agencies are required to issue a [formal solicitation](#). Estimate between 2 to 6 months to complete the formal solicitation process. A list of formal solicitation types can be found on Table 2, Formal Solicitation Methods.

- In addition to the requirements above \$25,000:

\$100,000.01 or above- the agency must submit its delegation request and its solicitation through the Procurement Oversight & Delegation portal if required. If the delegation request is denied, The Comptroller's Statewide Procurement Division (SPD) will procure the services on behalf of the agency.

- In addition to the requirements above \$25,000 and \$100,000.01:

\$5,000,000 or above- the Contract Advisory Team (CAT) reviews and makes recommendations on the solicitation documents.

## **Purchase of Professional Services**

Authority: TGC § 2254

Professional services refer to services that are either

1. 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; or
2. 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.

Agencies are authorized to procure professional services under Chapter 2254, Subchapter A, of the Texas Government Code. Acquisition of professional services is delegated to agencies by statute and does not require a delegation of authority from SPD.

## **Purchase of Audit Services**

Authority: TGC § 321.020

Section 321.020 of the Texas Government Code 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

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

## Purchase of Consulting Services

Authority: TGC § 2254

Consulting service refers to the service of studying or advising an agency under a contract that does not involve the traditional relationship of employer and employee. An 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. Consulting services procurements are usually advertised as an RFP.

Agencies are authorized to procure consulting services pursuant to Chapter 2254, Subchapter B, of the Texas Government Code. Acquisition of consulting services is delegated to agencies by statute and do not require a delegation of authority from SPD. The procurement of consulting services is subject to ESDD posting requirements as well as requirements applicable to CAT reviews.

Particular care must be taken to closely follow all statutory requirements for procuring consulting services. A consulting services contract, or renewal, amendment, or extension, is void under the following circumstances:

1. the contract is entered into without complying with the Texas Register publication requirements and notification requirements to the LBB and Governor's Budget and Planning Office. (Refer to the "Pre-Award Notification and Publication Requirements for Major Consulting Services Contracts" and "Post-Award Notification and Publication Requirements for Consulting Services Contracts" described in this Section of the Guide); and
2. the contract is entered into with a private consultant who has been employed by that agency or by another agency at any time during the two years preceding the making of the offer and failed to disclose in the offer:
  - a. the nature of the previous employment with the agency or the other agency;
  - b. the date the employment was terminated; and
  - c. the annual rate of compensation for the employment at the time of its termination.

If the contract is void, CPA may not draw a warrant or transmit money to satisfy an obligation under the contract and an agency may not make any payment under the contract with state or federal money or money held in or outside the state treasury.

Agencies are authorized to procure consulting services pursuant to Chapter 2254, Subchapter B, of the Texas Government Code. Acquisition of consulting services is delegated to agencies by statute and do not require a delegation of authority from SPD.

## Purchase of Goods

Authority: TGC § 2155.132 (e).

\$5,000 or less- does not require a competitive process. Follow THECB's internal procedures and policies for procuring commodities in an amount of \$5,000 or less. Time permitting, we will solicit to more than one vendor to include HUBs.

\$5,000.01 to \$25,000- agencies are required to obtain three informal bids with a minimum of two (2) bids from HUBs. Allow 5 business days for responsive bids. Purchasing staff will decide whom to award based on best value for the state.

\$25,000.01 to \$50,000- agencies are required to issue a [formal solicitation](#). Estimate between 2 to 6 months to complete the formal solicitation process. A list of formal solicitation types can be found on Table 2, [Formal Solicitation Methods](#).

\$50,000.01 and above- the agency must submit its delegation request as an Open Market Requisition (OMR) to the Statewide Procurement Division. The procuring agency 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.

- In addition to the requirements above \$50,000.01:

\$5,000,000 or above, the Contract Advisory Team (CAT) reviews and makes recommendations on the solicitation documents.

## Purchase of IT Related Goods and Services

Authority: TGC § 2157.068.

Under DIR's statewide procurement authority, DIR establishes and manages the following types of master contracts for use by eligible customers: (1) Cooperative Contracts for IT commodity items, (2) Texas Multiple Award Schedule contracts for IT commodity items, (3) the Texas gov contract, (4) Data Center Services contracts, and (5) Telecommunication Services contracts.

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.

Monetary Thresholds for Competitive Action An agency purchasing an IT commodity item under a DIR contract must follow the following procedure:

1. For a contract with a value of no more than \$50,000, the agency may directly award the contract to a vendor included in the category to which the contract relates without submitting a price request to other vendors in the same category;

2. For a contract with a value of more than \$50,000 but not more than \$1 million, the agency must submit a request for pricing to at least three vendors or resellers included in the category to which the contract relates; and
3. For a contract with a value of more than \$1 million but not more than \$5 million, the agency must submit a request for pricing to at least six vendors included in the category to which the contract relates or all vendors in the category if the category has fewer than six vendors.

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 exceeds \$5 million.

### **IT Services Statement of Work (SOW) Development**

Authority: TGC § 2157.0685.

#### **Services**

For service procurements with an estimated value more than \$50,000 but less than \$5,000,000, DIR contracts requiring SOWs include, but are not limited to:

- Deliverables-Based Information Technology Services (DBITS),
- Managed Services for Information Technology,
- IT Security Services,
- Cloud Services (when an SOW is executed)
- Comprehensive Web Development

A DIR SOW is not applicable to:

- IT staffing services;
- contracts exclusively for hardware or software and not including services; or
- the vendors' standard commercially available support, maintenance, and warranties as documented in the DIR cooperative contract or modified in accordance with the DIR cooperative contract provision addressing modification of contract terms and/or amendments

The THECB must develop a "statement of work" (SOW) to initiate IT services under the contract and must consult with DIR before submitting the SOW to the vendor and posting the SOW on the THECB's website. The agency must submit a completed draft DIR SOW to DIR for review at least 30 business days before anticipated submission of the DIR SOW to vendors. The DIR submission must include:

- a. the completed DIR SOW which at a minimum includes: the scope of the project, milestones, deliverables description, schedule, acceptance criteria, and any other items DIR may require; and

- b. a list of DIR cooperative contracts to which the DIR SOW will be advertised.

DIR may accept or reject the submitted DIR SOW. An agency may not submit the DIR SOW to vendors until DIR has issued written approval. If rejected, the agency may resubmit with required modifications DIR will not issue retroactive or backdated reviews.

For 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 TGC § 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.

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.

There are certain DIR [Blanket Exemptions](#).

Specific requirements related to [temporary IT staffing](#) are available.

### **Proprietary Purchases**

Authority: TGC §§ 2155.067 (a), 2155.067 (c), 2155.063, and 34 TAC §§ 20.25 (44), 20.209 (b)(4).

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. 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. Proprietary purchases include products or services manufactured or offered under exclusive rights of ownership, including rights under patent, copyright, or trade secret law.

Proprietary purchases, by definition, preclude competition because an attribute of the purchase limits consideration to only one product or supplier. In today's robust marketplace, it is unusual for only one product or one vendor to be capable of addressing an agency's business need. Because Texas procurement law promotes the use of competitive bidding for purchases, proprietary purchases are subject to enhanced scrutiny.

\*See Office of General Counsel for proprietary determination.

### **Issuing a Formal Solicitation**

#### **Advertising Formal Solicitation on Electronic State Business Daily (ESBD)**

Authority: TGC § 2155.083 (h)-(i); 34 TAC § 20.214.

Agencies are required to post procurements with a contract value of more than \$25,000 to the ESBD, regardless of the source of funds to be used for the contract. To ensure solicitation is

competitive, purchasing staff will post the solicitation on the ESBD. Vendors may browse agency procurement opportunities and find recent awards by searching for solicitations using various criteria including agency name, NIGP Class/Item code, posting date, and solicitation closing date.

**Formal Solicitation Posting Requirements:**

Authority: TGC § 2155.083 (h)-(i); 34 TAC § 20.215.

It is best practice to advertise a solicitation for 30 days or longer. A 30-day solicitation period is recommended for RFPs, while RFOs may necessitate a longer posting time. Staff is encouraged to consider the solicitation posting times on a case-by-case basis, keeping the statutorily mandated minimum time periods in consideration. A particularly complex or unusual scope of work may result in many vendor questions, in which case, an extended solicitation period would be recommended. Evaluation of the proposals may take more or less time, depending on the size of the evaluation committee and the complexity of the procurement. Likewise, the number of proposals to be evaluated impacts the evaluation time frame. The evaluation period could also be extended if there are presentations, discussions, or best and final offers.

**Canceling a Formal Solicitation**

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.

**Formal Solicitations**

**Table 2: Formal Solicitation Methods**

<b>Procurement Method</b>	<b>Use When</b>	<b>Advantages</b>	<b>Disadvantages</b>
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.



<b>Procurement Method</b>	<b>Use When</b>	<b>Advantages</b>	<b>Disadvantages</b>
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)  [When used, 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.

## **Vendor Selection**

### Verification of use of Best Value Standard

Authority: TGC §§ 2155.074, 2156.007, 2157.003, 2254.003, 2254.027, and 34 TAC § 20.217(a).

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.

The THECB Procurement and Contracting Staff must:

1. approve each 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;

3. acknowledge in writing that the agency complied with the agency's procurement and contract management guide in the purchase; and
4. ensure that the agency shall evaluate the contractor's performance based on:
  - a. information prepared by the agency in planning the procurement that assessed the need for the purchase together with the specifications for the good or service and the criteria to evaluate the responses resulting in an award and contract;
  - b. compliance with the material terms of the contract;
  - c. ability to correct instances of contractual non-compliance; and
  - d. other evaluation criteria presented in the on-line vendor performance tracking system.

## **Contract Development, Awarding and Execution**

### **Elements of Contracts**

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

- An Offer;
- Acceptance;
- Legal Purpose/Objective;
- Certainty of Subject Matter;
- Consideration; and
- Competent Parties.

### **Scope of Work**

Authority: TGC § 2157.0685.

The scope of work should be written in a manner which provides a clear and thorough description of the products and services to be provided while at the same time fostering competition.

The scope of work should set specific deadlines for completion of tasks and a schedule for submittal, i.e., staff overseeing the contract performance, deliverables, required meetings, presentations, or other activities. The contract manager must consider monitoring methods to ensure the contractor performs as specified in the statement of work.

See [Appendix J](#) or additional Scope of Work resources

## **Items to include in every Contract, Grant Agreement, or Amendment**

1. A justification for awarding, giving additional funding, or issuing a no-cost extension amendment.

Ambiguous– Amendment will expand professional development to support program to further the statewide goals of 60x30TX

Unambiguous – The contract is being amended for an additional 4 months to allow Grantee to host 5 additional professional development events to further reach key stakeholders such as Education Service Centers (ESC), local counselors, and school district representatives.

2. Budget information:

Ambiguous– Grantee will receive an additional \$15,000

Unambiguous – The additional \$15,000 will be used toward salary expenses for Grantee’s state coordinator to host five 2 web-based and 3 face to face professional development events. All 5 events will be hosted between September 1, 2018 and December 31, 2018 to allow participating stakeholders to attend.

3. Payment

Ambiguous– Grantee will receive an additional \$15,000 upon execution

Unambiguous – After each professional development event, Grantee will submit to the THECB an expenditure report with supporting documentation for reimbursement. After the THECB’s acceptance of the report, the THECB will issue payment.

4. Reporting:

Ambiguous– Grantee will submit expenditure report

Unambiguous – After each professional development event, Grantee will submit within 30 calendars after event, an expenditure report in addition to a list of attendees with contact information. Grantee will provide attendees a survey to complete at each event. The use of an online survey is acceptable. Results of the survey shall be sent to the THECB point of contact.

5. Monitoring:

Ambiguous– THECB staff will monitor the Grantee

Unambiguous – THECB staff will monitor each expenditure report against the financial documentation. In addition, THECB staff will review event information to ensure Grantee is performing the deliverables.

## **Internal Routing Process**

Authority: 19 TAC § 1.16.

All contracts and purchase orders MUST be routed and approved in the Business Management System (BMS) prior to execution. The Office of General Counsel may assist in drafting the contract, but signature should not be obtained until it has been electronically approved in BMS.

The BMS System has five types of workflow categories. To determine which category to select, staff must understand the type of purchase and the funding authority.

BMS Workflow Categories:

- Purchase Order
- Contract
- Grant
- Single-vendor, multi-PCA
- Multi-vendor, single PCA

## **Pre-Award Compliance**

Authority: TGC §§ 2155.077, 2252.001 (2), 2252.152, 2252.153, 2270.021, 2270.001 (3), 2270.002, 808.051, and 2252.903.

### **Debarment Check**

Contracting and Procurement Staff must check the debarred vendor list posted on the CPA website to establish that the vendor has not been debarred by SPD. An agency may not award a contract to a debarred vendor.

### **SAM Check**

Contracting and Procurement Staff must check the SAM (System for Award Management) database to verify that the vendor is not excluded from grant or contract participation at the federal level. A contract cannot be awarded to a vendor named on the U.S. Treasury Department, Office of Foreign Assets Control's master list of Specially Designated Nationals & Blocked Persons (with limited exceptions set forth in the Order).

### **Iran, Sudan, & Foreign Terrorist Organization Check**

Governmental entities may not contract with a company doing business with Iran, Sudan, or a foreign terrorist organization. Prior to award, the Contract Developer (purchaser) must check the divestment lists to determine if the potential awardee is in violation of this requirement. The divestment lists are maintained by the Texas Safekeeping Trust Company and posted to the CPA website. If the business is in violation, the contract may not be awarded to that vendor.

## **Boycott Israel Check**

Governmental entities may not contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract. Prior to award, the Contracting and Procurement Staff must check the divestment lists to determine if the potential awardee is in violation of this requirement. The divestment lists are maintained by the Texas Safekeeping Trust Company and posted to the CPA website. If the potential awardee is on the list, the contract may not be awarded to that vendor.

## **Warrant/Payment Hold Check**

Contracting and Procurement Staff must check warrant hold status of the vendor.

## **Awarding and Executing a Contract**

Authority: 34 TAC § 20.3.

As a best practice, the THECB shall sign a contract last. THECB will accept electronic signatures. Electronic signature is a signature that is an image of a hand-made signature such as on a transmitted facsimile, an electronic document created by scanning the original physical document, or an electronic document (such as one created in a PDF) where a separate image of a hand-made signature has been overlaid onto the electronic document in place of a physical hand-made signature.

## **Signatory Authority**

Each contract is required to be signed by an authorized signor of the contracted party. A contract must be approved by the THECB within the BMS System prior to obtaining signatures.

## **THECB Signatory Authority for Contracts and Grants**

<b>Amount</b>	<b>Signatory Authority</b>
Under \$100,000	Assistant Commissioner or Appropriate Deputy Commissioner
Between \$100,000 and \$999,999	Appropriate Deputy Commissioner or Commissioner
\$1 Million and Above	Commissioner

## **Contract Monitoring and Reporting**

Contract managers, i.e., staff overseeing contract performance, should ensure the methods used to monitor contractor performance are clearly stated in the solicitation. The amount of monitoring should be balanced and adequate to meet the need, but limited in type, scope and frequency sufficient to achieve the desired result without unnecessarily increasing costs.

### **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 and Compliance

### **Responsibilities of a Contract Manager (i.e., staff overseeing contract performance)**

- Participating with the procurement team in solicitation development and the review of contract documents;
- Serving as the primary point of contact for agency communication with the contractor regarding all matters pertaining to the contract;
- Managing any state property used in contract performance, (e.g., computers, telephones, identification badges);
- Implementing a quality control and contract monitoring process;
- Monitoring the contractor's progress and performance to ensure goods and services procured conform to the contract requirements and keep timely records of findings;
- Consulting with agency legal counsel in a timely manner to address any legal concerns and/or issues;
- Managing, approving, and documenting any changes to the contract through the amendment process authorized by the terms of the contract;

- Inspecting and approving the products and/or services by submitting a written document accepting the deliverables or obtain documentation from the end users responsible for receipt that inspection and approval have been completed;
- Verifying accuracy of invoices and authorizing payments consistent with the contract terms;
- Monitoring the contract budget to ensure sufficient funds are available throughout the term of the contract;
- Identifying and resolving disputes with the contractor in a timely manner;
- Exercising state remedies, as appropriate, when a contractor's performance is deficient;
- Maintaining appropriate records in accordance with the records retention schedule;
- Confirming all products and/or services have been delivered and delivery is completed prior to the expiration date of the contract; and
- Performing contract closeout processes by ensuring the contract file contains all necessary contract documentation, vendor performance reported to VPTS, and document lessons learned.

**Contract managers are not authorized to:**

- Allow the contractor to commence work before the contract is fully executed;
- Change the scope or extend the term of the contract without complying with the formal amendment process prescribed by the contract;
- Authorize the contractor to perform work that is not specifically described in and funded by the express terms of the contract; or
- Allow the contractor to recover costs incurred prior to the effective date of the contract or recover costs above the budget limit set by the contract.

**Amendments**

Authority: 19 TAC § 1.16.

All contract and grant amendments are approved under the THECB's rules. Amendments are routed in the Business Management System (BMS) and linked to the original contract by using the system's "amend" feature. Each amendment document shall reference the original contract and any subsequent amendment numbers. An amendment to the contract or grant must be agreed upon by the parties prior to the original contract's term date.

**Contract Termination**

The THECB includes the following contract termination provisions within the contract if the agency wants to terminate a contract early. Notify the Office of General when issues first arise with a vendor.

**Convenience of the State:** THECB, in its sole discretion, may cancel or terminate this Contract upon thirty (30) calendar days' written notice to Contractor. Such notice may be provided by facsimile or certified mail return receipt requested and is effective upon Contractor's receipt. In the event of such termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. THECB will be liable only for payments for any goods and/or services ordered from the Contractor before the termination date.

**Termination for Cause:** THECB may, by written notice to Contractor, immediately terminate this Contract for cause if: (a) THECB is not reasonably satisfied with Contractor's Services; (b) default or abandonment by Contractor occurs; or (c) Contractor fails to comply fully with any term or condition of this Contract, through no material fault of THECB. If THECB deems it appropriate under the circumstances, THECB will provide a three (3) business day advance written notice of intent to terminate to Contractor, and THECB will provide Contractor with an opportunity for consultation with THECB prior to termination during that three (3) business day period.

If Contractor fails or refuses to perform its obligations under this Contract, THECB may exercise any and all rights as may be available to it by law or in equity. In the event THECB exercises its right to terminate for cause, Contractor is responsible for paying damages to THECB including but not limited to re-procurement costs (if applicable), and any other consequential damages to the State of Texas and THECB resulting from Contractor's non-performance.

**Abandonment or Default:** If the Contractor abandons or defaults on the Contract, THECB reserves the right to terminate the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible Contractor. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by THECB based on the seriousness of the default.

**Applicable Law and Conforming Amendments:** THECB may terminate this Contract immediately upon notice to Contractor in the event federal or state law is enacted, amended, or judicially interpreted so as to render continued fulfillment of the Contract, on the part of THECB, wholly unreasonable or impossible. THECB reserves the right, at its sole discretion, to unilaterally amend this Contract throughout the Contract Term to incorporate any modifications necessary for THECB's compliance, as an agency of the state of Texas, with all applicable state and federal laws, rules, regulations, requirements, and guidelines.

**Non-Appropriation:** This Contract is subject to termination by THECB, either in whole or in part, if state funds become unavailable. THECB is a state agency whose authority and appropriations are subject to actions of the Texas Legislature and whose availability of funds may be subject to governmental action. If THECB becomes subject to a legislative change, revocation of statutory authority, lack of appropriated funds, or unavailability of funds which would render Contractor's delivery or performance under this Contract impossible or unnecessary, this Contract will be terminated, either in whole or in part. In the event of a termination under this Section, THECB will not be liable to Contractor or any other person or entity for any payments, damages or any other



amounts which were otherwise due or which may be caused or associated with such termination and THECB is not required to give prior notice of such termination.

**Effect of Termination:** Upon any termination, all indemnities, including without limitation those set forth in this Contract, as well as Contract provisions regarding confidentiality, records retention, right to audit, ownership, and dispute resolution, shall survive the termination of this Contract for any reason whatsoever and shall remain in full force and effect. In the event of any termination, Contractor shall, unless otherwise mutually agreed upon in writing, cease all Services immediately upon the effective date of termination, except such Services that THECB deems are necessary to wind-up in a cost-effective manner. For any termination by THECB other than termination for non-appropriation, THECB shall be liable to Contractor for only that portion of the Services authorized by THECB and which have been completed prior to the effective date of termination, provided that THECB shall not be liable for any work performed that is not acceptable to THECB and/or does not meet Contract requirements, plus any necessary work deemed appropriate by THECB to cost-effectively wind-up.

**Transfer of Duties:** In the event of termination, Contractor will provide reasonable cooperation to transfer its duties under the Contract to another entity without disruption.

## **Reporting**

The THECB Contracting and Procurement Staff is responsible for the following contract related reports:

**Procurement Plan:** Each agency must complete an agency procurement plan that identifies its management controls and purchasing oversight authority in accordance with the policy guidance contained in this Guide. Agencies must submit a current procurement plan to SPD annually by November 30.

**HUB:** On a form prescribed by SPD, each agency must report to SPD, not later than March 15 of each year regarding the previous six-month period and on September 15 of each year regarding the preceding fiscal year, the total dollar amount of HUB and non-HUB contracting and subcontracting participation in all of the agency's contracts for the purchase of goods, services and public works payments. Agencies must include contracting and subcontracting participation paid from treasury and non-treasury funds.

**Quarterly Board Reports:** Submitted to the Board quarterly is a list of all contracts and grants that have not been previously approved by the Board or by Majority approval. The list includes allocation grants (e.g., Texas Grant, Community College 10-pay).

The contract may contain additional reporting requirements.

## **Contract Close-Out**

### **Contract and Grant Close-Out Form**

Every contract and grant award requires a close-out form documenting the results of the grant award. A close-out form is required to be uploaded prior to closing out the award in the BMS system. See [Appendix G](#).

If any inconsistencies are noted, it will require the signature of the Assistant Commissioner for that division along with the Deputy Commissioner's signature. A copy of the close-out form with inconsistencies listed will be provided to Internal Audit.

After a division uploads a completed close-out form to a BMS record, they will send an email to CMS asking that the applicable BMS number be closed. CMS will review the close-out form and close the BMS record.

### **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. See [Appendix I](#).

## Definitions and Acronyms

**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

**The Contract Advisory Team (CAT)** - was created to assist state agencies in improving contract management practices by reviewing the solicitation of contracts with a monetary value of \$5 million or more.

**The Contract Advisory Team-Review and Delegation (CAT-RAD)** - section is dedicated to the review of solicitations and delegation of purchasing authority for contracts for services greater than \$100,000, and coordination of the mandatory interagency Contract Advisory Team review for contracts with a value greater than \$5 million. Review and Delegation by the CAT-RAD section is required when state agency purchasing staff exceed the established dollar limits and are not authorized to make the purchases elsewhere in statute. If an agency wishes to exceed the established dollar limits of \$100,000 for services, it must seek delegated authority from the Comptroller's Statewide Procurement Division (SPD) to make these purchases.

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

**Contracts** - All documents requiring dual signature. Based on deliverables and reporting requirements. May also include amendments.

**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".

**Deliverables-Based IT Services (DBITS)** – Developed by the Department of Information Resources (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 for information technology (IT) related services.

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

**Disaster** - the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, other public calamity requiring emergency action, or energy emergency. See TEX. GOV'T CODE § 418.004(1).

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

**Grants** - An award of financial assistance by the state or federal governments to carry out a program in accordance with rules, regulations, and guidance by the grantor agency. See Grant Management Handbook for more information.

**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 on the [comptroller's website](#).

**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.

**Multi-Vendor, Single-PCA** - BMS Workflow. Grant funds are allocated directly to institutions of higher education. No contract required. Should only be used for grants.

**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 to be submitted and reviewed. *Prior to routing a RFA in BMS, please consult with the Office of General Counsel.*

**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 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 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.

**Single-Vendor, Multi-PCA** - BMS workflow category used when there are multiple sources of funding for the agreement (This category may be used for either a contract or a grant.)

**Statewide Procurement Division (SPD)** – 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, the Centralized Master Bidders List (CMBL) and the TxSmartBuy on-line ordering system. In addition, SPD Contract Development processes hundreds of solicitations and awards for the statewide Term, Managed, TXMAS and open market contracts, which are managed by SPD Contract Management Office (SCM).

**Texas Correctional Industries (TCI)** - Texas Correctional Industries (TCI) is a division of the Texas Department of Criminal Justice (TDCJ) that manufactures goods and services using primarily offender labor for purchase by Texas governmental entities.

**Texas Multiple Award Schedules (TXMAS)** - The Texas Multiple Award Schedule (TXMAS) Program adapts existing competitively awarded government contracts to the procurement needs of the State of Texas.

**Texas SmartBuy** – The State’s central e-procurement system for non-IT goods and services.

**Vendor** - See Contractor definition.

**Vendor Performance Tracking System (VPTS)** - The Comptroller’s statutorily mandated tracking system to help agencies evaluate vendor performance and reduce risk in the contract award process.

**Work Quest [Formerly Texas Industries for the Blind and Handicapped (TIBH)]** - 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.

## Appendix A: PCC List

- A - Purchases of items from SPD term contracts using Texas SmartBuy. See 34 Texas Administrative Code § 20.220 – Term Contracts.
- C - Purchases from SPD Managed term contracts using the agency's internal requisition/purchase order forms. See 34 Texas Administrative Code § 20.220 – Term Contracts.
- D - Purchases of information technology commodities (products or services) not available through DIR contracts. See 34 Texas Administrative Code § 20.391 – Request for Offer Purchase Method.
- E - Purchases of goods and services when the total purchase is estimated to be \$0.00 to \$5,000.00. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.
- F - Purchases of goods (not services) in the total estimated amount of \$5,000.01 or more but not more than \$25,000.00 for the total contract value. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.
- G - Purchases for non-delegated goods or services from a contract awarded by SPD on behalf of a particular agency. Items are not on SPD term contract. See 34 Texas Administrative Code § 20.184 – Requisitions and Specifications.
- H - Purchases in any category paid for with a payment card.
- I - Purchases of items from DIR Contracts. See Texas Government Code § 2157 – Purchase of Automated Information Systems (commodities or services).
- K - Purchases of publications directly from the publisher with no dollar limits. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.
- L - Purchases of perishable foods, e.g., fresh fruit, eggs, ice, etc. with no dollar limits. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.
- M - Purchases of distributor items, e.g., repair parts for a unit of major equipment that is needed immediately, or maintenance contracts for laboratory/medical equipment with no dollar limits. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.
- P - Purchases of petroleum products, e.g., fuels, oils, and greases - (class 405) with no dollar limits. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.
- Q - Purchases of services (not goods) in the amounts estimated to be \$5,000.01 or more but not more than \$25,000.00 for the total contract value. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.
- S - Purchases of services or goods in an amount estimated to exceed \$25,000.00 for the total contract value. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.
- T - Emergency purchases of goods and services exceeding \$25,000.00. See 34 Texas Administrative Code § 20.210 – Emergency Purchases.

X - Purchases of items from SPD TXMAS Contracts. As of 9-1-2007, PCC X does not include TXMAS Schedule 70 (Information Technology) contracts. See 34 Texas Administrative Code §§ 20.231-.233 – Multiple Award Schedule.

B, J, N, O, R, U, V, W, Y, Z were not set forth herein.

### Summary of Minimum Requirements for Delegated Purchases

The following chart provides a summary of the delegated purchases, each of which will be discussed in further detail in the Guide.

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**
\$0.00 to \$5,000.00	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 to \$25,000.00	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 to \$50,000.00	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 When Possible PCC T
\$50,000.01 to \$100,000.00	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 When Possible PCC T
Over \$100,000.00	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 When Possible 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 B: Governor's Directive Regarding Contracts & Grants

### MEMORANDUM

To: All THECB Employees with Potential Involvement in Procurement or Contract & Grant Management

From: Raymund A. Paredes, Ph.D., Commissioner

Date: January 8, 2017

RE: Governor's Directive Regarding Contracts & Grants

On January 28, 2015, Governor Abbott issued a directive to all state agency heads, regarding ethics and transparency in state contracting. Part of that includes disclosures of conflicts of interest.

This memorandum supplements the agency policy set forth in Chapter E – 01: Ethics and Standards of Conduct Policy as well as Chapter 572 of the Texas Government Code.

To implement the Governor's directive, all persons involved in contracts and grants, and/or procurement must read the following statement and sign below as indicated.

I am not currently employed by, nor am I receiving any compensation from, nor have I been nor will I be the recipient of any economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in connection with any current or proposed contract or grant with the Texas Higher Education Coordinating Board (THECB). I understand that I have a current and continuing duty to disclose to the THECB Office of General Counsel any relationship I have with a current or potential contractor or grantee or any of its employees.

Relationship includes, but is not limited to, those covered by the legal standard for determining degrees of relationship and consists of any persons related within the second degree by affinity (marriage) or within the second degree by consanguinity (blood). These include spouse, parents, children, brothers, sisters, father-in-law, mother-in-law, brothers-in-law, sisters-in-law, grandparents, great-grandparents, great-grandchildren, aunts, uncles, nephews, and nieces. Relationship also includes current or prospective affiliation with a current or potential contractor or grantee or any of its employees with the intent of achieving a pecuniary or other advantage. Any such relationships, along with any past relationship with a current or potential contractor or grantee or any of its employees, must be disclosed, and I agree to do so expeditiously, because they have at least the potential to create a conflict of interest.

I acknowledge that a conflict of interest is a situation that exists in which a person is involved in various interests (e.g., financial, personal, or otherwise), at least one of which could possibly undermine the impartiality of the individual in making a decision because of the possibility of a clash between the person's self-interest and the public's interest.

I understand and agree that: (1) THECB employees are obliged to conduct themselves in a responsible and judicious manner; (2) It is a fundamental principle that State of Texas public employees occupy positions of public trust for all the people of this State; (3) This means that the people have a right to expect public employees to act fairly and honestly and to be good stewards of public funds; and (4) THECB employees must remember their ultimate



accountability to the public and perform their duties in a manner that merits and maintains the trust and confidence of the people of Texas.

I further understand that I have a continuing obligation to disclose any real or perceived conflict of interest with either a current or potential contractor or grantee doing business with the THECB. I will do so to the THECB Office of General Counsel. I also understand that I have a duty to notify the Office of General Counsel in the event that a current or potential contractor or grantee offers me any sort of economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in connection with any current or proposed contract or grant with the Texas Higher Education Coordinating Board.

By my signature below, I agree to comply with this memorandum. I understand that I may always contact the Office of General Counsel if I have questions about this memorandum or any issue involving potential conflicts of interest, ethics, or the procurement, contracts, and grants process.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

# **Appendix C: Non-Disclosure and Conflict of Interest Certification**

## **For Contract Developers and Purchasers**

### **Fiscal Year [2018] Certification**

A special responsibility is imposed on all people who are entrusted with the disposition of the state's funds. The fiduciary nature of the purchasing function, particularly when expending public funds, makes it critical that all persons involved in the process remain independent, free of obligation or suspicion, and free from the perception of impropriety. Premature or unauthorized disclosure of information regarding a proposed solicitation irreparably harms the State's interests and may constitute a violation of Section 39.02 of the Texas Penal Code, the antitrust laws of the United States and the State of Texas, and/or the Texas Public Information Act (chapter 552, Texas Government Code). Credibility and public confidence are vital throughout the purchasing and contracting system. The appearance of impropriety can be as harmful as the conduct itself. It is with this in mind that the following certification is set forth.

I, \_\_\_\_\_, the undersigned hereby certify that I understand and agree to be bound by the commitments contained herein.

I agree that I will not participate in any procurement process if I have, or if I am aware that any member of my immediate family has, an actual or potential financial interest, including employment or prospective employment, in a contract that may result from the procurement. The term "immediate family," as used in this Certification means:

One's parents, wife or husband, children, brothers, and sisters, whether residing together or not. I agree that I will not participate in any procurement process if I have, or if I am aware that any member of my immediate family has, an actual, potential, or perceived financial interest, including, but not limited to, employment or prospective employment, in a business or organization that may be a respondent (a respondent may be called a proposer, an offeror, a bidder or other like term) or a subcontractor to a respondent. If, during any procurement process, I become aware of any actual, potential, or perceived conflict, I will immediately notify my Manager and the assigned legal counsel.

### **Statewide Procurement Division**

When participating in procurement processes, I will act on my own accord and not act under duress. I will not participate in a procurement process if I am currently employed by, or if I am receiving any compensation from, or if I will be the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in return for favorable consideration of a respondent(s) during a procurement process. I will have no preconceived position on the relative merits of any of the responses, nor will I have established a personal preference or position on the worth or standing of any respondents participating in any procurement. Further, I will, to the utmost of my ability, ensure that the solicitation and the specifications provide all potential respondents an equal and fair opportunity to submit a proposal for evaluation, taking care to ensure that specifications and evaluations are not intended to favor any particular respondent, performing any and all tasks related to the solicitation in an unbiased manner, to the best of my ability, and with the best interest of the State of Texas paramount in all decisions.

I will immediately inform both my management and the legal counsel assigned to my division if, at any time during the solicitation process, any of these statements are no longer true and correct. I have been given the opportunity to review this statement prior to signing. If I have questions or concerns about this statement, I am to contact my management and/or assigned legal counsel. **I have not made any changes or deletions on this form without informing my Manager and assigned legal counsel.** Should I violate any of the conditions of this agreement, I understand that I may be subject to the agency's disciplinary policies as well as possible actions relating to any professional certifications or licenses that I may hold.

---

(Signature)

---

(Date)

## Appendix D: HB 1295 Instructions for Certain Contractors/Grantees

Pursuant to Texas Government Code Section 2252.908, which was added by H.B. 1295, 84th Leg. Session, R.S. (2015), Contractor/Grantee agrees to submit a disclosure of interested parties to the THECB at the time Contractor/Grantee submits the signed contract to the THECB.

This section applies only to a contract of a governmental entity or state agency that either:

- requires an action or vote by the governing body of the entity or agency before the contract may be signed

or

- has a value of at least \$1 million

To submit a "Certificate of Interested Parties" form:

1. Go to the [Texas Ethics Commission \(TEC\) online portal](#) to create a username and password.

The portal and instructional video are located at  
[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm).

2. Log into the TEC portal and complete the "Certificate of Interested Parties" form.
3. Print the form.
4. Sign the form and ensure the "UNSWORN DECLARATION" section is complete.\*
5. Email completed form to [contracts@thecb.state.tx.us](mailto:contracts@thecb.state.tx.us)

\*The "unsworn declaration", including the date of birth and address of the signatory, replaces the notary requirement that applied to contracts entered into before January 1, 2018.

If you have questions about how to complete the HB1295 form, please contact:

[Texas Ethics Commission](#)

(512) 463-5800

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

**Example Form 1295**

<b>CERTIFICATE OF INTERESTED PARTIES</b>		<b>FORM 1295</b>	
Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.		<b>OFFICE USE ONLY</b>	
<b>1</b> Name of business entity filing form, and the city, state and country of the business entity's place of business.		Must file online at <a href="http://www.ethics.state.tx.us/File">www.ethics.state.tx.us/File</a>	
<b>2</b> Name of governmental entity or state agency that is a party to the contract for which the form is being filed.			
<b>3</b> Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.			
4		Nature of Interest (check applicable)	
Name of Interested Party	City, State, Country (place of business)	Controlling	Intermediary
<b>5</b> Check only if there is <b>NO</b> Interested Party. <input type="checkbox"/>			
<b>6 UNSWORN DECLARATION</b> My name is _____, and my date of birth is _____. My address: _____ (street) _____ (city) _____ (state) _____ (zip code) _____ (country). I declare under penalty of perjury that the foregoing is true and correct. Executed in _____ County, State of _____, on the _____ day of _____, 20____. <span style="float: right;">(month) (year)</span>			
_____ Signature of authorized agent of contracting business entity (Declarant)			
<b>ADD ADDITIONAL PAGES AS NECESSARY</b>			

## Appendix E: Risk Assessment Analysis

Prior to Contractor/Grantee selection, please complete the Risk Assessment Analysis to assess the risk involved with this purchase or acquisition of goods and/or services. For PRQs, Purchasing staff will complete the Risk Assessment upon vendor selection.

Preliminary Information:		
1. IT Related <input type="checkbox"/> Yes <input type="checkbox"/> No	2. BMS#:	
3. Contract Administrator:		
4. Type of Contract or Procurement:	<input type="checkbox"/> Grant <input type="checkbox"/> Interagency <input type="checkbox"/> PRQ/Purchase Order <input type="checkbox"/> Memorandum Of Understanding	<input type="checkbox"/> Service Contract <input type="checkbox"/> Request for Proposals <input type="checkbox"/> Request for Applications
5. Describe the need for the goods, services, and/or deliverables. i.e., is this contract needed?		
6. Is this good, service, and/or deliverable currently provided under an existing contract? <input type="checkbox"/> Yes Current Contract #: _____ Contract End Date: _____ <input type="checkbox"/> No		
7. Is this purchase required by Statute? <input type="checkbox"/> Yes If yes, provide the statutory citation: <input type="checkbox"/> No		
8. Is Board Approval Required (See THECB Rule 1.16.)? <input type="checkbox"/> Yes <input type="checkbox"/> No		
9. Proposed Contract Start Date: _____ End Date: _____		
10. Funding Source: <input type="checkbox"/> General Revenue (State) <input type="checkbox"/> Federal <input type="checkbox"/> Private If more than one source, please provide details:		

## Conflict of Interest:

11. Each state agency employee or official who is involved in procurement or in contract management for a state agency must disclose to the agency any potential conflict of interest specified by state law (Texas Government Code §2261.252) or agency policy (Chapter E. Ethics and Standards of Conduct and Policy; see also Attachment A) 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.

Conflict of Interest Disclosure:

## Risk Assessment

12. Dollar Amount	<input type="checkbox"/> Between \$0 and \$5,000 <input type="checkbox"/> Between \$5,000.01 and \$25,000 <input type="checkbox"/> Between \$25,000.01 and \$100,000 <input type="checkbox"/> Between \$100,000.01 and \$750,000 <input type="checkbox"/> Between \$750,000.01 and \$1,000,000 <input type="checkbox"/> Over \$1,000,000
13. Contract Experience	<input type="checkbox"/> Repeat Vendor with THECB <input type="checkbox"/> Vendor has never done this type of work before <input type="checkbox"/> Vendor has contracted with the state before but not for this type of work <input type="checkbox"/> Vendor has done this type of work before but not for THECB
14. Any Current or Prior Issues Related to this Contractor/Grantee?	<input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify issue(s):
15. Will Contractor have access to confidential data? Describe access needed.	
16. Type of Monitoring by Staff:	
17. Payment (Including Reimbursement) Schedule and Rates:	

18. **Evaluation Criteria**

	1	2	3	4
Cost	Between \$0 and \$25,000*	Between \$25,000 and \$100,000	Over \$100,000, but less than or equal to \$750,000	Over \$750,000
Impact to public or agency	No impact	Minimal impact	Some impact	High impact
Access to Confidential Data	No Access	Minimal Access	Some Access	Full Access
Time Constraints	Should be completed in less than 3 months	Should be completed in 3 -6 months	Should be completed within 6 months - 1 year	Should be completed in longer than 1 year
Contractor Experience	Repeat Vendor	Vendor has done this type of work before but not with THECB	Vendor has contracted with state before but not for this type of work	Vendor has never done this type of work before

**\*Office supplies such as pencils, pens, computer paper, paper notepads, etc. are not included.**

19. **Evaluation Table**

Risk Factor	Score
Cost	
Impact to public or agency	
Access to Confidential Data	
Time Constraints	
Contractor/Grantee Experience	
<b>Total Score:</b>	

20. **Risk Assessment:**

- Very High      16-20
- High              11-15
- Moderate        6-10
- Low                0-5

21. **Recommendations based on assessment:**



## Instructions to Complete the Risk Assessment Analysis (RAA)

Below are instructions for completing the (RAA). Instruction numbers match those used in the form.

1. Indicate if ISS will be used under the scope of the procured or contracted goods, services, and/or deliverable work product. If so, contracts will be required to comply with accessibility requirements.
2. Enter BMS# assigned to these procurement.
3. Please provide the first and last name of the person responsible for initiating the procurement process. This person should be the intended contract or grant administrator responsible for monitoring the agreement(s) ultimately entered into.
4. The procurement or contract type will impact the contracting process and requirements. For assistance in making this determination, please contact the Office of General Counsel for assistance.
5. Provide a description of the goods, services, and/or deliverables that will be included in the procurement or contract. Provide a brief justification of the goods, services, and/or deliverables needed.
6. If services are currently being provided, please include current contract information.
7. If applicable, please include a reference to the authorization for the purchase (statute, rule, legislation, action memo, etc.)
8. Will this procurement require Board Approval, per Rule 1.16?
9. Proposed Contract Start and End Date (Include the intended duration of the agreement including all expected renewals or extensions.)
10. Indicate if the proposed procurement, contract, or contacts will be funded through general revenue, federal funds, or private funding.
11. Disclose any conflicts of interest anyone in the Division may have related to the procurement of this contract and list the name of the Contract Administrator.
12. Estimate a total dollar amount for the duration of the contract.
13. What is the contractor's/grantee's experience providing these goods, services, and/or deliverables to THECB and the State of Texas?
14. In reviewing the Texas Comptroller's Vendor Performance Tracking System, how has this vendor been rated?

15. Indicate if the contractor(s)/grantee(s) will have access to confidential information. If yes, please list types of data needed. (Responses to question #15, will be used to determine contracting requirements for access to confidential information and may necessitate the execution of a Data Use Agreement to be drafted and/or reviewed by the Office of General Counsel.)

16. Who will be assigned to monitor the contract/grant and determine the method of monitoring (on-site or desk review)?

On-Site: Site visits can be used to verify actual performance against scheduled or reported performance. These can ensure the contractor/grantee is dedicating sufficient resources and appropriate personnel to the contract/grant.

Desk Review: Typically these are reviews of reports submitted by the contractor/grantee to THECB.

17. Please indicate the payment and reimbursement rates to be paid to contractor/grantee.

18. The Evaluation Criteria table ranks Risk Factors on a scale of 1 -4. 1 being a low risk and 4 being a very high risk to the agency. Your selection for each Risk Factor will be used for #19.

19. Based on your selection, score each risk factor a 1, 2, 3 or 4.

20. Calculating your total score for #19, select whether this vendor falls under the Very High, High, Moderate, or Low category.

21. A recommendation will be based on the information gathered on the assessment.

## **Appendix F: Majority Approval Form**

### **19 Texas Administrative Code, Rule §1.16**

#### **Board Chair, Vice Chair, and Appropriate Committee Chair Approval Request Form**

1. Background regarding this approval request:
2. Description of the project that the contracts/grants will support:
3. Date and which committee approved the RFA/RFP:
4. Number of proposals/applications received:
5. Evaluation process used to select the recommended awardees/vendors/providers, i.e., number of evaluators and whether they were internal, external or combination of both, and the criteria used in the evaluation i.e., cost, experience, number of deliverables, etc.
6. Date of approval of recommendation by appropriate Deputy Commissioner, often based on what is referred to as a Decision Document:
7. List of recommended awardees/vendors/providers, with recommended amount for each:
8. Total amount of all the awards:
9. Total amount of available funding for this program:
10. Contact person that can provide additional information or respond to questions:
11. List the applicable Rule 1.16:

# Appendix G: Contract and Grant Close-Out Form

## THECB Contract and Grant Close-Out Form

THECB # \_\_\_\_\_ Contracted Party/Grantee \_\_\_\_\_ Program \_\_\_\_\_

Item	Completed?			Notes
	Yes	No*	NA*	
Terms of the contract/grant satisfactorily completed				
Documentation adequately shows receipt and acceptance of all contract items (e.g. reports, expenditures)				
All financial matters have been resolved				
Service contracts \$25,000 or above with a non-state entity, require a Vendor Performance form to be completed. Has a Vendor Performance form been submitted to OGC?				

I certify that the information provided on this document is accurate to the best of my knowledge and belief.

THECB Staff	Print Name	Certification Signature	Date	Notes
Program Manager				
Deputy Assistant Commissioner				
Signatures from the Assistant Commissioner and Deputy Commissioner are only required if there are any issues with performance				
*Assistant Commissioner				
*Deputy Commissioner				

## **Appendix H: Grants and Contracts with a Value Exceeding \$1 Million Form**

### **TGC Sec. 2261.254 / 19 TAC, Rule §1.16(j)**

Contract/Amendments #s: \_\_\_\_\_

Contracted Party: \_\_\_\_\_

For the purpose of 19 Texas Administrative Code, Rule §1.16 subsection (j), "contract" includes a grant, other than a grant made to a school district or a grant made for other academic purposes, under which the recipient of the grant is required to perform a specific act or service, supply a specific type of product, or both.

Rule 1.16 (j) For each contract for the purchase of goods or services that has a value exceeding \$1 million:

(1) There must be contract reporting requirements that provide information on the following:

A. Compliance with financial provisions and delivery schedules under the contract

Identify the sections of the contract or RFA: \_\_\_\_\_

B. Corrective action plans required under the contract and the status of any active corrective action plan; and

Identify the sections of the contract or RFA: \_\_\_\_\_

C. Any liquidated damages assessed or collected under the contract

Identify the sections of the contract or RFA: \_\_\_\_\_

(2) Verification is required of:

A. The accuracy of any information reported under paragraph (1) of this subsection that is based on information provided by a contractor; and

B. The delivery time of goods or services scheduled for delivery under the contract.

At the time of final payment and close out, program staff will complete a formal Grant and Close Out form, certifying all Terms of the contract/grant were satisfactorily completed, documentation adequately shows receipt and acceptance of all contract items (e.g. reports, expenditures), all financial matters have been resolved, and if a service contract, a Vendor Performance has been completed.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

## Appendix I: Vendor Performance Report

Texas Higher Education Coordinating Board

### VENDOR PERFORMANCE REPORT (VPR)

BMS#	Vendor	
Service	<input type="checkbox"/>	Brief Description:
Commodity	<input type="checkbox"/>	
THECB Division:		
Program Manager:		Phone:

Please rate the vendor's performance:

A= Excellent performance, B= Good performance, C = Satisfactory performance, D = Unsatisfactory performance, F = Extremely unsatisfactory performance

A  B  C  D  F

Did the Vendor Meet the Best Value Standard?  Yes  No

Please indicate at least one of the following Best Value Criteria:

- Purchase Price
- Goods/Services met specifications
- Installation Costs
- Life Cycle Costs
- The quality and reliability of the goods and services
- The effect of a purchase on agency productivity
- The cost of any employee training associated with a purchase
- The vendor's anticipated economic impact to the state or subdivision
- The vendor's financial resources and ability to perform
- The vendor's experience or demonstrated capability and responsibility
- The vendor's ability to provide reliable maintenance agreements and support
- Other factors relevant to determining the best value for the state in the context of a particular purchase:

Other Comments:

### **Positive Performance**

Please check all that apply:

- (301) Shipment made early upon agency/co-op member request
- (303) Product upgrade substitution suggested and accepted at no additional cost to the agency
- (305) Exceptional customer service response
- (309) Provided technical/training/set-up assistance when not required
- (310) Order or service completed satisfactorily
- (311) Voluntary Price reduction for large order
- (399) Vendor commended

## **Negative Performance**

Please check all that apply

### **Delivery:**

- (005) Late Delivery
- (006) 1st Written notice issued for late delivery
- (007) 2nd Written notice issued for late delivery
- (008) Failure to deliver
- (010) Delivery made at wrong destination

### **Customer Service:**

- (020) Failure to replace damaged goods
- (021) Slow replacement of damaged goods
- (040) Failure to promptly notify TPASS/Agency /CO=OP Member concerning manufacturer discontinuation of an item
- (042) Repair parts not available
- (087) Failure to respond to letter, phone call, or email
- (090) Poor customer service
- (091) Unauthorized substitution

### **Work Product:**

- (124) Failure of workforce to meet specifications
- (122) Misrepresentation of qualifications
- (123) Falsification of/fraudulent submittals
- (125) Incorrect allocation of work

### **Shipment:**

- (014) Failure to identify shipments per contract terms
- (016) Short/over, weight or count
- (018) Vendor shipped incorrect merchandise
- (022) Failure to pick up incorrect shipment
- (023) Improper product packaging or palletizing

### **Customer Service Continued:**

- (095) Failure to supply performance bond within required time
- (102) Service not performed within specifications
- (110) Incorrect invoices
- (114) Failure to comply with requirements of HUB Subcontracting Plan (HSP)
- (120) Failure to provide proof of insurance or maintain insurance
- (121) Failure to provide report(s)

### **Work Product Continued:**

- (052) Inspection - Receiving Agency
- (100) Unsatisfactory installation
- (129) Failure to comply with code of conduct as specified
- (024) Failure to follow palletizing instructions
- (113) Failure to comply with terms/conditions of contract (Give details below)

### **Product:**

- (038) Poor product quality and/or performance
- (083) Failure to meet specifications
- (085) Poor product quality

### **Customer Service Continued:**

- (126) Failure to respond to emergencies as required
- (127) Failure to close out project as specified
- (128) Certification not received on time
- (130) Failure to pay administrative fees

### **Miscellaneous Issues:**

- Other

## **Provide details concerning any negative performance:**

*Agencies shall report vendor performance on purchases of goods and services over \$25,000. The information gathered from this report, will be submitted electronically, through the Texas Procurement and Support Services (TPASS) Vendor Performance Web Portal. A vendor has fourteen (14) calendar days to respond to performance report.*

## Appendix J: Scope of Work

Authority: General Appropriations Act, Senate Bill 1, 85th R.S. at Article IX, Section 17.10(a)(1)

### **Overview**

The scope of work is a description of the products and services to be provided by the vendor who is awarded the contract. The scope of work should be written in a manner which provides a clear and thorough description of the products and services to be provided while at the same time fostering competition. A scope of work should be logically organized and tailored to the agency's business need.

Because agency procurement and contracting staff are not subject matter experts, the program staff is expected to be able to craft a scope of work. A scope of work should be able to explain to a layperson, or a court, what the agency is expecting the vendor to provide and how they will provide it. Further, the program staff should be able to define how the vendor will be selected and evaluated and paid upon award of the contract.

Matters customarily addressed in a scope of work include the following:

- Vendor responsibilities
  - Provide compliant deliverables by the due date
  - Furnish services using qualified personnel
  - Perform tasks at a specified location
- Constraints on the vendor
  - Limited availability of agency resources (e.g., Mon.-Fri. 8 a.m. to 1 p.m. CT access only)
  - Agency security policies (e.g., state building admittance procedures, email encryption protocols)
- Agency responsibilities
  - Permit reasonable access to agency personnel
  - Grant suitable access to agency facilities (including storage space for vendor materials and supplies), equipment, and computer systems
- Evaluation of vendor performance (e.g., standards of performance, inspection, testing, and deliverable acceptance and rejection process)
- Communication protocol (e.g., designated points of contact, routine communications, and escalation plan for problem resolution)

### **Specifications**

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.

**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. Agencies must ensure that performance specifications are reasonable and measurable.

**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. Agencies must ensure that processes are in place to properly inspect and test for compliance with the specifications.

**Descriptive Specifications- Referenced Brand or Equal-** Descriptive specifications 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." Restrictive descriptive characteristics which are essential to the intended use may be included only if all the manufacturer/brands referenced in the solicitation can qualify.

### **Deliverables and Milestones**

Deliverables and milestones are often used in projects to assess whether required tasks are being provided in accordance with an agreed timeline.

**Deliverable-** A deliverable is a measurable task or outcome (e.g., product, service). A report is one of the most common contract or provided deliverables. There are various types of agency-requested reports. For example, a status report is used by the agency to assess whether products and services are being provided by the contractor on schedule; a time sheet, however, is used by the agency to track time spent by contractor personnel in performance of the contract.

**Milestone-** A milestone is a scheduled event associated with a deliverable. Milestones are a means to gauge progress. For instance, a milestone may be the date when a specified percentage (e.g., 10 percent) of work is complete or mark the occurrence of the installation of a critical piece of equipment.

### **Professional Licenses and Certifications**

If the type of service to be procured requires a professional license or certification, the solicitation must describe the applicable licensing and certification standard. The solicitation must require the contractor to maintain the license and certification during the term of the contract, notify the agency if there is a change in status, and specify the remedies available to the agency for contractor non-compliance.

### **Established Standards**

If a standard is incorporated by reference, the scope of work must identify any industry, state or agency standards of performance that relate to each activity, task, work product or

deliverable. If an industry standard is used, the scope of work should specifically identify the industry standard by name and number.

Examples of national and international standards include American National Standards Institute (ANSI), American Society for Testing and Materials (ASTM), International Organization for Standardization (ISO), Occupational Safety and Health Organization (OSHA), and National Institute of Standards and Technology (NIST).

### **Monitoring Activities**

When developing the scope of work, the agency should consider the strategy it will utilize to monitor the quality of the contractor's performance. The methods used to monitor contractor performance should be clearly stated in the solicitation.

### **Payment and Pricing Terms**

Advanced payment- An agency may not pay for goods or services before their delivery to the agency unless the advance payment is necessary and serves a public purpose. A list of exceptions to the advance payment prohibition is located on eXpendit State Purchase Policies on the CPA website. Exceptions include, but are not limited to, lease costs, subscriptions, and maintenance contracts. An agency that makes an advance payment to a contractor is responsible for pursuing appropriate legal remedies to recover the payment if the contractor fails to provide the good or service.

Reimbursement - Payments should be structured to fairly compensate the contractor and encourage timely and complete performance of work.

Invoicing Requirements- The solicitation must specify any invoice procedures that apply to the procurement.

### **Acceptance Criteria**

It is common for information technology contracts to have language regarding testing and acceptance criteria in order to determine functionality and compatibility with the agency's IT systems. In these cases, the agency may not pay the vendor until the product or service is deemed to be accepted under this criteria.

### **Contract Term and Termination**

As a general policy, it is recommended that the maximum duration for a contract without reissuing a competitive solicitation is three to four years. This includes any renewal or extension periods.

### **Drafting Tips**

- Organize Content for Readability
- Use Short, Precise Sentences.
- Use Active Voice. Active verbs
- Use "Shall", "Must", "May", and "Should" Appropriately
- Use Terminology Consistently
- Avoid Ambiguity
- Avoid Repetition
- Proofread

## Appendix K: Post-Award Reporting Requirements

- 1. Post notice of award to the ESBD for contracts exceeding \$25,000.** A contract award is void if it is in violation of the applicable minimum required posting times or if no ESBD posting was made.

- 2. SB 20 Report S.B. 20 Report**

Authority: TGC § 2261.253.

The [THECB Contract Report](#) is provided in accordance with TEX. GOV'T CODE §2261.253, Governor Greg Abbott's January 28, 2015 directive requiring public disclosure of all no-bid contracts, and Senate Bill 20, 84th Texas Legislature, requiring state agencies to post all contracts with private vendors.

THECB Contracts \$100,000 and Above

Authority: TGC § 2054.126(d)(4).

The [THECB Contracts \\$100,000 and Above Report](#) is provided in accordance with TEX. GOV'T CODE §2054.126(d)(4).

- 3. Legislative Budget Board (LBB) Notification**

Authority: 34 TAC § 20.511, and 34 TAC § 20.218.

General Appropriations Act, H.B. 1, Article IX, Section 7.12, 84th Leg. Session, R.S. (2015) requires the reporting of all contracts and grants \$50,000 and above, including amendments. The award must be reported 30 days after execution.

Awards \$1 million and above made without an RFA require an Attestation Letter to be signed by the Commissioner detailing the award and certifying all state laws were followed.

Awards \$5 million and above require a certification from the Office of General Counsel stating all state and agency laws were followed.

Awards \$10 million and above require an LBB Attestation Letter to be signed by the Commissioner detailing the award and certifying all state laws were followed.

General Appropriations Act, Senate Bill 1, 85th R.S. at Article IX, Section 17.10(b)

Sec. 17.10 requires agencies to report on contract cost containment strategies utilized to achieve required savings.

- 4. Texas Ethics Commission**

Authority: TGC § 2252.908 (H.B. 1295).

Awards to non-state entities needing approval by either the Board or by Majority Approval are required to complete "Form 1295" directly from the Texas Ethics Commission's website. The form is completed by the Grantee and submitted to the

THECB for review. The Office of General Counsel will formally acknowledge the form by logging into the Texas Ethics Commission's portal.

The THECB will redact the following from any posted or reported contract:

1. information that is confidential under law,
2. information that the Office of Attorney General has determined can be excepted from public disclosure under exceptions to Chapter 552 of the Texas Government Code, commonly known as the Texas Public Information Act, and
3. the social security numbers of any individuals
4. information protected under Family Educational Rights and Privacy Act (FERPA)

## Appendix L: Resources

<b>Division</b>	<b>Title</b>	<b>Name</b>	<b>Extension</b>
Information Support Services	Assistant Commissioner	Zhenzhen Sun	76259
Information Support Services	Director	Hector Yanez	76258
Financial Services	Assistant Commissioner CFO	Ken Martin	76173
Financial Services	Senior Director	Karen Taylor	76192
Financial Services	Assistant Director	Brad Broaddus	76194
Financial Services	Accounts Payable	Teresa Aleman	76178
Financial Services	Accounts Payable	Brenda Allen	76432
Financial Services	Accounts Payable	Tamara Ramon	76179
Financial Services	Financial Analyst	Ruben Leal	76175
Office of General Counsel	General Counsel	Bill Franz	76143
Office of General Counsel	Assistant General Counsel	Kathy Cordova	76144
Office of General Counsel	Assistant General Counsel	April Griffin	76135
Office of General Counsel	Assistant General Counsel	Wes Ogilvie	76375
Contracts/Grants	Director	Linda Natal	76141
Contracts/Grants	Program Manager	Kammi Contreras	76438
Contracts/Grants	Program Specialist II	Channel Wesson	76289
Purchasing	Director	Theresa Lopez	76142
Purchasing	Purchaser	Michelle Tafoya-Salazar	76165

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