

TMD STATE CONTRACT MANAGEMENT GUIDE

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1. GENERAL PROVISIONS

1.1. Introduction

The Purchasing and Contracts Division (PCD) has developed the TMD State Contract Management Guide (Guide) as an overview of the procurement process for all Texas Military Department (TMD) employees who request goods and services. The information contained in this Guide outlines the purchasing and contracting processes used in procuring the products and services required to support the TMD mission and goals. This Guide contains the latest requirements of Senate Bill 20 (SB 20), 84th Legislature and is consistent with the Comptroller's Contract Management Guide. Due to the fluid nature of government procurement, rules and procedures may change between revisions of this manual.

1.2. Purpose

The purpose of this Guide is to establish consistent contracting policies and practices within TMD. It serves as a handbook for agency personnel involved in the development and management of contracts that commit the agency. Additionally, best practices are included to provide guidance for managing TMD contracts.

TMD is responsible for managing resources effectively, efficiently and in a manner that aligns with state strategic goals and societal needs. TMD is committed to maintaining a businesslike system of contracting that ensures the state, contractors, and employees receive quality services at a reasonable cost. PCD stays current on all purchasing rules, policies and regulations and should be the primary source to provide guidance on the procurement process. PCD coordinates all contracting activities closely with the agency's Contracting Attorney. If anyone has any questions about the guide or any of the procedures described herein, they may contact the Director of Purchasing and Contracts Division within the Office of the Executive Director.

This guide does not attempt to address all issues that may need to be considered in a particular circumstance. For complex or unusual contracts, please contact the Director of Purchasing and Contracts Division or TMD's Contracting Attorney.

1.3. Contract Criteria

For purposes of this Guide, a contract is defined as a legally enforceable written agreement in which a contractor provides goods or services and the agency pays for such goods and services in accordance with the established price, terms and conditions. A contract also includes a revenue generating agreement with private entities or other state entities. The essential elements necessary to form a binding contract are usually described as

- An offer

- Acceptance of an offer
- Legal purpose
- Mutuality of obligation
- Consideration
- Competent parties

A PO is considered a contract because it contains an offer; acceptance; and consideration. The quote provided by the vendor is the offer. The PO issued by the purchaser is the acceptance of the offer. The agreement to pay the vendor for performing a service or delivering a product is the consideration.

Additionally, the following requirements constitute a contract and will require that a TMD contract number be assigned by PCD:

- All two-party signature contracts
- All PO's with a service period over 2 months
- Contracts that include special terms and conditions

1.4. Purchasing and Contracts Division

The Purchasing and Contracts Division (PCD) is responsible for coordinating and managing all purchasing, contracting, property and fleet activities for TMD. TMD's program staff work with the PCD to plan purchases, develop solicitation documents, evaluate responses, conduct negotiations and determine final award. The PCD's efforts are focused on the purchasing and contracting activities that obtain the best value for the agency.

The Purchasing and Contracts Division also conducts the following activities:

- Maintains purchasing and contract files;
- Facilitates routing and approval of contracts and amendments;
- Develops procurement and contracting policies and procedures; and
- Provides technical assistance to TMD program staff.

1.5. Ethical Standards

All TMD employees who participate in the state purchasing and contracting activities must adhere to the following ethical standards.

State officials and employees are responsible for protecting the safety and welfare of public money. All state officials and employees should act in such a way as to avoid impropriety or the appearance of impropriety. Therefore, state officials and employees shall avoid acts that are improper or give the appearance of impropriety. This conduct is particularly important for state purchasing personnel and contract management personnel who are charged with the disposition of state funds.

State purchasing personnel must adhere to the highest level of professionalism when

performing 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 a clear set of guidelines and rules. Such guidelines are designed to prevent actual and potential vendors from influencing state officers or employees in discharging their official duties. Furthermore, these guidelines will help prevent state officials' and employees' independent judgment from being compromised.

The TMD State Human Resources Policies and Procedures guide, policy 4, Standards of Conduct discusses standards of conduct, rules and requirements for TMD employees. Violation of these policies may result in disciplinary action.

1.5.1. State Ethics Policy

It is the policy of the State of Texas that a state officer or state employee may not have a direct or indirect interest, including financial and other interest, 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.

1.5.2. Standards of Conduct

A state officer or employee should not:

1. 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.
2. 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.
3. 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 officers or employees official duties.
4. 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.
5. Intentionally or knowingly solicit, accept or agree to accept any benefit for having exercised the officers or employees official powers or performed the officer or employees official duties in favor of another.
6. A state agency may not use appropriated money to compensate a state employee who violates a standard of conduct.

1.6. Prohibition of Economic Benefit

In accordance with the Texas Constitution an officer or employee of the state may not, directly

or indirectly, profit by or have a pecuniary interest in preparation, printing, duplication, or sale of a publication or other printed material issued by a department or agency of the executive branch. A person who violates this section shall be dismissed from state employment.

1.7. Conflict of Interest

TMD employees are prohibited under Texas Government Code § 572.051 and § 2155.003 from having an interest in or receiving benefits from a contract or bid for a purchase of goods or services. By statute any person involved in the development or approval of a contract that has an actual or potential conflict of interest must disclose it and must be removed from involvement in the contract process. Per the State of Texas Contract Management Guide version, employees involved in preparing a solicitation should sign and submit a Non-Disclosure Statement and Conflict of Interest statement prior to beginning work on a solicitation. See Conflict of Interest Form, Appendix A. TMD employees should submit these signed documents with their requisition.

1. Each approval authority of a contract, by approving the contract, certifies that he or she:
 - a. Has no interest in, or connection with, the contract;
 - b. Has not accepted or received and will not accept or receive, from a person or entity to whom the contract has been awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation; and
 - c. Has disclosed any possible conflicts of interest to the Director of Purchasing and Contracts, TMD Contracting Attorney or the Executive Director.
2. Any TMD staff member who has knowledge of any conflict of interest that has previously not been disclosed by another staff member involved in the procurement process must report it to the Director of Purchasing and Contracts, TMD Contracting Attorney or the Executive Director.
3. Report suspected fraud, waste, or abuse of state resources to the TMD Legal Counsel at 1-512-782-5001 and to the Texas State Auditor's Office at 1-800-TX-AUDIT.
4. Texas Government Code § 2262.004 requires state agency purchasing personnel to disclose certain family relationships with business entities receiving any major contracts. Therefore, all TMD staff who participate in the solicitation, evaluation or the award of a major contract must sign this disclosure statement available at the State Auditor's Office web site: http://www.sao.state.tx.us/Resources/Forms/Nepotism_DisclosureForm.pdf

1.8. Employment of Former TMD Employees

If an employee or officer of a state agency participates on behalf of the agency in a procurement or contract negotiation with a person or company, the employee or officer may not accept employment with that person or company for two years after employment with the state agency ceased.

1.9. Prohibited Financial Interest

Perception plays a key role in maintaining the highest level of integrity, which includes avoidance of the appearance of impropriety. Employees who participate in any part of the procurement and contract processes are subject to a higher standard of ethics. Employees must adhere to the State's Ethics Policy which states:

“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.”

Under Texas Government Code § 2261.251, a state agency is prohibited from entering into a contract for the purchase of goods or services with a private vendor with whom any of the following agency employees or officials have a financial interest:

1. The Texas Adjutant General;
2. Executive Director;
3. TMD Contracting Attorney, Chief Fiscal Officer, Director of Purchasing and Contracts; or
4. Family member related to an employee or official within the second degree by affinity* or consanguinity*.
5. A state agency employee or official who has a financial interest in a person if the employee or official:
 - a. Owns or controls, directly or indirectly, an ownership interest of at least one percent in the person, including the right to share in profits, proceeds, or capital gains; or person could result in a financial benefit to the employee or official.
 - b. A financial interest prohibited by this section does not include a retirement plan, a blind trust, insurance coverage, or an ownership interest of less than one percent in a corporation.

* “Affinity”

1st degree: Spouse, mother/father-in-law, son/daughter-in-law

2nd degree: Brother/sister-in-law, spouse grandparent, spouse grandchild, grandchild's spouse or spouse of grandparent

* “Consanguinity” Individual Blood Relation:

1st Degree: Mother, father, child

2nd Degree: Brother, sister grandparents or grandchild.

The TMD Substantial Financial Interest Disclosure Form is located in Appendix B.

1.10. Disclosure of Interested Parties

Texas Government Code § 2252.908 prohibits agencies from entering into contracts with a value of \$1 million or contracts that require action by the governing body before the contract may be signed, with a business entity (contractor) unless the contractor submits a disclosure of interested parties to the agency at the time the business entity submits the signed contract. A contractor must file Form 1295 electronically with the Texas Ethics Commission using the online filing application.

Before fully executing a contract valued at \$1 million or more, TMD must obtain a copy of the Disclosure of Interested Parties Form from the contractor to be submitted with the contract for review by the Executive Director.

2. GENERAL AREAS OF RESPONSIBILITY

The Purchasing and Contracts Division is responsible for managing resources effectively, efficiently, and in a manner, that is aligned with state strategic goals. PCD is committed to maintaining a business-like system of contracting that ensures the state, and state programs receive quality goods and services at reasonable cost.

The Purchasing and Contracts Division staff will ensure that contracts are properly awarded in accordance with legal and statutory requirements and that the highest ethical standards are followed at all times. All TMD employees must ensure the integrity of TMD is maintained in all its business dealings.

Contract management concentrates on the relationship between TMD and the contractor from contract award to contract closeout, to ensure that the contractor delivers the product and/or services in conformance with the purchase order or contract terms and conditions. Effective contract management requires that a contract manager be involved throughout each stage of the contract lifecycle as referenced in CPA's Contract Management Guide (CMG). Reference CMG: <http://www.window.state.tx.us/procurement/pub/contractguide/>.

2.1. TMD Purchasing and Contracts Division Staff

The Agency has key roles to ensure that both Agency staff and the contractor comply with contract terms and conditions, specifications and deliverables within the solicitation document, as applicable. Below is a list of the key positions within the Agency that contribute to the contract management process, along with their general roles and responsibilities.

2.1.1. Agency Contract Manager

The Agency Contract Manager's primary responsibility focuses on the solicitation process and establishing contracts. Specifically, the Agency Contract Manager:

1. Manages the Contract Management Team and oversees the entire contracting process including procurement and monitoring.
2. Develops and maintains TMD contract and solicitation templates and procedures including purchasing accountability and risk analysis procedure.
3. Reviews all contracts to ensure purchasing statutes are followed and that the procurement is handled in a fair and competitive environment.
4. Approves contracts awarded using best value standard and ensures PCD has documented the best value standard utilized.
5. Oversees management of all TMD contracts, ensures customer needs are satisfied, and confirms that Contractors are fully compensated for services or supplies rendered per the contract terms and conditions.
6. Provides training and assistance to Agency program areas regarding the Agency's contract management policy and procedures and other contract-related subjects.

7. Keeps the Director of Purchasing and Contracts Division, the program area, and the Contracting Attorney informed of any technical or contractual difficulties encountered with the solicitation process (before award) and potential problem areas under the contract.
8. Ensures that a contract management plan (based upon a Risk Assessment), as applicable, is established for those contracts awarded under a competitive solicitation process.
9. Assists program areas in resolving contract issues and disputes.
10. Participates in the coordination of contract renewals, amendments, and Contract Management plan changes.
11. Maintains the Agency's contract management tracking system to ensure that all contracts and purchase orders are properly entered and tracked in the system.
12. Develops reports and queries to obtain various contract information.
13. Ensures that the appropriate program area staff is included in the specification development stage (for those contracts awarded on a formal competitive basis).
14. Coordinates with program areas for the collection of contract status information.

2.1.2. Contract Specialist or Purchaser

The Contract Specialist or Purchaser is responsible for the procurement process and the execution of the final contract. The Contract Specialist or Purchaser will coordinate the execution of any contract amendments or changes to the terms and conditions of the document. The Contract Specialist or Purchaser is also responsible for interpreting and clarifying contract specifications, terms and conditions. In addition, the Contract Specialist or Purchaser:

1. Ensures a cost estimate, needs assessment, risk analysis is conducted by end user(s) and submitted with initial procurement request.
2. Makes an initial assessment to determine if contract management is required.
3. Conducts competitive solicitation processes as required to select vendors/service providers based on best value standards.
4. Ensures that the appropriate program area staff is included in solicitation development stage.
5. Assist end user(s) in the development of specifications, requirements, performance measures and statements of work.
6. Facilitates/leads the evaluation process and performs negotiations.
7. Drafts and reviews contracts ensuring all required clauses are included.
8. Checks Comptroller's Vendor Performance Tracking System (VPTS) to identify past performance issues before awarding contract or PO.
9. Obtains signatures from all parties and TMD's Executive Director. Contract documents are routed for signature.
10. Communicates awards with the vendor and post award documents to LBB and TMD website, as required.
11. Certifies all contracts have been entered into with accordance to the rules, statutes and Contract Management Guidelines established by the Comptroller.
12. Identifies contracts that require enhanced contract monitoring or the immediate attention of the Agency Contract Manager.

13. Obtains vendor performance forms from end user(s) after contract is completed and reports them through VPTS.
14. Determines if a corrective action is necessary and works with Program Area and Agency Contract Manager to develop a plan, if required.
15. Manages the contract closeout process ensuring the contract file contains all necessary documentation, formal acceptance is documented, and documents lessons learned.

2.2. TMD Legal Counsel

TMD Legal Counsel provides guidance, direction and review to assist PCD in ensuring that the contracting and procurement activities are compliant with applicable state laws, policies and guidelines. The Legal Counsel's role in developing a contract is coordinated by the Contracting Attorney.

2.2.1. Contracting Attorney

The Contracting Attorney provides legal review, guidance, and oversight for all aspects of the Agency's contracting, and is responsible for ensuring that the Agency adheres to all statutory requirements of the contract. Additionally, the Contract Attorney:

1. Provides legal review, guidance and oversight of all aspects of the agency's contracting framework.
2. Determines contractual statutory authority.
3. Ensures all legal elements of agency contracts are met.
4. Signs agency contracts, "Approved as to form" when required.
5. Assists in resolving contract disputes.
6. Assists with developing cure notices and corrective actions letters.
7. Assists with determining when parties have breached the terms of a contract.
8. Assists in assessing liquidated damages related to breach of a contract.

2.3. Program Area Staff

Per Texas Government Code § 2261.256, each state agency must develop and comply with a purchasing accountability and a risk analysis procedure that provides for establishing clear levels of purchasing accountability and staff responsibilities related to purchasing and contract monitoring. Every purchase order and contract must have a designated Contract Monitor from the program area to assist in the contract management process. A program area must also designate a Contract Administrator for contracts that require enhanced monitoring as defined in Section 5 of this guide or for any contracts the program area or PCD deems necessary. In cases where a Contract Administrator is not required, Contract Monitors will provide information directly to PCD.

Provided below is a high-level description of key differences between the Contract Administrator and the Contract Monitor.

2.3.1. Contract Administrator

The Contract Administrator's role is to ensure the contract is satisfactorily performed and the responsibilities of both parties are properly discharged. Contract Administration involves the administrative activities associated with handling contracts. In general, the Contract Administrator:

1. Oversees management of the contract and ensures Program Area Contract Monitors are properly monitoring, documenting and submitting contract status information to the CMT.
2. Understands the provisions of the contract, communicates contract obligations to all parties involved, and maintains control over the performance.
3. Manages, approves and documents any changes to the contract in coordination with the assigned Contract Specialist and Contract Monitor.
4. Meets with the contract monitor, contractor and program area stakeholders on a regular basis to review progress, discuss problems and consider necessary changes.
5. Communicates, tracks, and escalates (as needed) work to be performed by Agency staff that impacts contract performance.

2.3.2. Contract Monitor

Contract monitors are responsible for carrying out contract management activities through closeout and are the primary point of contact for the day-to-day management of the contract. The Contract Manager:

1. Participates in developing the solicitation and drafting the statement of work, specifications and requirements.
2. Conducts and submits cost estimates, needs assessments and risk assessments on new and active contracts to the Contract Specialist.
3. Has a thorough understanding of the contract, scope, requirements and deliverables.
4. Ensures adherence to all applicable state and federal rules and regulations, TMD policies and the terms and conditions of the contracts.
5. Stays informed and involved throughout all stages of the contract lifecycle.
6. Ensures vendor understanding of the statement of work or purchase order responsibilities, performance outcomes and expectations.
7. Serves as the point of contact for disseminating instructions regarding work to the contractor.
8. Monitors the contractor's progress, performance measures and requirements to ensure contractor accountability and conformance to contract requirements.
9. Provides technical direction and approval (that is within the contract scope) to contractor in regards to performance and requirements.
10. Manages, documents and submits contract changes to PCD.
11. Inspects and approves the final product(s)/service(s) by submitting written acceptance of the deliverables.

12. Monitors expenditures, verifies accuracy of invoices and authorizes payments consistent with contract terms.
13. Identifies and resolves disputes with contractor in a timely manner, consulting with PCD and Legal Counsel as necessary.
14. Reports serious contract related issues or risks to PCD and Legal Counsel.
15. Keeps detailed and thorough documentation of communication with vendors and progress reports of contractor performance.
16. Submits status reports including performance and activity reports to assigned Contract Specialist, as required.
17. Monitors vendor performance using reports, testing requirements or other methods as stated in the solicitation and contract.
18. Manages any state property used in contract performance, e.g., computers, telephones, etc.
19. Works with assigned Contract Specialist to provide information necessary for contract close-out.

2.3.3. Contract administrators/Contract Monitors are not authorized to:

1. Instruct a vendor/contractor to start work before a contract is fully executed or a purchase order is awarded.
2. Change the scope of the contract without doing so through the formal contract amendment process or issuance of a change order.
3. Direct the vendor/contractor to perform work that is not specifically described in and funded by the contract.
4. Extend the time period of the contract without execution of an approved amendment or change order.
5. Allow the contractor to incur any additional costs over the limit set by the contract.

3. PROCUREMENT PROCESS

3.1. Procurement Overview

The lifecycle of a procurement or contract includes the request (requisition), the procurement of the goods or services (solicitation and award), the receipt of the goods or services purchased, and payment of the goods or services that happens during monitoring and the closeout of the procurement or contract. In order to ensure that a request is completed in a timely manner, advance planning needs to occur within the program areas.

Before issuing a competitive solicitation or awarding a contract, program areas must ensure that funds are approved and available for the desired project. The program area is responsible for ensuring that funds are appropriated ("set up") in the areas budget. PCD staff is responsible for ensuring that the resulting contract constitutes a legally binding agreement between the agency and the contractor.

3.2. Professional Services Contracts

In accordance with Texas Government Code § 2254, an agency may purchase professional services. These procurements are exempt from the Comptroller of Public Accounts (CPA) Statewide Procurement Division (SPD) review authority. Requests for professional services should be initiated using a requisition in CAPPs. All required documentation must be attached to the requisition.

Solicitations for the procurement of professional services are in the form of a Request for Qualifications ("RFQ"). RFQ's are drafted by the program area seeking to procure the services with the assistance of the PCD. In some instances, TMD may procure professional services using an Indefinite Delivery/Indefinite Quantity (IDIQ) contract.

TMD will select a provider of professional services and award a contract for the services on the basis of demonstrated competence and qualifications to perform the services for a fair and reasonable price. Award will not be based on competitive bids submitted for the services. The professional fees under the contract will not exceed any maximum provided by law.

If the professional or consulting service contract is anticipated to exceed \$25,000, a notice or the entire solicitation must also be posted on the Electronic State Business Daily.

3.2.1. Architectural/Engineering Services (A/E)

An architect/engineer (A/E) means a person licensed to practice architecture/engineering in Texas. The A/E is employed to provide professional architectural and/or engineering services and having overall responsibility for the design of a project. The term A/E may, unless the

context clearly indicates otherwise, mean either an A/E employed by TMD on a salary basis or an A/E in private practice retained under a contractual agreement with TMD. The term private A/E shall specifically refer to a registered architect or registered professional engineer in private practice retained by TMD under a contractual agreement.

In procuring professional services of architect, engineer or land surveying services, TMD will issue a Request for Qualifications (RFQ) to select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications and will then attempt to negotiate with that provider a contract at a fair and reasonable price.

If a satisfactory contract cannot be negotiated with the most highly qualified provider of professional services, the TMD shall:

1. formally end negotiations with that provider;
2. select the next most highly qualified provider; and
3. attempt to negotiate a contract with that provider at a fair and reasonable price.

The A/E shall submit responses to the RFQ regarding the size of staff, field of interest, experience, and capability and may supplement the answers with brochures and other material. The Purchasing and Contracts Division will maintain all data received from A/E on file for reference.

3.2.1.2. Selection of A/E

When funds are made available to TMD for a construction project, the following procedures shall be followed:

1. The Director of Purchasing and Contracts will work with the Program Area to establish a selection committee using TMD employees who are knowledgeable concerning the nature, scope, project location and who have an understanding of state or federal facility design, engineering, and/or contracting procedures. The Director of Purchasing and Contracts may, with the concurrence of the Executive Director and the Adjutant General of Texas, utilize available employees of the Adjutant General's Department or active members of the Texas National Guard to serve as members of such selection committees.
2. The selection committee will determine from the project description a list of the minimum qualifications that a prospective A/E should possess in order to provide professional services on the project.
3. The selection committee, where possible, will compile a list of at least three firms that meet or exceed the minimum qualifications for further consideration.
4. The list will be drawn from a file of A/E firms which have expressed an interest in work supervised by TMD by having responded to a RFQ or submitting adequate data on experience and capability in other formats.

5. Firms selected for consideration will be notified and given a brief description of the project, and those interested in further consideration will be scheduled for interviews with the selection committee.
6. Each firm will be rated individually by each committee member on a numeric scale. The firm receiving the highest total rating from the members of the committee will be considered the preferred firm for the project.
7. In case of identical scores, additional qualifications of the firms will be considered and rated individually until ties are resolved.
8. The Purchasing and Contracts Division and TMD Contracting Attorney will attempt to negotiate an agreement with the A/E scored the highest by the selection committee. Negotiations by the staff will be under the direction of the Director of Purchasing and Contracts. Should PCD be unable to reach an agreement with the A/E scored the highest by the selection committee, the PCD will terminate negotiations with that A/E and attempt to negotiate an agreement with the A/E scored next highest by the selection committee. Should PCD be unable to reach an agreement with this firm, a similar procedure will be followed until an agreement is reached.
9. After selection of a firm is completed, unsuccessful firms will be advised of the decision.
10. Items of consideration in making the initial selection will include, but will not be limited to, the following:
 - a. the A/E's experience with projects similar in nature to the one for which the firm is being considered;
 - b. the location of the A/E's home office relative to the project site;
 - c. compatibility between the size of the firm and the size of the project;
 - d. the quality and amount of previous work done for TMD (satisfactory experience is obviously conducive to favorable consideration, but in the interest of giving as many eligible and qualified firms as possible a fair chance to obtain TMD work, a substantial amount of prior TMD work may be the basis for rejection);
 - e. current work load and capability of proceeding with project at reasonable speed;
 - f. experience with control of budgets and schedules; and
 - g. A/E status as a Historically Underutilized Business (HUB).

3.2.1.3. Contracts with A/E Firms

The contract form for architect/engineer (A/E) services is a standard document adopted by the TMD. The contract will name the project, state the budgeted project cost, list the contract term, describe the respective responsibilities of the A/E and TMD, and establish the compensation the A/E will receive for his/her services. Compensation for A/E services is not bound by a fixed schedule except as may be otherwise established by law. The contract may be amended to reflect changes in project scope, responsibility, or compensation at any time upon written consent of both contracting parties.

3.3. Construction Services Contracts

In accordance with Texas Government Code § 437.054, the Adjutant General has all powers necessary for the acquisition, construction, rental, control, maintenance, operation, and disposition of Texas military forces facilities and real property and all associated property and equipment. In addition, the department may construct buildings on real property held by the department in fee simple or otherwise and may furnish and equip the buildings.

Requests for construction services should be initiated using a requisition in CAPPS. All required documentation must be attached to the requisition. PCD will review the requests and determine the appropriate procurement method to be used. Construction services will be procured in accordance with statutes, procurement rules and procedures.

Any Contractor interested in bidding on any TMD construction/renovation project should advise TMD in writing. An interested contractor will be sent a contractor's qualifications form to complete and return. The completed form will provide information concerning the contractor's type of organization, names of partners or officers, type of work performed, experience history, financial condition, bonding capacity, and financial and construction related references. The Contractor may update the file information as significant changes in status occur.

PCD will work with the necessary TMD staff to determine if contractors meet the minimum qualifications for a project before making bidding documents available.

3.3.1. Bidding Procedures

All TMD construction/renovation projects are to be bid competitively or bid using best value alternative delivery methods, and publicly opened in the office location designated by TMD. When projects are bid using best value alternative delivery methods, the public opening will be conducted in accordance with Texas Government Code, §2269 et seq. The Purchasing and Contracts Division shall place advertisement of bids in not less than two newspapers of general circulation far enough in advance of the bid opening date to allow bidders time to secure and examine bid documents and to prepare a bid therefrom.

Upon determination by the program staff that a project for repair, rehabilitation, or renovation is of an emergency nature necessary to prevent or remove a hazard to life or property, or to prevent undue additional costs to a state agency, PCD may issue a bid advertisement for such emergency project less than 30 days in advance of bid opening date.

Advertisements for bids shall contain pertinent information on the project, including name and location of the project; date, time and place of the bid opening and pre-bid conference; where and how bid documents may be obtained; and a listing of the requirements of the contractor for

submitting the bid. To eliminate the expense of bid preparation by a contractor not qualified to perform the work, a contractor must secure the permission of TMD to obtain bidding documents prior to receiving these documents.

All bids submitted must be accompanied by bid bond, cashier's check, or certified check in the amount indicated in the solicitation document and a Surety's Commitment to provide a Performance and Payment Bond if awarded the contract. A bid response must be submitted on the form, or a clear reproduction thereof, provided with the bid documents.

Bids should be submitted in sealed envelopes externally identified as to content, including project name and number, bid opening date, and name and address of bidder. Failure to identify sealed envelopes containing bid proposal(s) will not disqualify a bid but may increase the possibility of the bid being inadvertently misdirected and not officially received in proper time. It is the sole responsibility of bidders to deliver proposals to the designated bid opening site prior to the time the bids are scheduled to be read. Any bid received after this time will be returned unopened to the bidder. Bidding documents shall include the plans and specifications, including all addenda issued thereto. Bidders are assumed to have given full consideration to the entire content of and proposal submitted.

3.3.2. Construction Contract Award

Formal award of construction contracts will be made by PCD. Award will be based upon the best value to the state for bids and proposals received from a qualified bidder.

All advertised conditions, which bear upon the quality of a bid proposal, will be considered when making an award. TMD reserves the right to accept or reject all or any part of any bid, waive minor technicalities, waive any and all formalities of bidding and award the bid to best serve the interests of the State. TMD is not bound to accept the lowest bid or any proposal for this work or any part and has the right to request new bids for the whole or any parts.

Award shall become effective upon the date that TMD formally accepts a bidder's response or any part and notice thereof is communicated to the successful bidder. A contract binding on both parties will exist from that date forward. Formal notice of award to the successful bidder shall be in writing and shall state the basis of award.

The furnishing of any required bonds and insurance by the contractor is not prerequisite to award of contract by constitutes a part of the work and must be provided before any work on the project site is initiated and before the staff can issue a Notice to Proceed. Contract documents will consist of the following:

1. the contractor's proposal;
2. the owner-contractor agreement;
3. the conditions of the contract (general, supplementary general, and specific conditions);

4. the drawings and specifications;
5. the notice and description of the award;
6. the bidding documents;
7. the advertisement and Invitation for Bids and Instructions to Bidders;
8. all addenda to the plans and specifications issued prior to bid opening; and
9. all change orders issued after execution of the contract.

3.4. Consulting Contracts

In accordance with Texas Government Code § 2254, an agency may purchase consulting services. These procurements are exempt from CPA SPD review authority. Major consulting services contracts are defined as consulting services contracts for which it is reasonably foreseeable that the value of the contract will exceed \$15,000. An agency may contract with a private consultant only if:

1. there is a substantial need for the service; and
2. the agency cannot adequately perform the service with its own personnel or through another agency

In selecting a consultant, TMD shall base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and if other considerations are equal, give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

Before entering into a major consulting services contract, TMD must first notify the Legislative Budget Board and the governor's Budget and Planning Office to demonstrate that TMD has complied with Texas Government Code § 2254.026 and § 2254.027 and will obtain a finding of fact from the governor's office that the services are necessary.

3.5. Interagency Agreements

In accordance with Texas Government Code § 771, the Interagency Cooperation Act, an agency may agree or contract with another agency for the provision of necessary and authorized services and resources. The agreement must specify:

1. the kind and amount of services or resources to be provided;
2. the basis for computing reimbursable costs; and
3. the maximum cost during the period of the agreement or contract.

In accordance with Texas Education Code § 51.955, a state agency that expends appropriated funds may not contract enter into a research contract with an institution of higher education if the contract contains a provision precluding public disclosure of any final data generated or produced in the course of executing the contract unless the agency reasonably determines that

the premature disclosure of such data would adversely affect public safety, the protection of intellectual property rights of the institution of higher education, publication rights in professional scientific publications, or valuable confidential information of the institution of higher education or a third party.

Requests for Interagency Agreements should be initiated using a requisition in CAPPS. All required documentation must be attached to the requisition. The Purchasing and Contracts Division will finalize details of the agreement and will route it for review and signature. Once fully signed, copies of the signed contract will be distributed to all parties involved.

3.6. Interlocal Agreements

In accordance with Texas Government Code § 791, the Interlocal Cooperation Act, a state agency may contract with a local government to perform governmental functions and services. An Interlocal contract may be to study the feasibility of the performance of a governmental function or service by an Interlocal contract; or provide a governmental function or service that each party to the contract is authorized to perform individually.

An Interlocal contract must:

1. be authorized by the governing body of each party to the contract;
2. state the purpose, terms, rights and duties of the contracting parties; and
3. specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

An Interlocal contract payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract.

Requests for Interlocal Agreements should be initiated using a requisition in CAPPS. All required documentation must be attached to the requisition. The Purchasing and Contracts Division will finalize details of the agreement and will route it for review and signature. Once fully signed, copies of the signed contract will be distributed to all parties involved.

3.7. Leases

In accordance with Texas Government Code § 437.054, the Adjutant General has all powers necessary for the acquisition, construction, rental, control, maintenance, operation, and disposition of Texas military forces facilities and real property and all associated property and equipment. Requests for leases should be initiated using a requisition in CAPPS. All required documentation must be attached to the requisition including location needs and any sole source/proprietary justification forms. PCD will review the requests and determine the appropriate procurement method to be used. Leases will be procured in accordance with statutes, procurement rules and procedures.

3.8. Other Services Contracts

TMD procures various services including environmental services, janitorial, lawn maintenance and other services. Requests for services should be initiated using a requisition in CAPPs. All required documentation must be attached to the requisition. PCD will review the requests and determine the appropriate procurement method to be used. Services will be procured in accordance with statutes, procurement rules and procedures.

3.9. DIR Purchases

The following are purchasing rules for the procurement of information technology related products and services using Department of Information Resources (DIR) contracts:

1. Commodities – Commodities are defined to include hardware, software and services. Thresholds are:
 - a. \$50,000 or less may be awarded directly to DIR vendor;
 - b. \$50,000 to \$1 million - at least three (3) DIR vendors must be solicited for pricing, if available;
 - c. \$1 million to \$5 million - at least six (6) DIR vendors must be solicited for pricing, if available; and
 - d. \$5 million or greater – Agencies are required to conduct an open market solicitation process and may not use a DIR contract.
2. Additional requirements for deliverables-based information technology services (DBITS) and managed services for information technology, telecommunications and cloud services contracts greater than \$50,000, must submit statements of work (SOW) to the DIR for review
 - a. Prior to submission to vendor(s); and
 - b. For DIR approval and signature prior to final execution.
3. Purchases who go through the Data Center Services program are governed by a separate statutory authority and do not have these restrictions. Purchases that are required to go through the Data Center Services program still must follow the current process for the Data Center program.

3.10. Best Value Standard

TMD shall purchase goods and services that provide the best value for the state. In determining the best value, the purchase price and whether the goods or services meet specifications are the most important considerations. When best value is a consideration, other relevant factors should be considered such as:

1. Installation costs;
2. Life cycle costs;

3. Quality and reliability of goods and services;
4. Delivery terms;
5. Past vendor performance;
6. Vendor's financial resources and ability to perform;
7. Vendor's experience, capability or responsibility;
8. Cost of training associated with a purchase; and
9. Other factors relevant to determining the best value in the context of a particular purchase.

Information contained in the Comptroller's Vendor Performance Tracking System shall be used as best value evaluation criteria.

SPD may bar vendors who have known repeated unfavorable performance from participating in state contracting.

For a purchase made through competitive bidding, the agency must specify in the solicitation the factors other than price that will be used in determining which response offers the best value for the agency. Verification of use of best value standards will be made as stated in Section 3.13 of this guide.

3.11. Posting Requirements

Contracts and purchase orders must be posted to meet the requirements detailed below.

1. Agency public internet website:
 - a. For contracts and purchase orders exceeding \$15,000, post:
 - i. Statutory authority under which contract was awarded;
 - ii. Solicitations;
 - iii. Responses to solicitations, including "no-bids"; and
 - iv. Signed contract or purchase order.
 - b. Emergency purchases regardless of dollar value, sole proprietary purchases regardless of dollar value, interagency contracts regardless of cost.
 - c. For contracts less than \$15,000, posting is optional.
2. Legislature Budget Board – requires agencies to post contracts and related solicitation documents to the LBB website for:
 - a. Major information systems exceeding \$100,000;
 - b. Construction projects exceeding \$14,000;
 - c. Professional or consulting services exceeding \$14,000;
 - d. Contracts over \$50,000;
 - e. Emergency contracts over \$1 million or other contracts over \$1 million if not competitively procured;
 - f. Contracts over \$10 million;
 - g. Contracts that have been amended, modified, renewed or extended which increases the contract's value to \$50,000 or more; and

- h. Contracts for services that have been amended to increase the original contract value by 10% or more.
3. Electronic State Business Daily (ESBD)
 - a. Solicitations over \$25,000;
 - b. Proprietary purchases over \$25,000;
 - c. Purchase awards over \$25,000; and
 - d. Solicitations \$25,000 or less (optional)
4. Texas Register
 - a. Consulting services over \$15,000.

3.12. Contract Routing Process

PCD staff will review all requests for contracts and route contracts for internal TMD review and approval. Contracts are routed to the following individuals within the Office of the Executive Director (OED) for review and approval:

1. Director of Purchasing and Contracts
2. Chief Financial Officer
3. Contracting Attorney
4. Executive Director

Once reviewed and approved by OED, PCD staff will forward a copy of the contract to the contractor for signature. Upon return of the executed contract from the contractor, PCD will submit the contract to the Executive Director for final execution. After final execution, PCD will issue a PO and distribute copies of the contract to the contractor and the program area.

3.13. Additional Approvals

In accordance with Texas Government Code, Section 2155.0755, the following additional approvals are required:

The Agency Contract Manager or the Director of Purchasing and Contracts shall:

1. Approve each contract awarded using the best value standard;
2. Ensure best value standards are properly documented; and
3. Acknowledge in writing TMD has complied with the agency's and Comptroller's Contract Management Guide.

3.13.1. Contracts Over \$1 million

For Contracts exceeding \$1 million, TMD shall develop and implement contract reporting requirements that provide information on:

- Compliance with financial provisions and delivery schedules;
- Corrective action plans required under the Contract and status of these plans;
- Any liquidated damages assessed or collected under the Contract.

TMD shall verify the accuracy of any information reported by a contractor and the delivery time of goods and services.

3.13.2. Contracts Over \$5 million

For Contracts exceeding \$5 million, Agency Contract Manager and the Purchasing and Contracts Division Director shall;

- a. Verify the solicitation, purchasing method and contractor selection comply with state law and agency policy; and
- b. Submit in writing to the Executive Director information on any potential issue that may arise in the procurement process.

All solicitations expected to result in contracts valued at \$5 million and greater must be submitted to the Contract Advisory Team for review before the solicitation pursuant to Tex. Govt. Code, Section 2262.101.

3.14. Execution Authority

1. NO ONE except the Adjutant General, the Executive Director or an authorized designee has the authority to bind the agency to a contract or commit agency funds, except in regards to Item No. 5 below.
2. Purchasers and Contract Specialists within the agency's Purchasing and Contracts Division are only agency staff authorized to commit agency funds or to accept an offer on behalf of the agency through the purchase order procurement process.
3. No other agency staff unless specifically designated, has the authority to accept offers, bind or commit agency funds.
4. If a contract is signed by anyone other than the Adjutant General or the Executive Director or an authorized designee, it may be considered void and unenforceable.
5. Contracts will generally have a statement that says only the authorized representative of each party may sign the contract.
6. Purchasers may sign a purchase order provided a requisition was properly submitted and approved in TMD's requisition system, giving authority to the purchaser to commit the funds. <http://comptroller.texas.gov/procurement/pub/manual/1-1.pdf>
7. All purchasers must be trained and certified to the level of the dollar amount of the purchase order they are signing.

4. CONTRACT MANAGEMENT

4.1. Contract Management Process

TMD administers and manages contracts that present significant areas of business and service delivery risk to Texas. Effective contract management, a key element of quality contracting, ensures TMD customers get needed services and the state gets what it pays for. Contract Management refers to the entire contracting process from planning through contract administration. This includes tracking tasks: monitoring vendor performance, invoice payment processing, negotiating amendments, assessing penalties, and updating contract data.

At TMD, the Purchasing and Contracts Division staff, Legal and the Program Area and work together during the planning phase for a solicitation and/or contract development. Once the contract has been awarded, it is the responsibility of the Program Area to administer the contract. Each purchase order and contract will have a designated Contract Monitor from the requesting Program Area to assist in the contract management process.

4.2. Planning

The first step in Contract Management is planning. Planning is crucial to the successful outcome of any procurement. Effective planning should include consideration of the risk, value, term, scope, complexity and/or strategic nature of the contract. Program areas should consult with both the Purchasing and Contracts Division and Legal Counsel in the initial planning stages as this will avoid issues later.

Planning a contract is a process that begins with understanding the major steps involved. The initiation of a procurement is the responsibility of the requesting program or end user. The table below provides a brief description of the steps in the contract planning process, the major activities involved and the associated forms, its relationship to the requisition, and the staff responsible in each step.

Major Activities	Associated Forms	Staff Responsible
<ul style="list-style-type: none"> Determine the need Identify source of funds and estimated cost Prepare a Statement of Work Schedule resources 	<ul style="list-style-type: none"> CAPPS Requisition SOW/Scope/Specifications 	Program Area
<ul style="list-style-type: none"> Complete a Risk Assessment 	<ul style="list-style-type: none"> Risk Assessment 	Program Area
<ul style="list-style-type: none"> Participate in a Kickoff Meeting 	<ul style="list-style-type: none"> Kickoff Meeting Agenda Non-disclosure forms 	Program Area Procurement Staff
<ul style="list-style-type: none"> Develop Project Requirements, Deliverables and Performance Measures Draft Solicitation 	<ul style="list-style-type: none"> Project Requirements Solicitation Checklist 	Program Area Procurement Staff

*The Risk Assessment Tool (Appendix C) is completed in the Planning stage but should be reviewed yearly to add language if needed.

While ensuring the maximum use of competitive sourcing, contracts for similar services should be consolidated into the fewest vendors possible to reduce duplication of effort.

4.2.1. Needs Assessment

The purpose of the needs assessment is to ensure the program area plans for the correct contract objective. A clear definition provided by program area staff of the contract objectives and purpose will assist in developing the SOW, preparing the solicitation, negotiating and drafting contracting documents, and verifying the performance of the contractor. This assessment should incorporate the initial needs assessment conducted by program area when the determination was made to contract out for the service.

If the contract purpose is to implement, change or support TMD's statutory duties, it is useful for program area to identify applicable laws, rules and business processes that will be impacted by the contract. If business processes are not documented, it is often useful to document the business processes. After the legal requirements and business processes are clearly identified TMD can assess how these duties or processes will be changed or impacted. The program area should document any concerns or risks identified by the assessment so that the changes and risks can be managed or mitigated in the contract documents.

The success of many contracts is dependent upon how well business requirements are documented, communicated and understood by the contractor. Do not assume that the contractor understands the business of TMD. Detailed business processes are frequently incorporated into the SOW in a contract, so program area staff play a key role in planning and developing the SOW and during contract administration (including acceptance of deliverables and contract close-out).

4.2.2. Cost Estimates

During the planning stage of the procurement, program area staff will develop an estimated cost of goods/services. The cost estimate will assist in determining which type of procurement method to use. Even if limited by budget restraints, an estimated cost will provide an idea of the range and duration of services that TMD can include in the SOW.

Program area staff should work with TMD employees who have knowledge in the subject area to assist with the cost estimate. However, if unable to find anyone with knowledge in the subject area, program area staff may contact contractors to obtain pricing information. If contractors are contacted, be sure to advise them that you are obtaining price estimates for information purposes only and that the estimate is not a formal solicitation. In obtaining price

estimates from potential contractors, great care should be taken to avoid sharing information that would provide any contractor with a competitive advantage.

4.2.3. Procurement Lead Times

The table below is provided to assist TMD staff in the planning process.

TASK	SUGGESTED LEAD TIME FROM CONTRACT START DATE	EXAMPLE
Begin preparation of solicitation – Program Area works with PACD to develop SOW and contract language	120 to 180 days	March 1
Submit final solicitation with required approvals to the PACD	90 to 150 days	April 1
Advertise and Issue Solicitation	75 to 120 days	May 1
Receipt of Responses	90 days	June 1
Evaluation of Responses	30 days	July 1
Conduct Risk Assessment on the Recommended vendor	1 to 10 days	July 10
Contract Negotiation (<i>if allowed</i>) and Formation <i>Note: The time required for contract negotiation and formation may vary widely.</i>	30 to 60 days	Aug. 10
Contract Execution – all signatures are obtained	15 days	Aug. 25
Performance Begins (generally the effective date)	0 days	Sept. 1

To complete the procurement, contract formation and execution in a timely manner, program area’s must plan as far ahead as possible for their business needs, contact PACD staff to assist in early planning with respect to an anticipated procurement, and be committed to timely completion of contract tasks.

The lead times above are shown as ranges and are suggestions only. Actual lead times will vary depending on the specific requirements of TMD and the complexity of the procurement. Less complex procurements may be accomplished in less time, while more complex procurements may require more time. Contact PACD to ascertain more specific lead time requirements.

4.3. Procurement

The next step in the process is to determine the procurement method. The following table is provided to assist in selecting the appropriate procurement method.

Procurement Method	Use When	Advantages	Disadvantages
Competitive Bids (Invitation for Bid)	<p>Lots of competition exists.</p> <p>The product or service is available from multiple sources.</p> <p>Requirements are clearly defined.</p> <p>Negotiations are not necessary and price is the determining factor.</p>	<p>Award process is simpler.</p> <p>Award is made to the lowest responsive, responsible bidder providing the best value to the state.</p>	<p>Defined specifications may be difficult to develop.</p> <p>Does not encourage innovative solutions.</p>
Competitive Proposals (Request for Proposal or Request for Offer)	<p>When factors other than price are evaluated.</p> <p>When negotiations are desired.</p> <p>When objective criteria are not clearly defined.</p> <p>Vendor is expected to provide innovative ideas.</p>	<p>Allows factors other than price to be considered.</p> <p>Allows for customized proposals suggesting different approaches to the same business need.</p> <p>Allows for negotiations in order to obtain the best value for the state.</p>	<p>Lead times for procurement are much greater.</p> <p>Evaluations are more complex and subjective.</p>
Request for Information	<p>There is insufficient information to write specifications for any procurement method.</p> <p>Used to gather information in order to prepare a complete solicitation.</p>	<p>Provides information to prepare a complete bid or proposal document.</p> <p>Allows the business community to have input into the agency's solicitation document based on current industry practices and market factors.</p> <p>Informs agency of any potential problem early in the procurement.</p>	

Request for Qualifications	Selection is made solely on the skills and qualifications of the contractor. Price is not a factor until a vendor is selected.	Emphasizes the competency of the proposed contractors.	Contractor is selected before price is negotiated.
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Once the procurement method has been selected, the solicitation document is prepared. The solicitation is developed by the Purchasing and Contracts Division from the statement of work. The lifecycle of the Purchasing & Contracts Process can be found in Appendix D.

4.3.1. Statement of Work (SOW)

The statement of work is the most important element as it forms the basic framework for the resulting contract. The SOW:

1. Describes in detail what is required of the contractor including the project and contractor requirements to satisfactorily perform the work. This involves, including language in the contract, clearly defined performance measures and/or deliverables that describe the conditions under which the service provider will be paid;
2. Must allow for free and open competition to the maximum extent reasonably possible;
3. Is used to minimize risk to TMD by describing in detail what parties are required to do. Including clearly defined performance measure and deliverables in the contract will minimize risk to TMD; and
4. Must include:
 - a. Specifications describing the physical or functional characteristics of supplies or services to be purchased and may include a description of any requirements for inspecting, testing, or preparing supplies or services for delivery;
 - b. Detailed list of services to be performed, actions to be taken by the parties and/or products to be delivered;
 - c. How performance will be measured. Performance measures set the level of quality required and expected;
 - d. Deliverables that must be met in order to receive payments;
 - e. Dates when deliverables are required;
 - f. Consequences for not performing or meeting deliverables;
 - g. How compensation will be provided for successfully performing;
 - h. Rules for receiving payment;
 - i. Request for vendors identify potential cost savings.

PCD Staff will work with the Program Area to determine the initial contract term and any renewal periods. A reasonable contract term compliant with applicable law must be established prior to solicitation and must be included in the solicitation document. All contracts must have a specific ending date. Indefinite contracts are prohibited.

4.4. Calculating Contract Value

Contract value refers to the total cost or monetary value of the contract, including all potential contract extensions or renewals whether automatic or by operation of additional documentation. The program area will include in the contract value calculation the value for the original term and all renewal terms (whether automatic or by operation of additional documentation). Estimates should be based on best business practices, state fiscal standards, Applicable Laws and Rules.

4.5. Contractor Selection Risk Assessment

Prior to recommendation for award and contract execution a risk assessment will be performed on the recommended contractor. The purpose of the assessment is to measure the risk of fraud waste and abuse for the specific contractor.

4.6. Contract Development

A written contract must be executed before a vendor can provide goods or services. The purpose of any written contract to serve as a reference document that records the terms of an agreement to prevent misunderstanding and conflict as to those terms at a later date, and creates a legal, binding and enforceable obligation.

All contracts, with the exception of leases, are initiated by the Purchasing and Contracts Division. Leases are initiated by the Planning and Programming Commission of the CFMO Office.

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

1. Solicitation document (Invitation for Bid (IFB), Request for Offer (RFO), Request for Proposal (RFP), Request for Qualifications (RFQ), etc.);
2. Addenda to the solicitation;
3. Proposal or quote submitted by vendor;
4. Negotiated and agreed to changes;
5. Best and final offer;
6. Any document included in the contract by reference;
7. Signed contract;
8. Amendments, change orders or modifications to the contract.

If a contract is involved that will require signatures the Purchasing and Contracts Division will finalize details of the purchase and will route the contract for review and signature by the Director of Purchasing and Contracts Division, Chief Financial Officer, Contracting Attorney

and Executive Director. Once fully signed, copies of the signed contract will be distributed to all parties involved. An authorized employee's signature on a contract will reflect a representation that the contract has been properly submitted, reviewed and approved in accordance with all TMD policies and procedures, and that the contract is in the best interest of the state.

Program Areas should never take a contract directly to Executive Director or the Contracting Attorney. The process starts and ends with the Purchasing and Contracts Division.

4.7. Contract Administration

Once a contract has been agreed to and signed by the contractor and the TMD Executive Director or designated representative, the management of the contract is assigned to a Contract Monitor. The Contract Monitor is an individual within the program area responsible for the day-to-day oversight of the contract and may be a Project Manager or the Real Property Manager for leases.

Throughout the term of the contract, the Contract Monitor coordinates with the contractor in order to ensure compliance with the contract elements and monitors performance. Monitoring and control are essential to ensure the contractor uses and manages its resources in a manner that will provide TMD exactly what it has contracted for in terms of quality, timeliness, and economy of cost. The Contract Monitor also works with the Purchasing and Contracts Division to initiate modifications to an existing contract, and to initiate procedures to close-out contracts once the contract elements have been completed.

Roles and Responsibilities	
Purchasing and Contracts Division	Program Area(s)
Facilitate and provide technical assistance on state procurement laws and options for contracting for TMD	Understand their contract(s)
Work with Program Areas to create procurement documents such as solicitations and contracts	Manage Contractors and keep written documentation of communication
Create and maintain official procurement files (hard copy and/or CAPPs automated)	Manage the daily operational aspects of the contract
Process contract amendments and change requests	Ensure insurance and bonding requirements are being met
Review and approve work orders and task order documentation	Receive goods and processes receiving reports in CAPPs
Request Program Areas to provide vendor performance documentation	Review and approve invoices in CAPPs while verifying costs are within approved budget(s) and have sufficient documentation to support the invoice
Enter vendor performance evaluations into the CPA portal	Monitor funding
Partner with Legal to review and approve insurance and bonding requirements	Monitor contract budget
Publish and report contract information to the public and to state oversight agencies	Manage financial obligation of vendor
Provide training on procurement requirements and contract management functions to TMD	Set performance measures to ensure progress of completion for the deliverables
Partner with Legal to determine risk factors during the solicitation process	Request contract and budgetary amendments before performance of the work

Roles and Responsibilities	
Purchasing and Contracts Division	Program Area(s)
Provide guidance during the solicitation process	Request amendments to HUB Subcontracting Plan (HSP) when necessary
	Initiate and manage work orders and task orders
	Complete contractor/vendor performance evaluations and submit them to Purchasing and Contracts Division
	Notify Purchasing and Contracts Division of performance issues and monitors corrective action plans
	Perform risk based routine and enhanced monitoring
	Periodically perform risk assessments throughout the life of the contract

4.8. Contract Amendments

An amendment is an addition, deletion or change to contract and can only be accomplished by mutual agreement of all the parties. Once a contract is amended, the portions of the contract affected by the amendment are superseded and can no longer be given any force or effect. If competitive, the resulting contract must be consistent with what was asked for during the competition, usually contained in the solicitation document. Not being consistent can violate the competitive process requirements. If a change is needed to a contract, the change has to be within the scope, or range, of what was provided in the solicitation. Any contract amendments are required to be within the scope of the original contract and the competitive process underlying the original contract.

Contract Monitors may not alter the scope or cost of the original contract to meet unanticipated post- award changes at any point during the life of the contract. Needed contract modifications however can be identified by the contractor, program staff or the Contract Monitor. Changes to contracts require a documented request and must require prior written approval. Verbal authorization is not permitted under any circumstances.

The procurement and contract documents serve as the primary guide in establishing whether or not the modification can be allowed. Depending the level and amount of the requested change the program may be required to update the contract risk register and the contract must contain provisions that allow changes to services, deliverables or other aspects of the contract agreement.

A written contract amendment, signed by the TMD signature authority and the contractor, is required if there is a change to:

- The contract terms and conditions
- The services or the statement of work, including performance measures
- Dollar amounts
- Contract period that is outside of that stated in the contract

A contract amendment must be routed and approved according to TMD procedures before

execution of the work by the contractor. The purpose of routing the amendment is to ensure appropriate review of the transaction, by all parties to confirm the source of funding, and to review the terms and conditions.

The Contract Monitor is responsible for:

- Assembling the contract amendment and required documentation
- Submitting the required documentation to the Purchasing and Contracts Division

If the initial major contract (defined as expected value of \$10M or more) changes substantially, the agency is required to submit the original solicitation document with the proposed changes to the CPA Contract Advisory Team (CAT). Substantial changes are defined as a change that caused the estimated value for the original term of the contract, not including renewal periods, to increase by 25% or there are significant revisions or additions to the specifications, statement of work (SOW), deliverables, performance measures, or the payment methodology that was not identified in the original solicitation.

4.9. Contract Change Orders

Changes and additions to the work specified in a contract may be necessary. If changes significantly alter the character of the work or add items, a change order should be executed. A change order is a written order, signed per TMD procedures, directing a contractor to make a change that the contract authorizes. Change orders are generally used for construction contracts for additions, deletions or revisions to the contract work or for changes that require adjustments in the contract amount and/or time.

If competitive, the resulting contract must be consistent with what was asked for during the competition, usually contained in the solicitation document. Not being consistent can violate the competitive process requirements. If a change is needed to a contract, the change has to be within the scope, or range, of what was provided in the solicitation. Any contract amendments are required to be within the scope of the original contract and the competitive process underlying the original contract.

A written contract amendment, signed by the TMD signature authority and the contractor, is required if there is a change to:

- The contract terms and conditions
- The services or the statement of work, including performance measures
- Dollar amounts
- Contract period that is outside of that stated in the contract

A contract amendment must be routed and approved according to TMD procedures before execution of the work by the contractor. The purpose of routing the amendment is to ensure appropriate review of the transaction, by all parties to confirm the source of funding, and to review the terms and conditions.

The Contract Monitor is responsible for:

- Assembling the contract amendment and required documentation
- Submitting the required documentation to the Purchasing and Contracts Division

4.10. Contract Renewals

Contracts generally have a definite termination date and expire at the end of their term. Usually, contracts contain options for renewal which allow you to extend or renew the term of the contract before its expiration date. Options for renewal should be clearly specified and must be by mutual agreement of the parties. Contracts should contain clauses that will allow for renewals if it is determined that the contract should be renewed rather than rebid. The renewal process should occur prior to the end date.

Renewals should not be automatic because it is less work than developing a new solicitation/contract. By completing the contract renewal form a program area can decide if it is in the best interest of the agency to continue performance under the contract when the market conditions may have changed or the needs of the program area may have changed. An option for renewal includes additional forms be submitted with the request. The contract must also include a provision to renew and specify the terms and conditions of the contract during the renewal period.

Before renewing or extending a contract that has been in effect for more than 3 fiscal years as of August 31, 2017, and which has a value less than \$10 million or 10% of the agency's All Funds budget for the 18-19 biennium, TMD must seek competitive bids. This requirement does not apply to the following types of contracts:

- a. TxSmartBuy, term, and cooperative contracts administered by the Comptroller or Department of Information Resources;
- b. grants;
- c. interagency contracts;
- d. contracts that relate to a construction project as defined by §2166.001, Government Code;
- e. contracts that relate to highway construction or highway engineering;
- f. contracts that relate to developing information resource applications or information resource technologies; and
- g. contracts not required by law to be competitively bid.

4.11. Vendor Performance Reporting

The Contract Monitor is responsible for providing vendor performance information to the Purchasing and Contracts Division who will then will submit the report to the Comptroller of Public Accounts (CPA). Vendor Performance Reporting is **REQUIRED** at various intervals during performance. The frequency of a Vendor Performance report is based on the activity occurring with the contract. They must be submitted:

- At least once a year

- Upon completion of any major deliverable
- Upon any negative performance by the vendor at any time during the term of the contract
- At the close-out of the PO or contract.

Vendor reports must:

- Be based on solid, well documented contract management and monitoring activities
- Include associated information to substantiate the performance rating
- Include the following information for reports of unsatisfactory performance:
 - Terminations for cause
 - Debarments
 - Final reports by the Office of Inspector General and Office of the Attorney General resulting from investigations of alleged fraud

4.12. Contract Issues

The Contract Monitor is the first person to know about and resolve issues. Contract Monitors should keep a log of all issues that arise during the life of the contract and document the timeline of the issue along with the resolution. To prevent disputes, Contract Monitors will:

- Maintain regular communication with contractor
- Respond promptly to all contractor inquiries regarding contract concerns
- Work with the Purchasing and Contracts Division to develop a strategy to resolve issues and communicate to contractors
- Thoroughly document all issues and communications pertaining to contract issues
- Notify the Purchasing and Contracts Division promptly of any issues
- Use Corrective Action Plans to address issues that are impacting performance of the contract

The Contract Monitor must ensure that the Purchasing and Contracts Division, leadership, program staff, executive management and other applicable staff, are notified immediately when they become aware of a serious contract issue or risk. Although contractor non-compliance issues are often identified during monitoring, the Contract Monitor must maintain reasonable awareness of a contractor's performance throughout the duration of the contract. Routine contract activities can also alert staff to non-compliance issues as part of a regular evaluation.

Examples of Significant Issues for Escalation Include (but not limited to):

- Loss or misuse of agency funds related to the contractor's failure to cooperate or carelessness (depending upon amount and repetition)
- Risk that the contract will exceed budget limitations or timeframes
- Repeated non-compliance

- Publicized or political concerns
- Patterns of complaints or high-profile complaint
- Appearance of impropriety or potential conflict of interest
- Suspicion of fraud, waste or abuse
- Any other serious issue or risk, - when in doubt, call it out

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

4.13. Contract Close-Out

The contract close-out process is used to verify that both parties to the contract have fulfilled their contractual obligations and there are no responsibilities remaining. In addition, contract close-out is the time to assess the success of the contract and determine if there are any lessons learned for future contracting. A contract is completed when all goods or services have been received and accepted; all reports have been delivered and accepted; all administrative actions have been accomplished; all agency furnished equipment and material have been returned; and final payment has been made to the contractor.

To initiate the close-out process, the Contract Monitor should first determine if the contractor has satisfactorily performed all required contractual obligations. It is vital that administrative actions that are contractually required; i.e. property, confidential data destroyed or sanitized, possession of all works developed under the contract, and all invoices are reviewed prior to approving the final invoice. It is responsibility of the program area to ensure that the work under a contract has been completed and the contract is ready for closeout prior to final payment.

At the conclusion of a contract, a contract closeout meeting may be required to discuss applicable information pertaining to the contractor's performance. The Agency Contract Manager will review the contract with the Contract Monitor, review the vendor performance questionnaires submitted throughout the life of the contract and determine if there are any outstanding issues with the contract. The Contract Monitor will prepare a closeout memo, send a copy to the Purchasing and Contracts Division and file all documents.

4.14. Records Retention

The following is the required retention policy for all purchase order and contract related documentation:

1. For contracts and purchase orders entered into after 9/1/2015, a state agency shall retain in its records each contract and related documents it enters into for a period of seven years after contract expires, terminates or is completed, after all issues have been resolved. Along with the contract, all solicitation documents shall also be retained.

2. For contracts and purchase orders entered into before 9/1/2015, the records retention period is four years

5. ENHANCED MONITORING GUIDANCE

[Texas Government Code § 2261.253](#) requires each state agency by rule to establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit to the officer who governs the agency. The Director of Purchasing and Contracts Division will immediately notify the Adjutant General through the Executive Director of any serious issue or risk that is identified with respect to a contract monitored under this section.

5.1. Contracts More Than \$1 Million

Under [Texas Government Code § 2261.254](#), for all contracts over \$1 million, the Agency shall develop and implement contract reporting requirements that provide information on:

- Compliance with financial provisions and delivery schedules under the contract;
- Corrective action plans required under the contract and the status of any active correction plans; and
- Any liquidated damages assessed or collected under the contract.

TMD shall verify the accuracy of any information reported by a contractor and the delivery time of goods and services. All contracts over \$1 million must be approved by the Executive Director or designee. Prior to entering into contracts over \$1 million, the business entity must submit a Disclosure of Interested Parties Form, as stated in Section 1.8 of this guide.

Per General Appropriations Act, Article IX, Section 7.12 requirements, TMD must provide notice to the Legislative Budget Board (LBB) prior to the date on which the first payment will be made but no later than 30 calendar days after award on any contract that is over \$1 million that was awarded outside of the competitive process or within 48 hours of making payment if the contract was awarded as an emergency contract. This notice includes a certification, in the form prescribed by the LBB, from the Executive Director that the purchase complied with the contract management guide, procurement manual, and applicable statutes. The notice must include a copy of the contract and solicitations.

5.2. Contracts More Than \$5 Million

Under Texas Government Code § 2261.255, for all contracts over \$5 million, the Director of Purchasing and Contracts Division must:

- Verify in writing that the solicitation and purchasing methods and contractor selection process comply with state law and Agency policy; and
- Submit information to the Agency's governing body on any potential issue that may arise in the solicitation, purchasing, or contractor selection process.

5.3. Contracts More Than \$10 Million

Under Texas Government Code § 2262.101, all solicitations expected to result in contracts valued at \$10 million and greater must be submitted to the Comptroller’s Contract Advisory Team (CAT) for review before the solicitation is posted. The contract value is determined without regard to source of funds or payment mechanism. State agencies must comply with CAT recommendations or provide a written explanation for not complying with the recommendation.

Per General Appropriations Act, Article IX, Section 7.12 requirements, TMD must provide notice to the Legislative Budget Board (LBB) prior to the date on which the first payment will be made but no later than 30 calendar days after award on any contract that is over \$10 million. This notice includes a certification, in the form prescribed by the LBB, from the Executive Director that the purchase complied with the contract management guide, procurement manual, and applicable statutes. The notice must include a copy of the contract and solicitations.

6. RISK MANAGEMENT

Under Texas Government Code 2261.256, each state agency must develop and comply with a purchasing accountability and risk analysis procedure that provides for:

- Assessing the risk of fraud, abuse or waste in the contractor selection process, contract provisions and payment and reimbursement rates;
- Identifying contracts that require enhanced contract monitoring or immediate attention of the contract management staff;
- Establishing clear levels of purchasing accountability and staff responsibilities related to purchasing.

Risks must be reviewed and reevaluated by the Contract Monitor on a continual basis until the contract has been fully performed and final payment has been rendered. In addition to using the risk assessment tool, Contract Monitor's should keep a log of all of their Contracts and PO's. This log should identify all risks to their contract, the mitigation plan or strategy for addressing the risk, and the outcome. This log should be available for review upon request by the Purchasing and Contracts Division.

A risk assessment is performed in two stages of the procurement process. The first risk assessment should be performed during the planning stages. At this stage, the program should assess the risk of requested services and/or commodities. The second risk assessment should be performed with the specific contractor prior to award. Additional assessments will be performed through at the life on the contract at minimum on an annual basis and if a significant change in the contract is requested.

Under Section 2261.253, TEX GOV'T Code, and other provisions of Senate Bill 20 (84th Legislative Session) and General Appropriations Act Art IX, Rider 7.12 adopted by the 84th Legislature, Regular Session, the Director of Purchasing and Contracts Division has responsibilities relative to serious issues or risks on certain contracts. The Director of Purchasing and Contracts Division shall notify the agency's Executive Director of any serious issue or risk on certain contracts. The Director of Purchasing and Contracts Division will also provide a monthly report to the Executive Director that identifies risks or issues with these items.

6.1. Risk Assessment Tool

An effective risk assessment tool will help focus monitoring resources on contractors with the highest risk of noncompliance. Performing risk assessments help to determine the level of oversight and participation required for the contract. The Purchasing and Contracts Division has developed a Risk Assessment Tool (Appendix C) to assess contracts with the greatest risk exposure that could cause unexpected negative effects. The tool outlines the method of Risk

Assessment used to evaluate the contract. This tool calculates risk score, provides a solution, and ranks the contracts.

6.1.1. Risk Attributes

The following attributes are used in the Risk Assessment tool to determine the impact and probability scores at the contract level. A detailed description of the risk attributes can be found in the Risk Assessment tool.

- Term of Contract
- Complexity
- Fraud, Waste, & Abuse
- Contract Amount
- Payment Methodology
- Vendor Capacity to Perform
- Performance History

6.1.2. Risk Assessment Overview

The Risk Assessment process provides the Contract Management Team the essential means to strengthen planning, evaluate procurements, and establish the need for engagement frequency in given areas of the organization. The process entails identification of risk attributes and the assignment of impact and probability by the program area. The final result of this process produces a Risk Assessment Score (RAS) and a Qualitative Value for each contract area. The RAS and Qualitative Value of each project area provide the Contract Management team with simple indicators to rank relative contract priorities.

6.1.3. Risk Analysis Overview

The analysis of risk has several key characteristics that are common for most contracts. These are identified below:

- Risk Assessment utilizes the program area's understanding of the vendor's operations and environment.
- Risk Assessment considers both financial and non-financial risk.
- Risk Assessment must be sensitive to the inverse relationship between risk and control. The weaker the internal control system, the greater the risk.
- Risk Assessment is a dynamic process. Analysis must remain sensitive to change and must incorporate risk contingencies.
- Risk Assessment is pivotal in choosing areas to evaluate.
- Risk Assessment is an important factor in planning the degree and frequency of vendor audits and follow-up measures.
- Risk Assessment is a process that is crucial to the development of effective contract monitoring and quality control and assurance measures.

6.1.4. The Risk Assessment Process

Risk analysis and the calculation of the RAS involves several steps. RAS is the result of the impact and probability scores for a particular risk attribute. The steps describing the RAS are listed below:

- **Step 1 – Selecting the Team**

Form a Risk Evaluation team consisting of program area staff to evaluate the contracts.

- **Step 2 – Identifying Risk Evaluation Attributes**

The Risk Evaluation team must identify the key elements of risk within their operational process. The impact and probability of each attribute will be assessed by the Risk Evaluation team.

- **Step 3 – Evaluating the Significance of the Attribute Impact**

The attributes are assessed for the significance of each attribute's impact to risk exposure. The Risk Evaluation team assigns each attribute a descriptive value from 0 to 5, with the highest value indicating the most severe impact. Zero (0) is a score reserved for attributes that are not applicable to the contract. A score of 0 will not impact the overall score.

Impact	The severity of a negative outcome for a risk attribute	
5	Severe	Unable to function, security breach, inability to fulfill obligations
4	Significant	Significant impact on fulfilling obligations
3	Moderate	Fulfilling obligations partially achievable
2	Minor	Low impact on fulfilling obligations
1	Minimal	Insignificant impact on fulfilling obligations
0	Not Applicable	Risk attribute is not applicable to the contract

- **Step 4 – Evaluating the Probability of the Risk Exposure**

The next step entails evaluating the probability of risk exposure per each risk attribute. The Risk Evaluation team assigns each risk attribute a descriptive value from 0 to 5, with the highest number indicating the greatest probability of risk exposure. Zero (0) is a score reserved for risk attributes that are not applicable to the contract. A score of 0 will not impact the overall score.

Probability	The likelihood that a negative outcome for a risk attribute will occur	
5	Almost Certain	Will undoubtedly happen
4	Likely	Will probably happen
3	Even Chance	An equal likelihood of occurrence or not
2	Unlikely	Not expected to happen
1	Remote	Very unlikely this will ever happen
0	Not Applicable	Risk attribute is not applicable to the contract

- **Step 5 – Determining the Inherent Risk Score**

An initial assessment of risk is performed using a qualitative value technique. The inherent risk score is calculated by multiplying the attribute impact by the probability of the risk exposure to produce a numeric score.

- **Step 6 – Applying a Risk Mitigation Approach**

Risk mitigation can assist in lowering the final RAS for each contract. Applying a mitigating factor reduces adverse effects related to the risk attribute. There are four types of risk mitigation strategies including:

- Risk Acceptance – Risk probability is so small that the effort to mitigate is not worthwhile.
- Risk Avoidance – Eliminate the risk all together.
- Risk Limitation – Take actions to minimize the severity or probability of the risk.
- Risk Transference – Transfer risk responsibility to someone else (i.e. insurance, bonding).

- **Step 7 – Calculating the Risk Assessment Score (RAS)**

The RAS is calculated by the Risk Tool to produce a residual risk score. Each risk attribute receives a RAS after factoring in the mitigation approach to the inherent risk score. The RAS for each risk attribute is totaled to arrive at an average RAS for the contract. The RAS average is assigned a corresponding Qualitative Value (high, medium or low) with high representing the greatest risk exposure.

- **Step 8 – Assigning Qualitative Risk Value**

Probability	Impact				
	Minimal (1)	Minor (2)	Moderate (3)	Significant (4)	Severe (5)
Almost Certain (5)	5	10	15	20	25
Likely (4)	4	8	12	16	20
Even Chance (3)	3	6	9	12	15
Unlikely (2)	2	4	6	8	10
Remote (1)	1	2	3	4	5

APPENDICES

APPENDIX A

Texas Military Department Code of Ethics & Conflict of Interest

A special responsibility is imposed on everyone who is entrusted with the disposition of state funds. As purchasing personnel, we are required to perform with the highest integrity while constantly being asked to manage state contracts more effectively, secure better economic results, speed up the procurement process and be innovative in accomplishing our mission. State officials and state employees are entrusted with the safety and welfare of the citizenry. In return for their confidence in state government, citizens expect that state employees' private interests will not conflict with public business.

The nature of purchasing functions makes it critical that all participants in the process remain independent, free of obligation or suspicion, and completely fair and impartial. Maintaining the integrity and credibility of a purchasing program requires a clear set of guidelines, rules and responsibilities to govern the behavior of purchasing employees. Credibility and public confidence are vital throughout the purchasing and contracting system.

This section sets out the ethical standards of conduct required of SPD employees, vendors, potential vendors, and employees of other state agencies when acting under authority delegated from the SPD. Every person employed by a public purchasing agency should abide by a code of ethics. In accordance with state law and SPD Rule (34 Texas Administrative Code §20.41), agencies, when purchasing under SPD-delegated authority, shall adhere to the following ethical standards:

A state employee may not:

- 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.
- solicit or accept anything of value from an actual or potential vendor;
- be employed by, or agree to work for, a vendor or potential vendor;
- knowingly disclose confidential information for personal gain; or
- be employed at a pay classification of A17 or B 9, Step 1 or higher if he or she is the spouse of an officer, manager, or paid consultant of a Texas trade association of businesses that contracts with the state. (See your Human Resources representative for verification of the equivalent pay classification which became effective 09/01/97).

A former employee:

A former employee who had a pay classification of A17 or B 9, Step 1 (see above note) or higher who ceases service or employment with a state agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter (a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge or other proceeding) in which the former employee participated during the period of employment, either through personal involvement or because the case or proceeding was a matter within the employee's official responsibility (see Texas Government Code § 572.054 Representation by Former Officer or Employee of Regulatory Agency Restricted; Criminal Offense).

A vendor or potential vendor may not:

Offer, give, or agree to give a state employee anything of value.

If a violation occurs:

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.

Purchasing professionals have the right under law to have any ethics question reviewed and decided by the Texas Ethics Commission. If you wish to learn whether a specific action violates the ethics rules, please contact the Texas Ethics Commission, 201 E. 14th Street, 10th Floor, Austin, Texas 78701 or call them at (512) 463- 5800 or (800) 325-8506 outside of Austin.

The ethics provisions of 1 Texas Administrative Code §45 apply to employees, vendors and potential vendors acting under delegated authority. In consultation with the Comptroller's office, the Ethics Commission is required, under Section 1.07 of House Bill 3560, to adopt new rules to implement the specific ethics provisions of that legislation as they relate to SPD.

Likewise, under Section 3.10 of House Bill 3560, the Ethics Commission is required to adopt new rules to implement the specific ethics provisions of that legislation as they relate to the SPD.

Conflict of Interest:

All purchasing staff of a state agency who have been delegated the authority to purchase must also sign a Conflict of Interest statement each year. One copy of the signed statement should be given to the employee, with a copy to the employee's supervisor and other copies distributed according to individual agency requirements. The following is the Conflict of Interest statement used by SPD.

Confirmation of Receipt

Employee Signature

Date

CONFLICT OF INTEREST TEXAS GOVERNMENT CODE §2155.003

Under Texas Government Code §2155.003, a Texas Military Department (TMD) employee may not have an interest in or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual which outlines the ethical standards required of public purchasers, employees, and vendors who interact with public purchasers in the conduct of state business. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of SPD or purchasers from other state agencies.

I certify that I have read and understand the above statement.

Employee Signature

Date

Printed Name

cc: Personnel File Supervisor's File

APPENDIX B

Texas Military Department

Step 1: Read the Guidelines on the following page for completing parts I and II of the Substantial Financial Interest Disclosure Form

Step 2: For each statement below, initial in the appropriate box to describe your situation.

SUBSTANTIAL FINANCIAL INTEREST DISCLOSURE FORM

Employee's Name <i>(Print last, first, middle initial)</i>	
Position Title	
Agency Texas Military Department	
Work Phone:	Reporting Status: D Annual D Update to previous disclosure
E-mail address:	

Part I

	Initial Here for YES	Initial Here for NO
I have reportable assets or sources of income for myself, my spouse or my dependent children.		

Step 3: If you initialed "Yes" you must describe the reportable interests that you have in part II of this form.

Step 4: Sign and date the form at the bottom of this page.

Step 5: Submit the completed form to TMD State Legal Department.

PART II

Reportable Information: Assets and Income

Specific stock, bond, sector mutual fund, type/location of real estate, where more than one percent interest is owned etc. (Indicate the full name of each specific asset or investment. You may add the ticker symbol to the full name.) Name of Employer or Business; Source of Fees, Commissions, or Honoraria Include brief description where control over operations exists.) Other required disclosure (Pursuant to attached disclosure)		You may distinguish any entry for a family member by preceding it with S for Spouse, DC for dependent child, or J for jointly held.
1		
2		
3		
4		
Signature		Date

APPENDIX B (CONTINUED)

GUIDELINES FOR COMPLETING THE SUBSTANTIAL FINANCIAL INTEREST DISCLOSURE FORM

This disclosure statement is required to ensure compliance with the amendments to Section 2261, Government Code included in S.B. 20, 84th legislature. The changes are intended to increase transparency and accountability in agency contracting and procurement. The new statute directs that state agencies are prohibited from contracting for the purpose of goods or services with a private vendor or business entity where the following agency employees or officials have a financial interest. If you are or plan to be directly involved in procurement or contract management, are a member of the agency governing body, governing official, executive director, state contracting attorney, chief procurement officer, or procurement director you must provide information about yourself and your immediate family on the enclosed form. The form does not ask you to disclose any financial interests which are clearly unrelated to potential Texas Military Department or Texas Military Forces contracting and procurement.

If you, your spouse and dependent children or other family member by marriage within the second degree.* If any, either: do not have a substantial interest in any business entity; or have one or more investment accounts but do not exercise any discretion over the sale or purchase of investments in the account (e.g., 401(k), etc.), then initial “NO” in Part I of this form. A financial interest prohibited by this section does not include a retirement plan, blind trust, insurance coverage, or an ownership interest of less than 1 percent. If you do have information which requires disclosure, be as complete as possible in your disclosure. The information you provide will be treated as confidential.

“Business entity” means any entity recognized by law through which business for profit is conducted, including a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, or trust. (Tex. Gov’t. Code § 572.002(2)).

- (1) has controlling interest in the business entity;
- (2) owns or controls more than 1 percent of the voting interest in the business entity;
- (3) owns more than \$25,000 of the fair market value of the business entity;
- (4) has a direct or indirect participating interest by shares, stock or otherwise, regardless of whether voting rights are included, in or more than 10 percent of the profits, proceeds, or capital gains of the business entity;
- (5) is a member of the board of directors or other governing board of the business entity;
- (6) serves as an elected officer of the business entity; or
- (7) is an employee of the business entity.

Who Must File? Texas Adjutant General
Executive Director
Chief Fiscal Officer
Chief Procurement Director or Procurement Director
Legal Counsel

* “Consanguinity” Individual Blood

Relation: 1st Degree: Mother, father,
child

2nd Degree: Brother, sister grandparents or grandchild.

“Affinity”

1st degree: Spouse, mother/father-in-law, son/daughter-in-law

2nd degree: Brother/sister-in-law, spouse grandparent, spouse grandchild, grandchild’s spouse or spouse of grandparent

If you do not have any reportable outside positions, then initial “NO” in Part II of this form.

APPENDIX B (CONTINUED)

Why must I file? The individuals listed above must file the Substantial Financial Interest Disclosure Form to avoid involvement in a real or apparent conflict of interest regarding the purchase of goods and services. In addition, individuals involved in state procurement or contract management must disclose potential conflicts of interest through process outlined by the state comptroller. Procurement officials are expressly prohibited from awarding contracts with firms where any member of an agency's governing body, executive director, state contracting attorney, procurement official or respective family member, has a substantial 1 percent financial interest in the firm. The purpose of this report is to assist the Office of the Adjutant General in avoiding employee conflicts between official duties and private financial interest or affiliations. The information you provide will only be used for legitimate purposes and will not be disclosed to any requesting person unless authorized by law. Please ensure that the information you provide is complete and accurate.

When Must I File? The report is due within 30 days of your assuming a position designated for filing, unless your agency request the report earlier or your agency grants you a filing extension. You must update this disclosure on an annual bases and promptly submit a new or amended disclosure if any of the information changes.

New Entrants Reporting Period: Report the required information for the 12 months preceding your filing this form.

Annual Filers: Report the required information for the preceding state fiscal year (Sept. 1 – Aug. 31).

What if I Have Questions: If you have any question about how to complete this form, please contact the State Legal Counsel Office

cc: Personnel File
Supervisor's File

APPENDIX C

Risk Assessment Tool

#	Risk Attribute	Risk Description	Impact	Probability	Inherent Risk Score	Mitigation Approach	Residual Risk Assessment Score
1	Term of Contract	Length of contract term discourages exiting relationship if performance is not satisfactory.					
2	Complexity	Contract outcomes are dependent on many factors that may be difficult to plan, difficult to perform, difficult to detect, difficult to monitor, or difficult to complete.					
3	Fraud, Waste & Abuse	The contract involves inherently risky aspects such as currency, sensitive information, easily liquidated assets, difficult to monitor activities, or difficult to monitor authority.					
4	Contract Amount	Contracts involving large contract amounts generally place more funds at risk than small contracts.					
5	Payment Methodology	Fixed price vs. cost plus % of savings.					
6	Vendor Capacity to Perform	A Vendor may lack sufficient resources, experience, or understanding to fulfill the requirements of the contract.					
7	Performance History	Past indicators of successful contract performance.					
					Average		Average

APPENDIX D

Purchasing & Contracts Process

Activity	Description	Responsibility	Typical Duration
Identify need	Follow internal process for requesting goods or services	Program Area	Based on Program Area requirements
Identify risks	Complete Risk Assessment based on	Program Area	2 days
Submit requisition	Enter a new requisition attaching relevant documents and submit for approval	Program Area	5 – 7 days
Obtain OED approval	Budget, Accounts Payable and Executive Director review and approve requisition	OED	3 days
Assess requisition	Requisition is assigned for processing by CAPPS The purchaser/contract specialist determines the procurement method, ensures all required information is received and creates a new contract file	Procurement	5 – 7 days
<i>For procurements exceeding \$25,000 the following steps may apply</i>			
Kick-off meeting	All project stakeholders meet to discuss the timeline, roles and responsibilities	PACD	1 day
Develop solicitation	A draft solicitation document is created and reviewed by stakeholders	PACD	2 – 30 days
External review	The solicitation is submitted for external review, as necessary a. Contract Advisory Team Review and Delegation (CATRAD) b. Contract Advisory Team (CAT) c. Quality Assurance Team (QAT) d. Department of Information Resources (DIR) e. State Auditor’s Office (SAO) f. Office of the Attorney General (OAG) g. Other	PACD, Oversight agencies	14 + days
Evaluate feedback	Feedback from external entities is reviewed and responses are provided. PACD will work with the Program Area or Legal Counsel as required	PACD	2 – 5 days
Finalize solicitation	Update the solicitation document with recommended changes and submit the revised solicitation document to the Program Area for final review	PACD	1 – 3 days
Solicit	Post solicitations on the ESBD, as required, and submit to vendors using the CMBL	PACD	14 + days
Evaluation plan	Prior to solicitation due date, request list of evaluators from Program Area and develop evaluation plan	PACD	1 day
Evaluate	PACD reviews all solicitation responses for responsiveness to ensure basic requirements were met including HUB Subcontracting Plans (HSP)	PACD, Program Area Evaluation Team	1 – 15 days

Activity	Description	Responsibility	Typical Duration
	PACD facilitates the evaluation process with the Evaluation Team The Evaluation Team scores the responses according to the evaluation criteria included in the solicitation		
Select finalist(s)	The Evaluation Team makes a recommendation for selection based on the evaluation scores and best value determination (or pricing)	Evaluation Team	2 days
Negotiate	PACD facilitates negotiations between the vendor and TMD including the Evaluation Team and Legal Counsel, as needed. The vendor will submit a Best and Final Offer (BAFO)	PACD, Program Area Evaluation Team, Legal Counsel	3 – 30 days
Recommend award	The Evaluation Team will recommend award and obtain Program Area approvals The Evaluation Team will notify PACD of the final selection	Program Area Evaluation Team	1 – 5 days
Notify vendor	PACD will draft the Notice of Selection and will obtain required documents from vendor including Certificates of Insurance, Form 1295, Bonds, Milestones and Third-Party Inspector, as needed	PACD	2 – 30 days
Draft award documents	PACD will draft Contract and/or Purchase Order once required vendor documents are received	PACD	2 – 4 days
Route documents	PACD will route the award documents to the vendor for review and signature PACD will obtain OED review and final signature	PACD	1 – 30 days
Publish award	PACD will send approved Contract and/or Purchase Order to the Vendor and to the Program Area and include contract monitoring guidance PACD will ensure the contract is submitted to the LBB PACD will publish an award notice on the ESBD	PACD	3 days
Performance begins	Program Area will acquire goods/services per Contract and/or Purchase Order	PACD	Ongoing
Monitor Performance	Program Area monitors deliverables, performance measures and vendor performance Program Area reports and manages purchasing documents Program Area initiates requests for change orders Program Area notifies PACD of significant events, issues or risks	Program Area	Ongoing
Perform Agency tasks	Program Area ensures timely completion of TMD action items and deliverables	Program Area	Ongoing
Receive goods/services	Program Area will enter receipts when goods/services are received	Program Area	1 – 3 days
Supply invoices	Vendor will issue invoices to TMD Accounts Payable and the Program Area	Vendor	Ongoing

Activity	Description	Responsibility	Typical Duration
Issue payment	Accounts Payable will issue payment for goods/services that have been received	Accounts Payable	Within 30 calendar days of receipt of goods/services or invoice
Initiate closeout process	Program Area notifies PACD that contract closeout is being initiated	Program Area	1 day
Evaluate progress	Program Area validates that all deliverables have been met and notified PACD PACD files or obtains documentation from Program Area	Program Area, PACD	3 – 5 days
Final acceptance	Program Area approves final acceptance and submits outstanding receipts Program Area submits Vendor Performance Report to PACD	Program Area	1 day
Issue final payment	Accounts Payable issues final payment	Accounts Payable	Within 30 calendar days of receipt of final deliverable
Document file	PACD documents file with any required documentation and works with the Program Area to obtain documents <ul style="list-style-type: none"> a. Lessons Learned b. Vendor Performance c. Expenditure Report 	PACD	1 – 5 days
Closeout	PACD closes the file and lists it as complete	PACD	1 day