TMD
STATE CONTRACT MANAGEMENT GUIDE

Purchasing and Contracts Section

TEXAS MILITARY DEPARTMENT (TMD)

INTRODUCTION

August 2016

The information contained in this Contract Management Guide of the Texas Military Department (TMD) outlines the purchasing and contracting processes used in procuring the products and services required to support the TMD mission and goals. This Guide along with TMD's State Contracting Officer's Representative Handbook contain the latest requirements of Senate Bill 20 (SB 20), 84th Legislature. The Purchasing and Contracting Section (PCS) stay current on all purchasing rules, policies and regulations and should be your primary source to provide guidance on the procurement process. PCS coordinates all contracting activities closely with the State Contracting Attorney. If anyone has any questions about the manual or any of the procedures described here in, may contact the Director of Procurement within the Office of the Executive Director.

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WHAT IS A CONTRACT?

Things to consider:

1. A contract is a legally enforceable promise or set of promises.
2. May be written or verbal.
3. Not every promise is legally enforceable.
4. Some verbal promises may be legally enforceable.
5. Written contracts include all documents agreed to by parties and named in a contract.
6. Section 7 7.04(a), Article IX, of the General Appropriations Act (GAA), specifies that the term contract for the purpose of that Section, includes a contract or grant or agreement, including an interagency contract or agreement or an interlocal grant agreement, purchase order (PO) or other written expression of terms of agreement or an amendment, modification, renewal or extension of such for the purchase or sale of goods or services that was entered into or paid for , either in whole or part, by a state agency. It does not include a contract that has been reported to the Legislative Budget Board under Sections 2054.008, 2166, 2551, 2254.006 or 2254.0301 Government Code or a contract with a value of less than or equal to $50,000.
7. **TMD does not enter into verbal contracts. All contracts must be in writing and signed by the Executive Director or his designee or consist of a PO issued and signed by a certified or trained purchaser detailing the terms of the purchase agreement.**

ELEMENTS OF A CONTRACT

To qualify as a contract, the written agreement must contain:

1. A set of promises based on parties voluntarily agreeing to keep those promises;
2. Must be between parties who have a capacity to contract. You cannot contract with minors or individuals who lack the capacity to understand the terms of the contract;
3. The objectives and performance set forth in the agreement must be legal. A contract cannot require the parties to do something that is against the law.

All contracts are made up of:

a. Offer
b. Acceptance
c. Consideration

Consult with Purchasing and Contracting or TMD Legal Counsel before making any commitment on behalf of the agency.

CONTRACT DOCUMENTS

A contract may consist of several documents:

1. Solicitation, sometimes referred to as a request for proposal (RFP), request for offer (RFO), invitation for bid (IFB), request for qualifications (RFQ) etc. The solicitation may be formal or informal;
2. Addenda to the solicitation;
3. Proposal or quote submitted by service provider;
4. Negotiated and agreed to changes to original scope;
5. Best and final offer;
6. Any document included in the contract by reference;
7. Signed contract.

Note: **A purchase order** is a contract because it contains the three elements of a contract. With every purchase, you have 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.

CRITICAL FIRST STEP – OFFER

1. TMD will solicit an offer, quote or proposal from a potential vendor.

2. Vendor will provide a quote or submit a proposal to make an offer, giving power to TMD to bind both parties to a contract by accepting the offer.

3. Simply stated: "The vendor says here is my offer (quote), if you agree to these terms, we have a deal." You say "I accept." A binding contract is formed.

4. **Be careful accepting a vendor's offer (quote).** You may be binding the agency to a contract. Only trained and certified purchasers, Executive Director or designee can accept an offer to bind the agency to a contract.

5. **Always qualify your acceptance.** By saying: "Let me check with my purchasing and contracting department before I accept," or, "do not perform any work or ship the item until you receive a purchase order from TMD's purchasing office."

ACCEPTANCE

1. At TMD a signed contract or purchase order is the written acceptance of any offer.

2. At TMD the only person that can accept an offer, binding the agency by signing a contract, is the Adjutant General or the Executive Director, unless the authority is delegated in writing to another member of the staff.

3. In addition, a trained and certified purchaser may accept an offer by issuing and signing a purchase order. Prior approval by appropriate management level must be obtained on a requisition before purchaser can sign and issue a PO.

BASIC TYPES OF CONTRACTS

1. **Purchase Order –** Standard terms and conditions are included in every PO. The PO must clearly state what is being offered and accepted. It must clearly state how and for what the vendor will be made possible.

2. **Two party contracts –** Most contracts involve two parties, though some may involve multiple parties. A written document detailing the actions of the parties involved is prepared and signed by the parties involved. Each contract may have both standard and specific terms and conditions related to the services being performed or products to be delivered.

3. **Interagency Agreement (IAC) -** An agreement between two or more state agencies with a written description of services and relevant terms and conditions required by statute (Chapter 771, Government Code).

4. **Interlocal Agreement (ILC) - Same** as IAC but between a state agency and local governments such as cities and counties (Chapter 791, Government Code).

5. **Memorandum of Understanding (MOU) -** A simplified agreement outlining what two parties agree to do for one another, generally at no cost to either party.

6. Other variations of the above types of contracts may include: Memorandum of Agreement (MOA), Letter of Intent (LOI) and Letter of Agreement (LOA).

LAWS GOVERNING CONTRACTS

1. Federal and State Law
2. Article 2 of the Uniform Commercial Code
3. Common Law
4. Texas Government and Administrative Codes
5. New Legislation Senate Bill 20

OTHER GOVERNING RULES

1. State of Texas Procurement Manual and Procedures
   http://comptroller.texas.gov/procurement/pub/manual/ProcurementManual.pdf
2. State of Texas Contract Management Guide
   http://comptroller.texas.gov/procurement/pub/contractguide/
3. Comptroller Contract Advisory Team, CAT
   http://www.comptroller.texas.gov/procurement/res/CAT/catrad/
4. Department of Information Resources (DIR) Rule
   http://dir.texas.gov/
5. TMD Contract Management Guide

   www.txmf.us
6. Texas Procurement and Support Services (TPASS)
   http://comptroller.texas.gov/procurement/prog/cmo/
7. Uniform Grants Management Standards Guide
   http://www.texasagriculture.gov/Portals/0/Publications/ER/HDM_UGMS.pdf
8. Governing Statutes
   http://window.state.tx.us/procurement/procedures.html

CONTRACTING PROCESS DEFINITION

1. The contracting process is a sequence of defined, repeatable activities that begin before contract award and continue through delivery, payment and closeout;

2. It is the process of identifying needs, analyzing risk, planning, creating scopes of work, soliciting offers, evaluating offers, awarding contracts, administering and managing performance for agreements to buy goods and/or perform services from another party; and

3. It is the art and science of managing a contractual agreement both from a legal stand point and performance—based perspective.

4. The PCS is the section within TMD that is responsible for coordinating and managing all procurement and contracting activities for the agency. The PCS section is responsible for facilitating the procurement and contracting needs for all TMD locations and for all types of purchases PCS efforts are focused on the purchasing and contracting activities that obtain the best value for the agency.

BEST VALUE STANDARD

1. In determining the best value, the purchase price and whether the goods or services meet specification are the most important considerations. When best value is a consideration, other factors should be considered such as:

    a. Installation costs;
    b. Life cycle costs;
    c. Quality and reliability of goods and services;
    d. Delivery terms;
    e. Past vendor performance;
    f. Vendor's financial resources and ability to perform;
    g. Vendor's experience, capability or responsibility;
    h. Cost of training associated with a purchase; and
    i. Other factors relevant to determining the best value in the context of a particular purchase.

2. For a purchase made through competitive bidding, the agency must specify in the request for proposal (RFP) the factors other than price that will be used in determining which proposal offers the best value for the agency.

CONFLICT OF INTEREST AND ETHICS

1. 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. Conflict of Interest Form, Appendix B

2. 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 Chief Procurement Director, TMD Legal Counsel or Executive Director

3. 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 Chief Procurement Director, State Contracting Attorney or Executive Director.

4. 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.

5. Section 2252.905 Government Code requires vendors to file form 1295 with the Texas Ethics Commission.

6. Section 2262.004 Government Code 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

CONFLICT OF INTEREST PROHIBITIONS

1. Under Tex. Govt. Code, Section 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:

    a. The Texas Adjutant General;
    b. Executive Director;
    c. TMD Legal Counsel, Chief Fiscal Officer, Chief Procurement Director of the agency; or
    d. Family member related to an employee or official within the second degree by affinity* or consanguinity*.
    e. A state agency employee or official who has a financial interest in a person if the employee or official:
        i. 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.
        ii. 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.

2. Conflict of Interest Form is located in Appendix B

* "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.

STATEMENT OF WORK

The statement of work is the most important element of the contract. The SOW:

1. May be referred to as scope or work, description or services;

2. Describes key elements of the contract or purchase. It must describe in detail the written offer, terms under which the offer is accepted and the consideration exchanged for performance of the offer;

3. Describes in detail how each party is to perform and how performance is measured. 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;

4. 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

5. Must include:

    a. Detailed list of services to be performed, actions to be taken by the parties and/or products to be delivered;

    b. How performance will be measured. Performance measures set the level of quality required and expected;

    c. Deliverables that must be met in order to receive payments;

    d. Dates – deliverables are required;

    e. Consequences for not performing or meeting deliverables;

    f. How compensation will be provided for successfully performing;

    g. Rules for receiving payment.

STEPS IN CONTRACT PROCESS

All contracts and purchase orders must be processed through Purchasing and Contracting, who in coordination with TMD legal counsel, will determine the type of contract required. To assist with preparing required documents, the following steps must be followed for all contracts:

1. **Prepare.** Consult with both the Purchasing and Contracting and legal counsel in the initial planning stages of a contract. This will avoid issues later.

2. **Plan.** This is a critical first step that often gets overlooked. Prior to the beginning of each fiscal year, decide what departmental contracting needs are. Plan scheduling of resources to have contracts in place to cover agency needs. This may involve scheduling meetings with stake holders, reviewing current contracts, reviewing performance of service providers and meeting with service providers to identify areas of improvement.

3. **Determine.** Do you have existing contracts that need to be renewed or revised? Are new contracts necessary to cover your needs?

4. **Perform risk assessment.** Once you decide on required services, determine the risk level for the agency and how to minimize that risk through contract requirements. Based on risk level, develop detailed statement of work with written performance measures that minimize risk.

5. **Identify.** Budget to pay for services or products. Make sure proper budget codes are used and there is sufficient budget to cover the costs. Check with State Finance to confirm availability of funds and sourcing.

6. **Submit requisition.** In TMD's requisition system for supervisor approval and budget approvals. Make sure your requisition passes budget checking, gets approved through the TMD's requisition system requisition workflow and is ready to source to a PO or contract.

7. **Attach all documents.** Related to the purchase request including proposals, quotes, contract documents or agreements requiring signature and any other correspondence related to the purchase.

8. **Manage requisitions.** Periodically check on the status of your requisitions in TMD's requisition system to make sure requisitions are working their way through workflow approval and pass budget check. Correct any budget errors and notify approvers who have not approved the requisitions.

STEPS IN CONTRACT PROCESS (CONTINUED)

9. **Contract Specialist or Purchaser will take lead and will:**

    a) Clarify and evaluate what you are requesting. This may involve requesting additional details, asking for clarification, calling vendors or service providers, consulting with TPASS, looking for items in Texas SmartBuy and finding other state approved sources. Timely communication with purchasing staff is critical for the success of your purchase request;
    b) Select the best vendor in accordance with state purchasing rules;
    c) Obtain quote or verify quote received from requesting department;
    d) Initiate a competitive solicitation process when required;
    e) Negotiate and seek to find the best value; and
    f) Reach agreement with the other party on the terms of the contract. Certain standard legal terms are non-negotiable.

10. Process and dispatch a PO through TMD's requisition system, providing the requester, accounts payable and delivery location warehouse a copy of the PO;

11. If a contract is involved it will require signatures, the Purchaser will finalize details of purchase and route contract documents for approval, in TMD's requisition system;

12. After the requisition is executed in TMD's requisition system, the hard copy contract is routed for review and signature by the State Contracting Attorney and Executive Director. Once fully signed, copies of the signed contract will be distributed to all parties involved;

13. 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;

14. **Never take a contract directly to Executive Director or the State Contracting Attorney. The process starts and ends with the Purchasing and Contracting Section;**

15. There are three main functional areas of the contract process:

    a) Contract Initiation/Administration
    b) Contract Management
    c) State Contracting Attorney

CONTRACT INITIATION AND ADMINISTRATION

1. The initiation of a contract is the responsibility of the requesting program or end user.

2. **Requesting program is** responsible for contract initiation including:

    a. Consulting with Purchasing and Contracting and State Contracting Attorney when necessary;
    b. Identifying needs;
    c. Planning;
    d. Preparing risk assessment with assistance of Contract Specialist (reference **Appendix A**);
    e. Developing detailed statement of work, deliverables and performance measures;
    f. Identifying TMD Policies that apply to services being performed;
    g. Assisting PCS with contract development; and
    h. Assisting with contract negotiations, when needed.

3. **Requesting department,** after contract has been awarded, will:

    a. Apply specialized knowledge, skills and techniques to support program activities;
    b. Administer and manage daily operations of required services established in contract. The three elements managed are cost, time and scope;
    c. Manage performance as required in the contract. May require involvement of Contract Specialist should a dispute arise;
    d. Ensure provider meets required performance objectives defined in the contract;
    e. Oversee delivery and receipt of services;
    f. Analyze invoices for contractual compliance;
    g. Certify services were performed and deliverables met; and
    h. Approve invoice for payment.

Contract administration is the review of a contractor's records, business processes, deliverables, and activities to ensure compliance with the terms and conditions of the contract. Administration includes planned, ongoing, periodic, or unscheduled activities. The goal of contract administration is to ensure the delivery of quality goods and services, and protect the financial interest of the state.

CONTRACT MANAGEMENT

The Purchasing and Contracting Section is responsible for managing resources effectively, efficiently, and in a manner that is aligned with state strategic goals. Purchasing and Contracting Section 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.

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/

Purchasing and Contracting Section handles contract management. **Contract Specialist** Shall:

a. Conduct competitive solicitation processes as required to select vendors/service providers based on best value standards;
b. Construction projects estimated to cost $25,000.00 or more will receive a project number and be accompanied by the appropriate funding documentation;
c. If a project requires vendors to be pre-qualified, those pre-qualifications will be conducted by the architect assigned to the project.
d. Checks Comptroller's Vendor Performance Tracking System (VPTS) to identify past performance issues before awarding contract or PO;
e. Process all contract documents and amendments including renewals;
f. Obtain required documentation;
g. Ensure appropriate terms, conditions and clauses are in each contract;
h. Negotiate final terms with other party;
i. Prepare and finalize contract documents;
j. Obtain legal review;
k. Obtain reviews and approvals from all stakeholders. Contract approval is accomplished by routing through TMD's requisition system and Docuware workflow;
l. Obtain signatures from all parties and TMD's Executive Director. Contract documents are routed for signature in accordance with TMD Purchase Approval Matrix (Appendix A);
m. Enforce contract terms and manage actions of parties as governed by the terms of the contract;
n. Ensure TMD receives the services contracted for, at the quality level expected, at the time agreed to and for the negotiated price.

1. Ensure contracts are properly awarded in accordance with legal and statutory requirements and that the highest ethical standards are followed at all times;

2. Ensure integrity of TMD is maintained in all its business dealings;

3. Meet Certified Texas Contracts Manager (CTCM) standards; and

4. Certify all contracts have been entered into in accordance with the rules, statutes and Contract Management Guidelines established by Comptroller.

TMD LEGAL COUNSEL

The Legal Department's role in developing a contract is coordinated by the State Contracting Attorney.

Contract Attorney will:

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

TMD PURCHASE APPROVAL MATRIX

The Purchasing Approval Matrix (**Appendix A**) governs approvals required for all contracts, regardless of cost. The Adjutant General and Executive Director are the only authorized agents for TMD and one or the other must sign **all** contracts, unless authority has been delegated to another staff member. The Approval Matrix, approved by the Board, does the following:

1. Establishes approval levels required for all purchases;
2. Establishes approvals required for information technology and construction purchases; and
3. Establishes approval workflow in TMD's requisition system and Docuware.

EMPLOYMENT OF FORMER TMD EMPLOYEE

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.

ADDITIONAL APPROVALS

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

1. The Contract Specialist or Procurement Director shall personally:

    a. Approve each contract awarded through the competitive sealed proposal process, using the best value standard;
    b. Ensure best value standards are properly documented; and
    c. Acknowledge in writing TMD has complied with the agency's and Comptroller's Contract Management Guide.

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

TPASS may bar vendors who have known repeated unfavorable performance from participating in state contracting; and

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.

For Contracts exceeding $5 million, Contract Specialist and the Procurement 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 $10 million and greater must be submitted to the Contract Advisory Team for review before the solicitation pursuant to Tex. Govt. Code, Section 2262.101.

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 or more - Statement of Work must be approved prior to solicitation by the Executive Director;
   c. $50,000 to $150,000 – at least three (3) DIR vendors must be solicited for pricing, of available;
   d. $150,000 to $1 million, at least six (6) DIR vendors must be solicited for pricing, if available; and
   e. $1 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.

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 PCS 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.

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. Less than $15,000 – posting related documents is optional.

2. **TMD's requisition system** – Attach documents to contract or purchase order.
3. 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; and
   f. Contracts over $10 million.
4. 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)
5. Texas Register
   a. Consulting services over $15,000.

INTERPRETATION OF CONTRACTS

Interpreting contract terms and responsibilities is sometimes difficult and requires consulting with the Purchasing and Contracting and the State Contracting Attorney. Start with the Purchasing and Contracting Department that will.

1. Determine if the State Contracting Attorney's involvement is required;
2. Determine the meaning and effect of the terms;
3. Determine principle objectives;
4. Apply common sense guidelines;
5. Interpret handwritten provisions in the contract that may prevail over written ones;
6. Determine whether actions of the parties may be used to interpret the intent of the contract terms;
7. Initiate the dispute resolution process if necessary.

Avoid contract disputes with well written statement of work, clearly defined performance measures, payment based on clearly defined deliverables with specific time frames.

PERFORMANCE OF CONTRACTS

1. Strict performance is adhering to the specific contract terms.
2. Substantial performance is defined as:
   a. A Good faith performance;
   b. With an implied covenant of good faith and fair dealing;
   c. Where neither party will prevent the other from obtaining benefits they have a right to expect under the contract.

E-VERIFY

E-Verify is an Internet-based system that compares information from an employee's Form I-9, Employment Eligibility Verification, to data from U.S. Department of Homeland Security and Social Security Administration records to confirm employment eligibility

On December 3, 2014, then Governor Rick Perry issued Executive Order RP 80 and Senate Bill 374 was passed during the 84th legislative session, requiring all state agencies to use the U.S. Department of Homeland Security's E-Verify System to verify state employees' eligibility to work in the United States. The order also requires all agencies under the direction of the governor to include, as a condition of all state contracts for services, a requirement that contractors use the E-Verify system. State contractors must determine the eligibility of all persons employed during the contract term to work in Texas and all persons (including subcontractors) assigned by the contractor to perform work pursuant to the contract.

To ensure contractor compliance the Texas Military Department may randomly select a number of executed contracts containing this provision for compliance of the E-Verify system rules and guidelines. The Contractor and related subcontractors shall provide, upon request of TMD, an electronic or hardcopy screen shot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, as proof of adherence to the E-Verify requirement. All information provided will be placed in the contract file and subject to open records.

For more information, please refer to: http://www.uscis.gov/e-verify

VENDOR PERFORMANCE REPORTING

1. After a contract has been completed or otherwise terminated information about that vendor's performance shall be entered into the Comptroller's Vendor-Performance Tracking System (VPTS); and

2. As a part of the closeout process for all purchases over $25,000, vendor performance information both positive and negative shall be entered into the VPTS by the Purchaser or end user.

RECORDS RETENTION

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

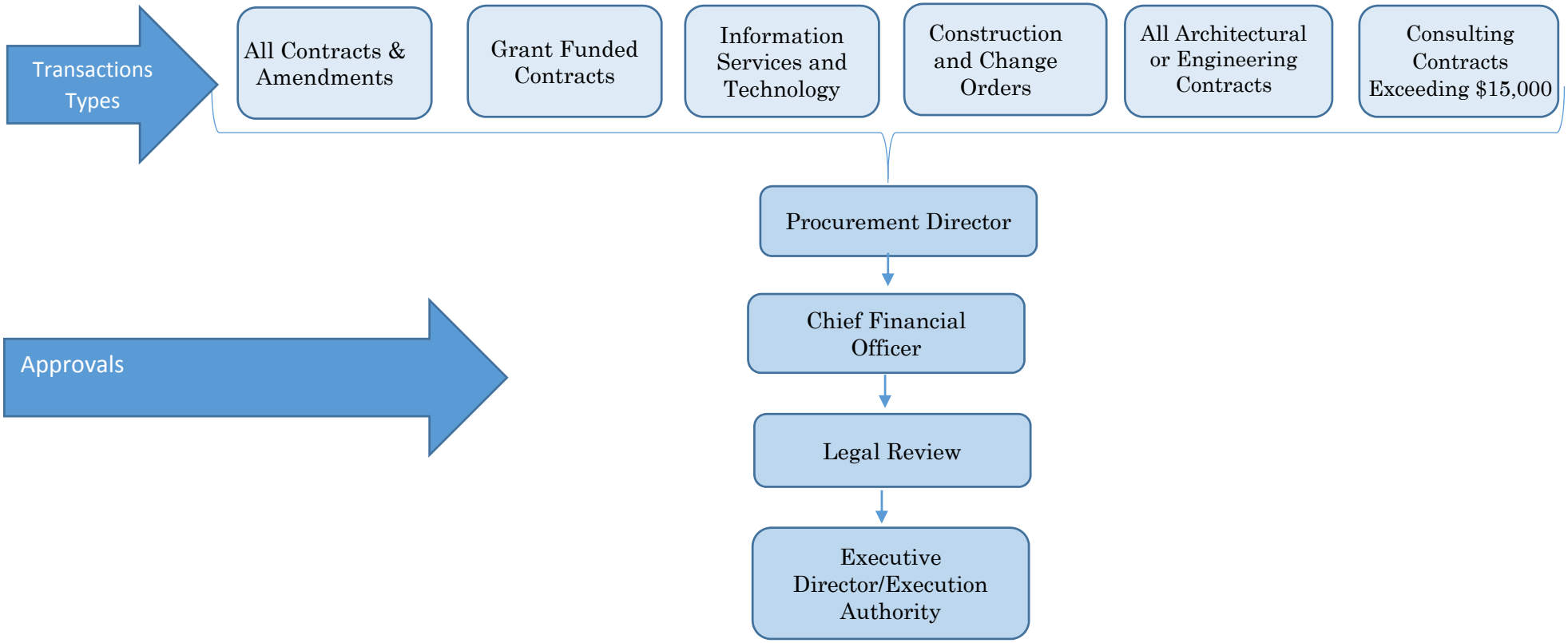
1. For contracts and purchase orders entered into after 9/1/2015, a state agency shall retain in its records each contract and related documents it enters into for a period of seven years after contract expires, terminates or is completed, after all issues have been resolved. Along with the contract,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

Appendixes

Contracts for Services – Approvals

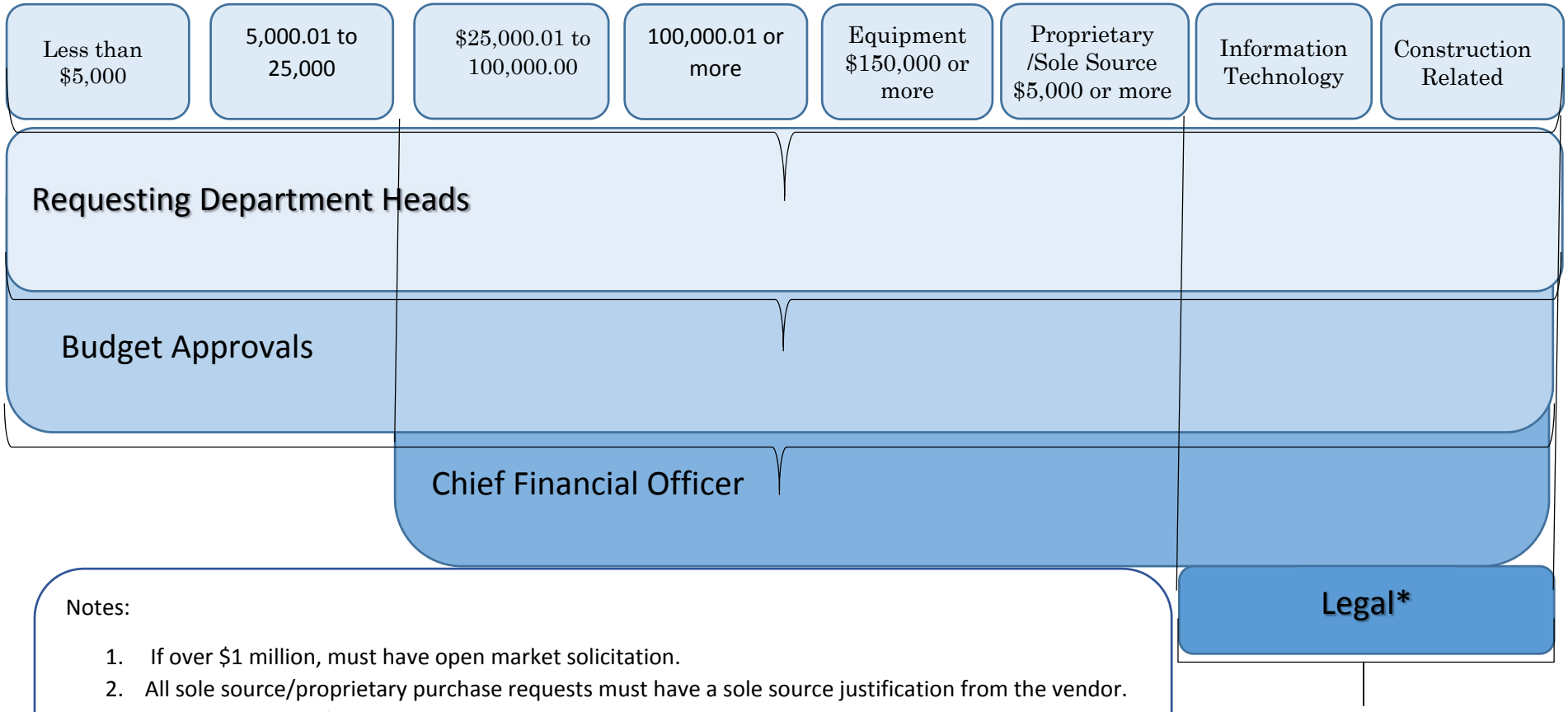
All contracts and amendments require the following additional approvals and executing signatures.



Special Notes

1. If signature approval was provided on the purchase requisition, it is not required on the contract approval routing.
2. Signatures will be obtained from the other contracting parties before the Executive Director executes the contact unless an exception is granted by the Procurement Director.
3. The Executive Director approval may be obtained at any point in the approval process however, it must be obtained before the contract or amendment is effective.
4. The Executive Director may delegate Execution Authority in accordance with Texas Statutes as necessary to conduct the business of the department.

Purchase Requisition Approvals



Notes:

1. If over $1 million, must have open market solicitation.
2. All sole source/proprietary purchase requests must have a sole source justification from the vendor. A proprietary justification letter must be signed by the Executive director or his designee.
3. The OED IT purchases require IT department approval. Purchase requests under $25,000 from the field may be approved by TMD Program IT Staff.

* Only IT purchases 1,00,000 or more require Legal review.

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 *(Print last, first, middle initial)*	
Position Title	
Agency Texas Military Department	
Work Phone: E-mail address:	Reporting Status: ☐ Annual ☐ Update to previous disclosure

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**

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

Ethical Standards and Policies

A. General

State officials and employees are responsible for protecting the safety and welfare of the public's monies. All state officials and employees should endeavor to pursue a course of conduct that does not raise suspicion among the public. 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 in discharging their official duties. The nature of purchasing functions makes it critical that everyone in the purchasing process remain independent and free from the perception of impropriety. Any erosion of public trust or any shadow of impropriety is detrimental to the integrity of the purchasing process. Consequently, the credibility of a purchasing program requires 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.

Therefore, with these principles in mind and in accordance with state law, the following policies and procedures must be adhered to by all state agency employees, contractors and potential contractors.

B. 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.

C. 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; or
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.

D. 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.

Texas Government Code §572.001(a)

Texas Government Code § 572.051

Texas Government Code § 2113.014(a)

Texas Constitution, Article XVI, Section 21

Texas Government Code § 2052.302