



# Contract Management Guide

Financial Services Division  
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## Section 1. Introduction

The Texas Real Estate Commission has prepared this Contract Management Guide (CMG) in accordance with SB20 passed in the 84<sup>th</sup> Legislative Session. This guide includes procurement processes and procedures for typical Texas Real Estate Commission (TREC) and the Texas Appraiser Licensing & Certification Board (TALCB) purchases. In the event TREC or TALCB has a procurement that is not covered by this guide, the agency will adhere to the best practices and instructions provided in the Comptroller of Public Accounts (CPA) Contract Management Guide (CMG). This guide includes core procurement and contract management processes and procedures that will be used for agency purchases.

### About Texas Real Estate Commission

The Texas Real Estate Commission was established by the Texas Legislature in 1949 to safeguard consumers in matters of real property transactions and valuation services. TREC shares staff members and resources with the Texas Appraiser Licensing and Certification Board, established as an independent subdivision of TREC in 1991 when federal law required increased regulation of appraisals. Together TREC and TALCB oversee real estate brokerage, real property appraisals, inspections, home warranties, right-of-way services, and timeshare. The agency provides licensing, education, and complaint investigation services, as well as regulation and enforcement of state laws and requirements that govern each of these areas of service to consumers in Texas.

### State of Texas Procurement Statutes

TREC/TALCB adheres to the Comptroller of Public Account's (CPA's) Statewide Procurement Division (SPD) policies and procedures. The SPD is the central authority for State of Texas procurement and contract rules and guidelines. The SPD created the Texas Procurement and Contract Management Guide to provide guidance to State of Texas Procurement and Contract professionals in accordance with Title 10, Subtitle D of the Texas Government code, in addition to Chapters 2261 and 2262.

TREC also adheres to its Vendor Protest procedures listed under Texas Administrative Code, Title 22, Part 23, Chapter 534 §7.

## Section 2. Definitions

Addendum	A written addition, change, or supplement to a solicitation issued prior to the opening date.
Amendment	Written addition or change to a contract.
Automated Information System (AIS)	Products and services that are associated with computers (automation) or telecommunication systems as defined in <i>Texas Government Code</i> Section 2157.001(1).
Award	The act of accepting an offer, thereby forming a contract between the State and a vendor.
Best Interests of the State	Most advantageous to the State considering all relevant circumstances.
Bid	An offer to contract with the State, submitted in response to a bid invitation.
Bid Tabulation	The recording of bids and bid data submitted in response to an IFB. The bid tabulation is used for comparison, analysis, and record keeping.
Bidder	An individual or entity that submits a bid. The term includes anyone acting on behalf of the individual or entity that submits a bid, such as an agent, employee, and representative. See Respondent.
Bidders List, Centralized Master Bidders List (CMBL)	A list of vendors that have expressed an interest in doing business with the State. CMBL is an online directory maintained by the CPA, containing contact information and product categories of vendors registered to receive procurement opportunities from public entities.
CAPPS	Centralized Accounting and Payroll/Personnel System. The system developed and maintained by CPA to provide a single financials and human resources administration system for Texas state agencies.
Change Order	An amendment, clarification, change, or deletion to the original scope of work to a contract.
Class and Item Commodity	The classification system found in the NIGP Commodity Book. Generally, the term means supplies, materials, or equipment. See IT Commodity Item.
Commodity Book	List of NIGP class and item numbers maintained on the CPA website.

Competitive Solicitation	The process of inviting and obtaining responses from competing vendors in response to advertised competitive specifications, by which an award is made based on best value. The process contemplates giving potential vendors a reasonable opportunity to compete and requires that all vendors be placed on a level playing field. Each respondent must respond to the same advertised specifications, terms, and conditions.
Comptroller of Public Accounts (CPA)	The CPA Statewide Procurement Division (SPD) is the central authority for state agency procurement guidance, education, and statewide contract development services.
Consultant	A person who provides or proposes to provide the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. The term includes a political subdivision but does not include the federal government, a state agency, or a state governmental entity.
Consulting Services	The service of studying or advising a state agency under contract that does not involve the traditional relationship of employer and employee. See Major Consulting Services Contract.
Contract	The written agreement, if any, executed by the authorized representative of the parties to a solicitation that formalizes the terms, provisions, covenants, and obligations of the respective parties to the arrangement for provision of services. A contract may be in the form of a formal, written agreement, interagency cooperation contract, letter agreement, memorandum of understanding, end user licensing agreement, lease, or a Purchase Order.
Contractor	A business entity or individual that has a contract to provide goods or services to the State.
Cooperative Purchasing	A program for qualified entities to use the SPD or DIR contract resources.
Debarment	An exclusion from contracting or subcontracting with state agencies on the basis of any cause set forth in statute or SPD rules, commensurate with the seriousness of the offense, performance failure, or inadequacy to perform.
Delegated Purchase	A purchase made by an agency under the authority of SPD and subject to SPD rules and procedures.
Deliverable	A measurable task or outcome (e.g., a product or service).

Department of Information Resources (DIR)	Texas' information technology and telecommunications agency. DIR procures and manages statewide cooperative contracts for IT and telecommunications products and services.
Electronic State Business Daily (ESBD)	An online directory, administered by SPD, that publishes solicitations to inform vendors of procurement opportunities and provide public notice of contract awards.
Executive Sponsor	A high-level individual with primary responsibility for implementation and operation of the project. In some instances, the executive sponsor may be the executive head of the entity. In other instances, the executive sponsor may be the division or program director with overall project responsibility.
Fiscal Year (State of Texas)	A period of 12 consecutive months, beginning September 1 of each year and ending August 31 of the next year.
Goods	The term means supplies, materials, or equipment.
Historically Underutilized Business (HUB)	A business as defined by <i>Texas Government Code</i> Chapter 2161 and 34 TAC § 20.282.
Informal Solicitation	An unsealed, competitive solicitation used to obtain offers submitted verbally or in writing for purchases with a value of \$25,000 or less.
Interlocal Contract	("ILC") – An agreement such as an IAC, but between a state agency and local government such as a city or a county.
Interagency Contract (IAC)	Written understanding between two or more agencies as authorized by Texas Government Code Chapter 771.
Invitation for Bids (IFB)	A written solicitation requesting the submission of bids; also referred to as a bid invitation. Typically, negotiations not allowed.
Invoice	Document from a contractor requesting payment for goods delivered and/or services rendered.
IT Purchases	Commercial software, hardware, or technology services, other than telecommunications services, that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more agencies. The term includes seat management, through which an agency transfers its personal computer equipment and service responsibilities to a private vendor to manage the personal computing needs for each desktop in the agency, including all necessary hardware, software, and support services.



Major Consulting Services Contract	A consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000 or \$25,000 for an institution of higher education other than a public junior college.
Managed Contract	An SPD Term Contract that cannot be processed through Texas SmartBuy. The purchase order is prepared by the agency, referencing the contract number and pricing, and sent directly to the contractor.
Memorandum of Understanding	("MOU") – A simplified agreement outlining what two parties agree to do for one another, generally at no cost to either party.
Miscellaneous Agreement	An agreement established outside of the standard procurement process. A miscellaneous agreement generally does not involve the exchange of funds.
Negotiations	A consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. In a contractual sense, negotiation means the "dealings conducted between two or more parties for the purpose of reaching an understanding."
NIGP	National Institute of Governmental Purchasing. NIGP provides uniform codes for products or services; the codes are used by bidders, vendors, and state agency personnel.
Notice of Award	An official announcement of an executed contract.
Offer	A proposal to contract with the State submitted in response to an RFO.
Payment Card	A commercial charge card that is predominately used for transactions that require payment upfront. Agencies may only use commercial charge cards obtained under SPD established contract(s).
Posted Date	The date a document is made available online to the public.
Professional Services	Services directly related to the professional practices specified by the Professional Services Procurement Act, Chapter 2254, Subchapter A of the Texas Government Code.
Proposal	An offer to contract with the State, submitted in response to an RFP.
Protest Procedures	Procedures for resolving vendor protests relating to purchasing issues.

Purchase Order	<p>A document issued by a Purchaser to a seller, indicating types, quantities, and agreed prices for products or services the seller will provide to the customer.</p> <p>Sending a Purchase Order to a supplier constitutes a legal offer to buy products or services. Acceptance of a Purchase Order by a seller usually forms a one-off contract between the buyer and seller, so no contract exists until the Purchase Order is accepted. A Purchase Order is required for TREC/TALCB to issue payment of goods or services.</p>
Purchase Requisition	<p>Most common type of procurement planning document. At TREC/TALCB, a Purchase Requisition is required to initiate the purchasing process.</p>
Request for Information (RFI)	<p>A general invitation to the vendor community requesting information that may be used in a potential future solicitation.</p>
Request for Offers (RFO)	<p>A written solicitation requesting the submission of offers for AIS which include hardware, software, and other information technology goods and services.</p>
Request for Proposals (RFP)	<p>A written solicitation requesting the submission of proposals.</p>
Request for Qualifications (RFQ)	<p>A written solicitation requesting the submission of qualifications or specialized services. Typically used for the procurement of professional services.</p>
Respondent	<p>An individual or entity that submits an offer or proposal. The term includes anyone acting on behalf of the individual or entity that submits an offer or proposal, such as an agent, employee, and representative. See Bidder.</p>
Responsive	<p>The bid, offer, or proposal complies with all material aspects of the solicitation document, including submission of all required documents.</p>
Service	<p>The furnishing of skilled or unskilled labor or professional work.</p>
Set-Aside Contract	<p>Term used to refer to the State Use Program and the Texas Correctional Industries (TCI) purchasing program.</p>
Solicitation	<p>A document such as an IFB, RFO, RFP, or RFQ requesting responses from vendors to provide specified goods and services. The term also refers to the process of obtaining responses from vendors to provide specified goods and services.</p>

Statewide Procurement Division (SPD)	The Texas Comptroller of Public Accounts (CPA) Statewide Procurement Division (SPD) is the central authority for state agency procurement guidance, education, and statewide contract development services.
Term Contract	A contract established by SPD for the purchase or lease of goods and services used in large quantities by several agencies.
Texas SmartBuy	The State's central e-procurement system for non-IT goods and services.
Two Party Contracts	Written document detailing actions of the parties 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 the products being delivered
Unauthorized Purchase	Any purchase or agreement entered into by an employee that is not a Purchaser or Contract Specialist in Purchasing or one of the employees authorized to sign agreements on behalf of TREC/TALCB.
Vendor	A potential provider of goods or services to the State.

### Section 3. Roles

The roles and responsibilities listed typically below are the roles as used by TREC/TALCB in the procurement process.

Role	Responsibility
Approvers	Management designated to approve Purchase Requisitions within specific divisions. The Approver is responsible for ensuring that the division purchase is appropriate before approving and forwarding a Requisition.
General Counsel	Provides legal review, guidance, and oversight for all aspects of agency's contracting and is responsible for ensuring that the agency adheres to all statutory requirements.
The Executive Director	Signs all contracts and agreements on behalf of TREC and TALCB. The Executive Director may delegate signature authority within statutory limits.
Contract Specialist	A member of the purchasing section and works closely with the Purchasing Manager. The Contract Specialist works with the division subject matter experts to develop specifications for formal solicitations, leads the procurement process, guides the work of the evaluation teams, assist with the contract negotiations, and may act as the main point of contact for the vendors.
Financial Services	Manages the agency's budget, purchasing, inventory and asset management, receiving, accounts payables, and revenue functions.
Purchasing Manager	Oversees the procurement process and manages the purchasers, contract specialist and inventory specialist. Duties include sourcing requisitions to staff, assigns tasks, reviews, and approves purchase orders and contracts, and provides guidance and technical advice to the Purchasing Section, the Inventory Specialist and agency staff.
Purchaser	Works within the Financial Services and in the Purchasing Section. Assists requisitioners and division staff obtain pricing, gather specifications requirements; processes purchase requisitions; and issues purchase orders.
Purchasing Section	Processes all agency purchases and oversees the management of all agency contracts.
Requisitioner	Employees designated by the Division Director to submit purchase requisitions and work with the purchasing staff to process purchases. The requisitioner is not authorized to purchase any item or service or to approve any agreements on behalf of the agency.

## Section 4. Ethics and Standards of Conduct

The agency must adhere to Ethics and Standards of Conduct as enacted by statute for state officers and employees. The Texas Ethics Commission (TEC) is responsible for the oversight and enforcement of these statutes and is authorized to oversee and enforce these laws.

### 4.1 Conflicts of Interest

A conflict of interest potentially exists whenever one has business, personal, professional, or other relationships that could reasonably influence their judgment in the performance of their TREC/TALCB duties. All agency staff have an ongoing duty to disclose actual or potential conflicts of interest relating to TREC/TALCB business opportunities.

### 4.2 Conflict of Interest Violations

An agency employee may not solicit, accept, or agree to accept *any* honorarium or payment in consideration for services that the employee would not have been requested to provide, but for the employee's official TREC/TALCB position or duties. TREC/TALCB employees and officers shall not accept nor solicit any gift, favor, or service that might give the appearance of reasonably tending to influence the individual in the discharge of official TREC/TALCB duties or that the individual knows or should know is being offered with the intent to potentially influence official conduct.

A TREC/TALCB employee whose job responsibilities are related to TREC/TALCB contracts, grants, and purchases, including but not limited to evaluating proposals, awarding grants and contracts, or managing/monitoring contracts is prohibited from soliciting, accepting, or agreeing to accept *any* favor, gift, gratuity, entertainment, or service from:

- 1) an entity seeking or awarded a contract or grant with TREC/TALCB; or
- 2) an employee or agent representing the entity seeking or awarded a contract or grant.

### 4.3 Other Violations

#### 4.3.1 Bribery

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

#### 4.3.2 Gift to Public Servant

A public servant may not accept a benefit from a person subject to his jurisdiction. It is an offense for a public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government to solicit, accept, or agree to accept any benefit from a person who the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim,

or transaction involving the exercise of the public servant's discretion. This includes the gift of from a registered lobbyist.

In some instances, state employees may accept non-cash items of less than \$50 in value. For example, promotional or commemorative items of minimal value such as caps, coffee mugs, t-shirts, key rings, and discount coupons, do not constitute an improper benefit if such items are not solicited and not offered or accepted in exchange for any action or inaction on the part of public servants. It is also permissible to accept a gift from a friend, relative, or business associate with whom a state employee has a relationship independent of the person's official status, provided that the gift is given because of the personal relationship and not because of the official status.

#### 4.3.3 Misuse of Official Information

A state employee may have access to information the public does not. A state employee may face criminal liability if the person uses information that has not been made public and was obtained during the course of official duties for a private purpose. The term "information that has not been made public" means any information to which the public does not generally have access, and that is prohibited from disclosure under the Texas Public Information Act, Chapter 552 of the *Texas Government Code*. A public servant commits an offense if, by relying on nonpublic information, the person (1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information, (2) speculates or aids another to speculate based on the information, or (3) as a public servant, coerces another into suppressing or failing to report that information to a law enforcement agency. A public servant also commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, the person discloses or uses information for a non-governmental purpose that the person has access to by means of office or employment and that information has not been made public.

#### 4.3.4 Misuse of Government Property

State law prohibits the misuse of governmental resources including computers, copiers, supplies, and staff time. A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, the person intentionally or knowingly misuses anything of value belonging to the government that has come into the person's custody or possession by virtue of the person's office or employment.

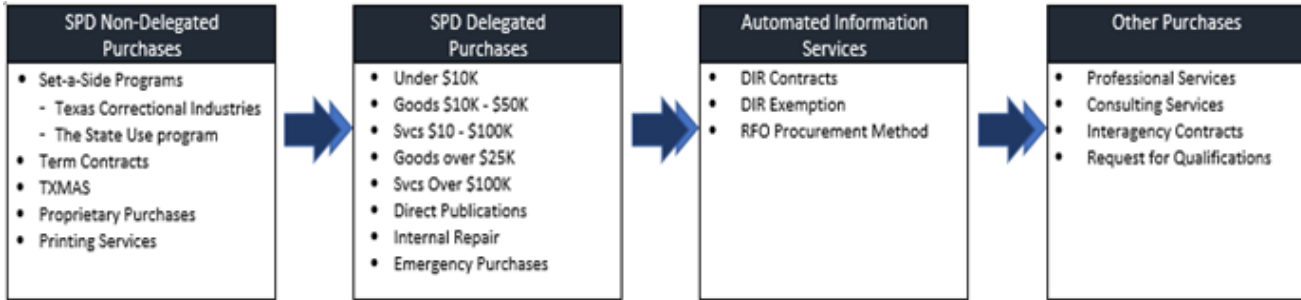
#### 4.4 Violation of Ethical Standards

An employee that violates the above referenced violations are subject to disciplinary action, up to and including termination of employment. If an actual violation of these ethical standards 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. See *Texas Government Code* Section 2261.252 and *Texas Penal Code* 36.08.

## Section 5. Purchasing Methods

The purchasing staff must determine the procurement method before purchasing the requested goods or services. The purchaser must consider the procurement type and cost estimates. Below are the purchasing methods that should be considered. Contract value for goods and services is determined by considering the full price of the order or contract including any optional extensions and renewals.

Note: This does not include the purchase consulting services, professional services, or legal services.



The chart below provides a high-level list of the purchasing methods and the general order of consideration.

### 5.1 Non-Delegated Purchases

The Texas SmartBuy is the State of Texas' online marketplace for non-IT goods and services used by agencies and local governments. SmartBuy includes hundreds of competitively bid and awarded state contracts with almost 2 million items available. Many of the purchasing methods used in the non-delegated purchases are made using the SmartBuy system.

#### 5.1.1 Set-Aside Programs (TCI, State Use Program)

There are two set-a-side programs that state agencies are required to use:

- (1) Texas Correctional Industries - Prison Made Goods governed by Chapter 497 of the Texas Government Code, and
- (2) State Use Program-Texas WorkQuest - the State Use Program authorized by Chapter 122 of the Texas Human Resources Code.

##### A. Texas Correctional Industries (TCI)

TCI is a division of the Texas Department of Criminal Justice (TDCJ) that manufactures goods and services using primarily offender labor for purchase by Texas governmental entities. TCI offers most goods through Texas SmartBuy. For goods not available through Texas SmartBuy, the agency may find them in the TCI Catalog. In those instances, a PO must be issued directly to TDCJ via email to [tcj@tdcj.texas.gov](mailto:tcj@tdcj.texas.gov) with the following

notation: “The award was made under the Prison Made Goods Act and is non-competitive.”

TREC/TALCB may decline to procure a good or service from TCI if (1) TCI grants a waiver, (2) SPD determines that the good or service produced by TCI does not meet the requirements of the agency, or (3) SPD certifies that the good or service can be purchased elsewhere at a lower price after the agency gives TCI final opportunity to negotiate on price.

#### B. State Use Program Exception

The State Use Program is managed by the Texas Workforce Commission (TWC). State Use programs are administered by WorkQuest (formerly TIBH Industries). Only products and services approved by TWC qualify as a set aside purchase available for agencies to purchase on Texas SmartBuy. The only exceptions to not using the State Use program is when (1) under the rules of SPD, a WorkQuest-provided or -produced product or service does not meet the reasonable requirements of the agency; or (2) the requisitions made cannot be reasonably complied with using products or services produced by persons with disabilities.

#### 5.1.2 Term Contracts

SPD establishes term contracts for the purchase or lease of goods and services. Term contracts are available through the Texas SmartBuy catalog and competitive bidding is not required. TREC/TALCB should not purchase goods or services on the open market if they are available through a term contract unless the quantity required is less than the minimum order quantity specified in the relevant term contract.

#### 5.1.3 TXMAS (optional)

SPD establishes Texas Multiple Award Schedule (TXMAS) contracts to supplement the term contracts and are available through the Texas SmartBuy System. TREC/TALCB can use a TXMAS contract regardless of contract value. TXMAS contract purchases with a value less than \$50,000 can be awarded directly to a vendor using a best value determination. Purchasers should request pricing from at least three TXMAS vendors for purchases with a contract value greater than \$50,000.

NOTE: The Information Technology Purchases section has additional information on DIR TXMAS purchase requirements.

#### 5.1.4 Proprietary Purchases

A purchase is proprietary when the specifications or conditions of the purchase are exclusive to one vendor and the vendor does not allow other resellers or there is not an equivalent product or service available for purchase. The Purchasing Section will work with the division to evaluate whether the purchase is proprietary because a proprietary purchase limits competition. There are three types of purchases which should be considered:



- A. Proprietary  
A product or service that has a distinctive feature or characteristic which is not shared or provided by competing or similar goods or services. A proprietary purchase may be either sole source or competitive.
- B. Sole Source  
The specified good or service is only available from a single vendor.  
Example: back issue of a magazine available only from the publisher; education conference available only from the conference sponsor.
- C. Competitive  
The specified good or service is available for purchase through more than one vendor. Example: software that is available through multiple resellers.

If Purchasing determines that a purchase is proprietary, the purchaser will work with the division to prepare a Proprietary Purchase Justification. Upon approval, the Executive Director will sign the Proprietary Justification and the purchaser will include it in the procurement file. The justification must include the following information:

- Description of the product or service
- The business need and planned use
- Explanation of why the specifications for the good or service are written as they are, and why those specifications are necessary to accomplish the agency's goal for the purchase
- Reason(s) that no other competing goods or services will satisfy the agency's need and provide examples of the technical, practical, or operational risks that would occur if competing goods or services are selected
- A statement whether the purchase is sole source or competitive

Proprietary purchases are subject to formal posting requirements as well as requirements applicable to SPD delegation, CAT reviews, and QAT reviews.

Competitive bidding is not required if the total value of the purchase is less than \$25,000. Proprietary purchases over \$10,000 must include the following statement: "These specifications are being advertised under *Texas Government Code* Section 2155.067. Only bids on items conforming exactly to these specifications, which include proposing only the brand name(s), make, and model number(s) specified, will be considered in determining an award."

#### 5.1.5 Printing Services

TREC and TALCB must utilize SPD approved State Print Shops to competitively procure print services for printing procurements estimated to be \$2,500 dollars or more. State Print Shops provide services through interagency contracts with SPD. The State Print Shops provide design, digital, and traditional offset printing, binding, fulfillment, mailing, and other print-related services to agencies.

The Purchasing section will complete a CPA "Print Shop Job Request Form" and submit to the State Print Shops. Once the Print Job Request is submitted, the agency must print or save a copy of the results page for the procurement file.

For print purchases, TCI must be given the final opportunity to meet or beat the lowest price. If TCI submitted a bid and TCI is not the lowest bid, the purchaser must request a final bid from TCI. The purchaser should not disclose the other bids to TCI during this stage of the competitive bid process. Upon award, the completed bid tabulation noting the successful bidder should be sent to all State Print Shops and SPD with the email subject line: "Print Bid Tabulation for Requisition No. XXX."

For print and print-related service requests of less than \$2,500, the purchaser will utilize any contract SPD Print Vendors:

- Texas Correctional Industries (TCI)
- Texas Department of Public Safety (DPS)
- Texas Department of Transportation (TxDot)
- Texas Department of State Health Services (DSHS)
- Texas Workforce Commission (TWC)
- The University of Texas at Austin (UT)
- University of North Texas (UNT)

## 5.2 Delegated Purchases

The Purchasing Section has delegated authority to purchase goods or services on the open market if the goods or services are not available through the methods described above. Requirements for open market purchases vary based on the contract value.

### 5.2.1 Delegation by Rule

The Comptroller of Public Accounts State Purchasing Division (SPD) has delegated purchasing authority to agencies based on a pre-approved class of procurements, contract value or on a case-by-case basis. Below is a list of pre-approved open market purchasing categories:

- One-time purchase of goods up to \$50,000
- Purchase of services up to \$100,000
- Direct publications
- Purchases of perishable goods
- Distributor purchases
- Fuel, oil, and grease purchases
- Internal repair purchases
- Emergency purchases

NOTE: A contract value is defined as "the estimated dollar amount that an agency may be obligated to pay pursuant to the contract and all executed and proposed amendments, extensions and renewals of the contract".

Purchasers should not divide a purchase into small lot purchases to match the delegation dollar thresholds. **Procurements made under SPD's delegation authority are subject to ESDB posting requirements as well as requirements applicable to CAT and QAT reviews.**

Below is a description of the three main purchase categories:

#### 5.2.2 \$10,000 and under - Spot Purchases

Competitive bidding for non-IT items is not required if the total value of the contract is \$10,000 or less. The Purchaser may supplement the CMBL with non-CMBL vendors for spot purchases. TREC/TALCB may not divide purchases to avoid the competitive bidding requirement.

#### 5.2.3 Between \$10,000 and 25,000 - Competitive, Informal Purchases

Competitive bidding is required if the contract value is over \$10,000. For goods and services between \$10,000 and \$25,000, TREC/TALCB must obtain informal quotes from at least three vendors on the CMBL, two of which must be HUBs, if available.

#### 5.2.4 \$25,000 Competitive, Formal

Competitive bidding is required if the total value of the contract is over \$25,000. For goods and services over \$25,000, a formal solicitation is required. The Purchaser must solicit quotes from each CMBL vendor in the service region (Texas Government Code Section 2155.264). The Purchaser may supplement the CMBL with on-CMBL vendors.

The Invitation for Bid (IFB) or Request for Proposals (RFP) procurement methods are typically used for these purchases. If the purchase is over \$25,000, Direct Publications

Publications may be purchased directly from the publisher only when the publication is not available through a set-aside program, CPA term contract, TXMAS contract or through competitive bidding. All SPD guidelines must be followed when ordering direct publications. Competitive bidding is not required if the direct publication purchase is less than \$25,000. Examples of direct publications include, but are not limited to:

- foreign publications
- out-of-print or rare publications
- back issues of magazines, journals, and newspapers
- publications produced by professional societies
- audio, visual, or audiovisual materials (films, audio presentations, etc.)
- computer software
- collections of any of the above, and microfilm or microfiche copies of any of the above
- Library of Congress cards

The following statement must be added to all POs for direct publication purchases:  
“Direct Publication – Not available from any other source.”

#### 5.2.5 Interagency Contracts (IAC)

An interagency contract is a written understanding between two or more agencies as authorized by *Texas Government Code* Chapter 771. TREC/TALCB may agree or contract with another agency for the provision of necessary and authorized services (including technical services) and materials and equipment. Competitive bidding requirements do not apply to IACs.

When an interagency exchange is exempt from the requirements of a written contract, the agencies involved must document the exchange through informal letters of agreement or memoranda. As with other contractual agreements, it is best practice for a fixed term to be included in the contract.

#### 5.2.6 Internal Repairs

An internal repair is a repair to state-owned equipment where the extent of the work cannot be determined until the equipment is disassembled. An internal repair must contain labor and may also include parts. Internal repairs are usually the result of an unexpected, basic service outage. If an internal repair qualifies as an emergency, it must be processed as an emergency purchase.

#### 5.2.7 Emergency Purchases

An emergency purchase occurs when the agency must make a procurement quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state. Emergencies occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat or to avoid undue additional cost to the state.

NOTE: Lack of planning and expiration of funding does not constitute an emergency and Declaration of Disaster by the Governor is not processed under this emergency purchase process.

Emergency purchases should be made as competitive as possible. For situations where a solicitation is not posted to the ESBD, the agency should make a reasonable attempt to obtain at least three informal bids. Emergency purchases greater than \$25,000 must be posted to the ESBD. The minimum time for posting of the solicitation does not apply.

### 5.3 Information Technology Purchases

TREC/TALCB is required to use contracts established by the Texas Department of Information Resources (DIR) to obtain automated information systems (AIS) unless the procurement is subject to exclusion or exemption.

AIS includes:

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

#### 5.3.1 General Information

Commodity Codes - Classification codes with an AIS component are noted with an asterisk (\*) on the NIGP Commodity Book maintained on the CPA website.

Contract Value for IT Commodity Items - The contract value for IT commodity items does not include optional extensions and renewals.

Contract Categories –

- Cooperative Contracts for IT commodity items
- Texas Multiple Award Schedule (TXMAS) contracts for IT commodity items
- Texas.gov contract
- Data Center Services contracts
- Telecommunication Services contracts

DIR Cooperative Contracts - DIR develops master contracts for the procurement of IT commodity items in the following categories: hardware, software, technology-based training, managed services, IT staff augmentation contracts (ITSAC), and deliverables-based IT services (DBITS). The DIR master contracts offer negotiated minimum discounts for the goods and services. TREC/TALCB may negotiate deeper discounts based on individual purchase volumes.

### 5.3.2 DIR Thresholds

The chart below describes the estimated value of the IT purchase and provides how many vendors within the DIR cooperative contract program the purchaser must solicit for pricing,

< \$50,000	No competitive bidding is required. Awards may be made directly to the DIR Contract vendor.
\$50,000 - \$1,000,000	Pricing from three (3) DIR Contract vendors required.
\$1,000,000 - \$5,000,000	Pricing from six (6) DIR Contract vendors required.
> \$5,000,000	DIR Contracts cannot be used. The purchase must go through the CAT process with CPA.

### 5.3.3 DIR Statements of Work

Certain IT purchases require a Statement of Work (SOW) to describe the purchase need.

The SOW must include at minimum: the project SOW, milestones, description of deliverables, schedule, acceptance criteria, and other items DIR may require for the specific purchase.

If the purchase is over \$50,000, DIR must review and approve the SOW before it is submitted to vendors and must sign the final agreed SOW as part of the contract execution process.

The following purchases require a SOW:

- DBITS
- Managed Services for IT
- IT Security Services
- Web Development
- Cloud Services

The following purchases do not require a SOW:

- IT staffing services
- Contracts exclusively for hardware or software and not including services
- Vendors' standard commercially available support, maintenance, and warranties as listed in the DIR cooperative contract or amendments

#### 5.3.4 Exemptions and Exclusions

TREC/TALCB can obtain an exemption or waiver from the requirement to use a DIR contract to purchase an IT commodity item as follows.

1. Blanket Exemption. DIR may determine that under certain circumstances it is reasonable to grant a blanket exemption to all agencies. Procurements using blanket exemptions must be made in accordance with the exact scope, terms, and requirements specified in the blanket exemption. DIR maintains a list of current exemptions on its website.
2. One-time Exemption Request. If a blanket exemption is unavailable, TREC/TALCB must submit an exemption request through the DIR portal on DIR's prescribed form. DIR will review each exemption request on a case-by-case basis to determine if the proposed purchase is in the best interest of the State.

#### 5.3.5 Texas.gov Services

Texas.gov Services include payment processing, custom application development, operational and infrastructure support, customer service, marketing, and analytic reporting. To participate as a customer and use Texas.gov services, purchasers must execute a three-party agreement with DIR's service provider and DIR.

#### 5.3.6 DIR Data Center Services

DIR's Data Center Services (DCS) contract provides participating agencies data center (mainframe and server operations), disaster recovery, and bulk print and mail services. TREC/TALCB is a voluntary/discretionary customer and therefore uses the DCS on hybrid basis. NOTE: TREC/TALCB is not required to participate in the DSC procurement activities.

#### 5.3.7 Telecommunication Services

DIR provides a variety of telecommunications services to eligible customers throughout the State. All agencies are required to use the Texas Agency Network (TEX-AN) for telephone, internet, data, and video services. If a telecommunications service is offered by DIR, TREC/TALCB must purchase the service through DIR or must request and be granted a waiver before procuring the service through an avenue other than DIR.

TREC/TALCB will work closely with DIR to ensure compliance with DIR's requirements for telecommunication services.

### 5.3.8 Request for Offers (RFO) Procurement Method

A Request for Offers (RFO) procurement method is the primary purchasing method for procuring AIS items that cannot be purchased under a DIR contract.

Purchasers may use the RFO method only after a DIR exemption, prior approval from LBB, or specific Texas Government Code exemptions are verified or obtained.

## 5.4 Other Services

### 5.4.1 Audit Services

*Texas Government Code* Section 321.020 specifies that a state agency may enter into a contract for audit services only if: (1) the agency is authorized to contract with a private auditor through a delegation of authority from the State Auditor's Office (SAO); (2) the scope of the proposed audit has been submitted to the SAO for review and comment; and (3) the services of the private auditor are procured through a competitive selection process in a manner allowed by law.

In accordance with this requirement, TREC/TALCB will seek SAO delegated authority before procuring any professional audit services.

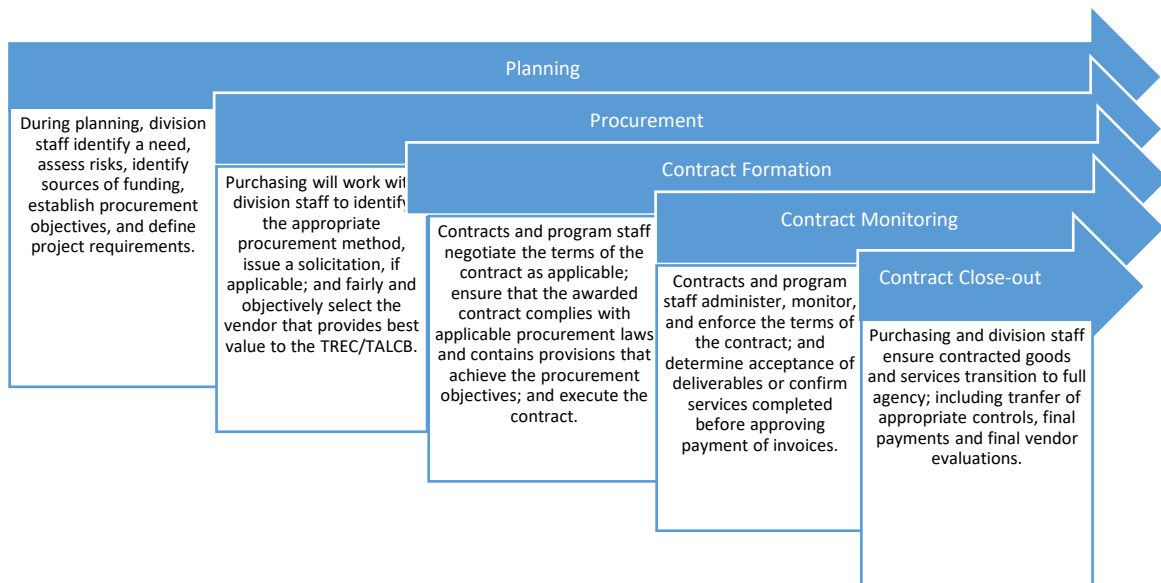


## Section 6. Procurement Process

TREC/TALCB purchasing section adheres to the Comptroller's Contract Management framework. Once Purchasing determines that a formal solicitation process is required, the Purchasing Section will follow the Contract Management Framework, or procurement lifecycle process. The Contract Management Framework identifies the phases performed for every procurement.

TREC/TALCB has established contracts where there are no fees or where external customers pay fees that cover the service. As appropriate, the Contract Specialist will include a memo in the procurement file reflecting the agency's decision.

### The Contract Management Framework



#### 6.1 Planning

Planning must include assessing needs, potential risks, and develop a cost estimate. When developing a cost estimate, the agency must also identify the funding source for the project.

During the planning stage, divisions are encouraged to work with purchasing to conduct research to obtain information relating to the potential vendor pool, pricing, industry standards, market trends, as well as to determine if the item or service is readily available during the planning phase.

One method of research includes gathering information through a Request for Information (RFI). Purchasing staff will work with division staff to develop an RFI and issue to potential vendors. The RFI may be posted to the Electronic State Business Daily (ESBD).

The CPA suggested procurement lead time is approximately 180 days from solicitation development to contract execution; however, this time will vary depending on the specific requirements of the agency and the complexity of the procurement. Division staff should be

mindful of this timeline for contract planning to ensure compliance with all required steps in the contract process.

## 6.2 Procurement

The Procurement Phase is a collaborative effort between division and the purchasing staff along with other subject matter experts, General Counsel, IT, etc., as necessary, to develop the actual solicitation document. This team will ensure all issues and risks are addressed and the solicitation clearly and accurately captures the needs of the agency, while ensuring compliance with applicable state and federal requirements.

Texas law mandates that state agencies award contracts to responsive vendors providing the best value to the state. The best value standard may vary depending on the procurement method; therefore, the purchasing section must ensure the appropriate best value standard is used as the basis for a contract award. Best value criteria may include, but is not limited to, assessment of installation costs, life cycle costs, quality and reliability of the goods and services, delivery terms, indicators of vendor performance under past contracts, costs of employee training, the effects of a purchase on agency productivity, the estimated impact of the contract to the state agency or other unit of government, and other factors relevant to determining the best value for the state.

Below are the general steps involved in the procurement process.

### 6.2.1 Solicitations

The solicitation process begins when purchasing determines the appropriate procurement method to obtain desired goods or services. Purchasers must solicit using one of the following methods: Requests for Proposals (RFP), Requests for Offers (RFO), or Requests for Qualifications (RFQ).

Once the appropriate method is selected, Purchasing will work with the division staff to develop a well-organized and concise solicitation that clearly articulates the procurement objectives. The solicitation must provide detail of the expected project deliverables, selection criteria, the weight assigned to each criterion and proposal requirements including the specific date, time, and location for submission.

### 6.2.2 Special Considerations

Inter-Agency Contracts (IAC) and Interlocal Cooperation Contracts (ICC) are exceptions to the competitive bidding requirement. In accordance with Texas Government Code 2254.021, Consulting Services are defined as the service of studying or advising a state agency.

Purchasers will work with the Purchasing Manager and General Counsel (when needed) to review the proprietary/sole source justification before proceeding with the purchase to ensure the enhanced review requirement in accordance with the Texas Government Code 2155.067.

### 6.2.3 Electronic State Business Daily (ESBD)

The ESBD is managed by the Comptroller's Statewide Procurement Division (SPD) and lists procurement opportunities for all state agencies. Agencies are required to post procurement opportunities on the ESBD with estimated values over \$25,000 regardless of the source of funds. The value of the contract for ESBD posting is the estimated dollar amount including all renewals.

The statutory minimum posting period is 14 days if posting the solicitation and 21 days if posting a notice. For major solicitations, it is best practice is to advertise a contract opportunity for 30 days or more depending on the complexity of the project. Consideration must be given to what affords eligible interested vendors sufficient time to provide quality responses. Purchasing will work with the divisions to establish a realistic estimated posting period taking into consideration holidays, the complexity of the project, and any statutory requirements.

### 6.2.4 Solicitation Response Submissions

Interested and eligible vendors must submit proposals responsive to a posted solicitation on or before the deadline date and time and at the posted location for receipt. TREC/TALCB does not reimburse or pay for any costs associated with the preparation of the response; and will not accept faxed responses. All responses are checked-in and evaluated as responsive or unresponsive to minimum criteria published in the solicitation. Unresponsive submissions are automatically disqualified and are not forwarded to evaluators for review.

Note: If a vendor wishes to negotiate TREC/TALCB's standard contract terms and conditions, the vendor must identify any exceptions at the time the proposal is submitted and provide recommended alternate language. If no exceptions are identified or alternate language is not provided, the vendor is deemed to accept the standard terms and conditions and no negotiation for those terms will be allowed if that vendor is selected.

### 6.2.5 Evaluations

#### A. Evaluation Committee

The evaluation committee is identified in the planning stage. The committee should include the subject matter experts and stakeholders who have signed a non-disclosure agreement and a Conflict-of-Interest Disclosure Form prior to receiving proposals for evaluation.

#### B. Evaluation Process

To safeguard the integrity of the evaluation process, the evaluation committee cannot not communicate with respondents or others outside the committee regarding the responses received or the evaluation process. Each response must be evaluated independently against the evaluation criteria and rubric published in

the solicitation. The evaluation committee members must not conduct independent research. Each member's evaluation must be based solely on his or her personal review of the response, as submitted, based on the identified criteria.

### C. Scoring

Evaluation committee members must individually submit their scores to the Contract Specialist who will compile the scores and identify the highest scoring responses. Evaluation committee members then have the option to invite top scorers for oral presentations. Oral presentations are not required and may not be necessary in every situation. Additionally, criteria for selecting respondents for oral presentation must be based on clear and articulable standards (i.e., top three highest scores). Oral presentations are coordinated by the Contract Specialist.

It is best practice to provide all respondents the same general questions to be addressed during oral presentations before the oral presentation, as well as any vendor specific questions based on their submitted proposals. This practice will ensure oral presentations produce the information required to effectively evaluate vendors. Evaluation committee members may engage in limited discussions with vendors during oral presentation, with the assistance of the Contract Specialist, to clarify information provided during the presentation only. Evaluation committee members will score oral presentations and submit individual scores to the Contract Specialist who will compile the score totals and identify the top scorer(s).

### D. Best and Final Offers (BAFO)

After any oral presentations or demonstrations are completed, the Contract Specialist may lead discussions between agency staff and the respondents. If discussions are held, all respondents must be given equal opportunity to discuss and submit revisions to proposals through a request for BAFO that includes instructions on exactly what should be submitted. The evaluation committee may select a vendor to enter negotiations using the results of the BAFO.

#### 6.2.6 Recommendation for Award Memo

The Purchaser will perform a compliance check by reviewing the evaluation scores. Once reviewed and confirmed, the Purchaser shall prepare written recommendation summarizing the procurement process and recommending contract award to a vendor (or vendors) with the highest score and determined to provide the best value. The memo must be reviewed by the Purchasing Manager to ensure it accurately summarizes the process and includes the best value considerations before it is routed through the Division Director and the Financial Services Directors for approval.

## 6.3 Contract Formation

Contract formation includes developing an enforceable, legally compliant contract that complies with Texas procurement laws, documents agency needs, vendor obligations, the project schedule and cost. During this stage, Purchasing will perform all necessary checks to ensure that the contractor is eligible to execute a contract.

### 6.3.1 Negotiations

During this stage, General Counsel will conduct contract negotiations. The time to negotiate and execute a contract may vary. Negotiations may be conducted if it is outlined in the solicitation document. The negotiation TREC/TALCB should include the Purchaser or Contract Specialist, Division Project Lead and General. All vendor contact will go through the purchasing lead.

### 6.3.2 Agreement Review

Once the agency and the vendor reach a final agreement on the substantive terms and conditions of the contract, a second review of the contract document and a pre-signature compliance review will be conducted.

### 6.3.3 Execution

A contract will be prepared for contractor and agency signature. All contracts with a value of \$5 million or more require the Purchasing Manager and the Financial Services Director verify in writing that the solicitation, purchasing methods, and contractor selection process complies with state law and TREC/TALCB policy. The Purchasing Manager and Financial Services Director must also raise any potential issue in the solicitation, purchasing, or contractor selection process. A memo will be prepared and signed by the Financial Services Director and Purchasing Manager and routed to General Counsel and the Executive Director for approval.

Once approved, the contract will be routed for the contractor's signature and then to the Executive Director.

### 6.3.4 Notice of Award

Once the contract is fully executed, the purchaser or contract specialist will post a notice of award to the ESBD if the contract is expected to exceed \$25,000. A copy of the ESBD posting will be added to the purchasing file. Major consulting services contracts will be advertised in the Texas Register and a notice of award will also be posted to the Texas Register.

Contracts that have a value that exceeds certain thresholds must be reported to the Legislative Budget Board (LBB). The submission must include any required documentation such as the solicitation documents, contract documents, and attestation letters.

## 6.4 Monitoring

Contract monitoring ensures that the vendor is providing the agreed goods and services in accordance with the specifications, terms and conditions included in the contract. In addition, the prevention of fraud, abuse, and waste will be monitored.

In general, contracts for services with an associated period greater than 3 months, contracts with specific terms that require acceptance (in addition to receipt) and all purchase orders or contracts for services with an estimated value of \$25,000 or more will require contract monitoring. The divisions will be asked to assign a contract monitor to the purchase order or contract. In general, the purchase orders or contracts will be assigned the status of low, medium, and high-risk. Depending on the level of risk will determine the level of monitoring.

### 6.4.1 Monitoring Activities

Monitoring activities include but are not limited to:

- Reviewing invoices to ensure the receipt and acceptance of goods and services per contract requirements.
- Certain administrative reporting activities stated in the contract's terms and conditions or in any special provisions.
- a contractor's HUB Subcontracting Plan (HSP) and requesting updated plans when contract amendments or renewals are processed.
- Performance Assessment Reports (PARs) according to schedule.
- Compliance with statutes, rules, and regulations governing state Agency contract and procurement activities.

Note: High risk monitoring will require a greater frequency and more enhanced monitoring. Enhanced monitoring activities include but are not limited to scheduling formal monitoring meetings between TREC/TALCB Contract Monitors and Contract Specialists to review monitoring requirements, providing training on best practices and agency standards for enhanced contract monitoring, and reviewing tools developed by program staff for contract monitoring.

### 6.4.2 Monitoring Criteria

#### 6.4.1 Tier I – Low Risk

- A service contract under \$10,000
- General on-going services that require no changes to the ongoing services
- Associated with a period of time of 3 months or more.
- The contractor will not have access to confidential information or TREC/TALCB data systems.
- A program or service similar to existing programs or services TREC/TALCB provides.
- Examples: Subscriptions, .....

6.4.2 Tier II – Medium Risk – meeting any one or more of the following criteria:

- A service contract over \$10,000 but less than \$100,000
- A proprietary or sole source contract over \$10,000
- Requires continuous monitoring or verification of services
- Order amounts or quantities may fluctuate or change throughout the life of the order or contract
- A consulting service reportable to the Office of the Governor's Department of Budget and Planning
- The contractor requiring advanced payment
- The contractor requiring access to confidential records or TREC/TALCB data systems
- Vendor performance reported in VPTS is lower than A
- A new program or service, unlike a current TREC/TALCLB initiative
- The contractor has not had a major contract with a Texas state agency.
- Example: Telecom services, Copiers

6.4.3 Tier III – High Risk – meeting any one or more of the following criteria:

- Over \$100,000.00
- Contracts paid with non-agency funding sources
- A proprietary or sole source contract over \$100,000
- Vendor performance reported in VPTS is lower than A
- Contracts that the agency has determined that a contract meeting one or more Tier II risk criteria should be subject to Tier III monitoring procedures.
- Examples: License Testing, Regulatory Software System, Call Recording System

6.5 Contract Monitors: Overseeing Deliverables

Contract monitors are responsible for monitoring their assigned contracts. to which they are assigned.

6.5.1 The responsibilities of the Contract Monitors include:

- The primary point of contact for agency communication with the contractor.
- Implements a quality control and contract monitoring process using TREC/TALCB monitoring resources.
- Monitors the contractor's progress and performance to ensure goods and services procured conform to the contract requirements and keep timely records of findings.
- Consults with Agency Contract Specialist to address contract concerns.
- Manages the distribution and collection of any state property used in contract performance, (e.g., computers, telephones, identification badges).
- Manages, approves and documents requested changes to the contract.
- Initiates the amendment process authorized by the terms of the contract.
- Oversees or performs the inspection and approval of products and/or services.

- Verifies the accuracy of invoices and authorizes contract payments.
- Monitors the contract budget to ensure sufficient funds are available throughout the term of the contract
- Promptly identifies and resolves contractor disputes
- Exercising state remedies, as appropriate, when a contractor's performance is deficient

#### 6.5.2 The responsibilities of the Contract Specialist

- Acts as the main point of contact to the Contract Monitors
- Develops month, quarterly and annual contract tracking reports
- Ensures that contract records are maintained in accordance with the records retention schedule
- Confirms that all products and/or services have been delivered and delivery is completed prior to the expiration date of the contract
- Coordinates the contract closeout processes by ensuring the contract file contains all necessary contract documentation, reporting vendor performance to VPTS, and documenting lessons learned.

#### 6.5.3 Dispute Resolution

The objective of any dispute resolution process is to resolve problems before they escalate. To avoid escalation of problems to the next level and ensure the Agency has not exacerbated potential problems, it is imperative that TREC/TALCB personnel respond promptly to all contractor inquiries.

TREC/TALCB Contract Monitors should make every attempt to informally resolve all issues with a vendor. The Contract Monitors should contact purchasing to assist in the event the contract monitor, and the contractor cannot resolve the dispute. TREC/TALCB is required by law to include as a term of the contract the dispute resolution process provided for in Chapter 2260 of the Texas Government Code.

#### 6.5.4 Change Management/Amendments

Agency contracts may require changes throughout the term of the contract. The changes may be minor administrative changes such as a change of address, or they can be substantial changes that affect the price and delivery. All changes must be approved and processed through Purchasing.

Failure to manage and control changes may result in an unintentional modification to the scope of work, extension of the schedule, increase in the contract cost, circumvention of management controls, or diminished contractor accountability. All may cause future compliance issues. When modifying any part of the contract, the Contract Monitor must contact Purchasing to initiate the contract change to determine if the change is within the scope, or parameters of the solicitation. Any changes to an original contract, whether it be competitive or IAC, ICC, etc., must remain within the scope of the original contract, funding authority, and statutory authority.



If a change is approved, the change and the impact to the scope of work must be documented in a contract amendment or purchase order change notice, as applicable. Under no circumstances may TREC/TALCB staff direct a contractor to perform work that is not stated in the contract terms. If a contractor perceives that work beyond the scope of the contract was ordered by TREC/TALCB, the contractor may claim that the contract was “constructively” changed and may be entitled to additional compensation for the changes. Changes determined to be substantial will require additional review by the Purchasing Manager.

#### 6.5.5 Renewals

If the contract has an option to extend or renew, the Contract Monitor will work with the Contract Specialist to assess whether the option will be exercised by TREC/TALCB prior to the expiration of the current contract term. The number, length, and process for exercising renewals and extensions should be specified in the contract.

Under no circumstances will a contract be renewed after the expiration date of the preceding contract term. Purchasing will provide vendors with a notice of expiration and direct the vendor to cease any work on the project. The Contract Monitor must ensure that all work ceases and should not approve invoice for work performed after the contract term expires.

Work performed by a vendor without a valid contract or outside the terms of a valid contract constitutes an unauthorized purchase and is prohibited.

#### 6.6 Close-out

The purpose of the close-out phase is to verify that all parties to the contract have fulfilled their contractual obligations. The contract specialist will oversee all close-out activities and ensure that the process is conducted promptly. The contract specialist will work closely with the contract monitor. The close-out activities should include:

- Ensure that all goods and services have been received and accepted.
- Review the list of required reports and ensure all reports have been received, reviewed, and accepted for accuracy and completeness.
- Confirm the return of equipment and materials.
- Identify ownership issues and confirm resolution, including the disposition of equipment or licenses purchased under the contract.
- Verify that services are complete with Contract Specialist.
- Approve final payment to the vendor.
- Coordinate the Contractor performance and enter into the Comptroller’s Vendor Performance Tracking System (VPTS).

## Section 7. Historically Underutilized Business (HUB) Program

The Statewide Historically Underutilized Business (HUB) Program was established in accordance with Texas Government Code §2161 and Texas Administrative Code, Title 34, Chapter 20, Subchapter D, Division 1, Sections §20.281 to §20.298. The HUB program promotes full and equal business opportunities to remedy disparity in state procurement and contracting. TREC/TALCB makes a good faith effort to do business with minority and women owned business that are registered through the Comptroller of Public Accounts HUB Program.

### 7.1 HUB Coordinator

*TREC/TALCB is required to designate a HUB coordinator for the agency. The HUB Coordinator is required to coordinate training programs to recruit and retain HUBs, report information to the CPA, and match HUB businesses with key staff within the agency.*

### 7.2 Subcontracting

In accordance with *Texas Government Code Section 2161.252*, TREC/TALCB requires respondents to solicitations with an expected value over \$100,000 to complete and submit a HUB Subcontracting Plan (HSP). TREC/TALCB also requests and encourages respondents to solicitations with an expected value under \$100,000 to complete and submit an HSP.

### 7.3 HUB Reporting

- **Semi-Annual Report** (*Texas Government Code Sections 2161.121 and 2161.125*). Due March 15 and reported through the CPA HUB Portal following the instructions provided by CPA.
- **Annual Report** (*Texas Government Code Sections 2161.121 and 2161.125*). Due September 15 and reported through the CPA HUB Portal following the instructions provided by CPA.
- **HUB Assessment – Bi-Annual** (General Appropriations Act Rider). Due December 1 and submitted to CPA and LBB via email.
- **State Agency Progress Reports** (*Texas Government Code Section 2161.124*). Due December 31 and reported by the Financial Services Office with the Nonfinancial Data Report.
- **Estimate of Expected Contract Awards** (*Texas Government Code Section 2161.183*). Due October 30; maintained by the agency.

## Section 8. Records Retention

### 8.1 Retention Period

#### 8.1.1 Before August 31, 2015

All contract and procurement files, including Purchase Orders and related documentation, for procurements executed, renewed, or amended on or before August 31, 2015, must be retained by TREC/TALCB for four (4) years after the contract or procurement closes. If the contract or procurement was involved in any litigation, claim, negotiation, audit, open records request, administrative review, or other action, then the retention date is four years from the completion of the action.

#### 8.1.2 After September 1, 2015

All contract and procurement files, including Purchase Orders and related documentation, for procurements executed, renewed, or amended on or after September 1, 2015, must be retained by TREC/TALCB for seven (7) years after the contract or procurement closes. If the contract or procurement was involved in any litigation, claim, negotiation, audit, open records request, administrative review, or other action, then the retention date is seven years from the completion of the action.

### 8.2 Purchasing Document Retention

The Purchasing Section is responsible for ensuring the retention of all procurement files.

#### 8.2.1 Purchase Order Records

As of Fiscal Year 2021, CAPPs is the system of record for all Purchase Orders and related documentation. Purchase Order records for Fiscal Year 2020 and earlier may be kept in electronic and hard-copy and filed by Purchase Order Number.

#### 8.2.2 Solicitation Records

Records for formal solicitations are kept in a mixed form of both hard-copy and electronic copy in the purchasing network drive. Records include all elements of the solicitation process and copies of all submitted vendor responses.

#### 8.2.3 Contract Records

PURCHASING keeps hard-copy master contract files with original signatures, including the original solicitation, response from the selected respondent, executed contract, and any amendments. All contract documents are also kept in electronic form for ease of access. The division Contract Monitor keeps contract management files related to day-to-day contract management activities.

#### 8.2.4 Division Retention

The Contract Monitor is responsible for ensuring the retention of division-level files. This includes documents related to the day-to-day management and oversight of the contract, project management, deliverable testing and acceptance, and invoice approvals.

## Section 9. Bid Protests

TREC/TALCB provides a protest procedure to be used by any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract. TREC/TALCB's bid protest procedures. Protests must be addressed to TREC/TALCB's Financial Services Director. If, after the Financial Services Director determination is made, the aggrieved party is not satisfied, that party may appeal the determination to the agency's Executive Director.

### PROPOSED RULE ACTION FROM THE NOVEMBER 10, 2020, MEETING OF THE COMMISSION

#### CHAPTER 534 GENERAL ADMINISTRATION (NEW) §534.7. Vendor Protest Procedures

(a) The purpose of this section is to provide a procedure for vendors to protest purchases made by the Texas Real Estate Commission ("Commission") and the Texas Appraisal and Licensing Board (collectively "the agency"). Protests of purchases made by the Texas Facilities Commission ("TFC") on behalf of the agency are addressed in 1 Texas Administrative Code Chapter 111, Subchapter C (relating to Complaints and Dispute Resolution). Protests of purchases made by the Department of Information Resources (DIR) on behalf of the agency are addressed in 1 Texas Administrative Code Chapter 201, §201.1 (relating to Procedures for Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures). Protests of purchases made by the Statewide Procurement Division of the Comptroller of Public Accounts ("CPA") on behalf of the agency are addressed in 34 Texas Administrative Code Chapter 20, Subchapter F, Division 3 (relating to Protests and Appeals). The rules of TFC, DIR, and the CPA are in the Texas Administrative Code, which is on the Internet website of the Office of the Secretary of State, Texas Register Division at: [www.sos.state.tx.us/tac/index.shtml](http://www.sos.state.tx.us/tac/index.shtml).

(b) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the agency. Such protests must be in writing and received in the office of the Director of Finance within ten working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements set forth in subsection (c) of this section. Copies of the protest must be mailed or

delivered by the protesting party to all vendors who have submitted bids or proposals for the contract involved.

(c) A formal protest must be sworn and contain:

(1) a specific identification of the statutory provision(s) that the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory provision(s) identified in paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) an identification of the issue or issues to be resolved;

(5) argument and authorities in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to other identifiable interested parties.

(d) The Director of Finance shall have the authority, prior to appeal to the Executive Director or his or her designee, to settle and resolve the dispute concerning the solicitation or award of a contract. The Director of Finance may solicit written responses to the protest from other interested parties.

(e) If the protest is not resolved by mutual agreement, the Director of Finance will issue a written determination on the protest.

(1) If the Director of Finance determines that no violation of rules or statutes has occurred, he or she shall so inform the protesting party and interested parties by letter which sets forth the reasons for the determination.

(2) If the Director of Finance determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he or

she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and any appropriate remedial action.

(3) If the Director of Finance determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he or she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and any appropriate remedial action. Such remedial action may include, but is not limited to, declaring the purchase void; reversing the award; and re-advertising the purchase using revised specifications.

(f) The Director of Finance's determination on a protest may be appealed by an interested party to the Executive Director or his or her designee. An appeal of the Director of Finance's determination must be in writing and must be received in the office of the Executive Director or his or her designee no later than ten working days after the date of the Director of Finance's determination. The appeal shall be limited to review of the Director of Finance's determination. Copies of the appeal must be mailed or delivered by the appealing party to other interested parties and must contain an affidavit that such copies have been provided.

(g) The General Counsel shall review the protest, Director of Finance's determination, and the appeal and prepare a written opinion with recommendation to the executive director or his designee. The executive director or his or her designee may, in his or her discretion, refer the matter to TREC at a regularly scheduled open meeting or issue a final written determination.

(h) When a protest has been appealed to the Executive Director or his or her designee under subsection (f) of this section and has been referred to the relevant Commission or Board of TREC by the Executive Director or his or her designee under subsection (g) of this section, the following requirements shall apply:

(1) Copies of the appeal, responses of interested parties, if any, and General Counsel recommendation shall be mailed to the TREC members and interested parties. Copies of the general counsel's recommendation and responses of interested parties shall be mailed to the appealing party.

(2) All interested parties who wish to make an oral presentation at TREC's open meeting are

requested to notify the office General Counsel at least two working days in advance of the open meeting.

(3) TREC may consider oral presentations and written documents presented by staff, the appealing party, and interested parties. The chairman shall set the order and amount of time allowed for presentations.

(4) TREC's determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting and shall be final.

(i) Unless good cause for delay is shown or the Executive Director or his or her designee determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

(j) In the event of a timely protest or appeal under this section, a protestor or appellant may request in writing that the agency not proceed further with the solicitation or with the award of the contract. In support of the request, the protestor or appellant is required to show why a stay is necessary and that harm to the agency will not result from the stay. If the Executive Director determines that it is in the interest of agency not to proceed with the contract, the Executive Director may make such a determination in writing and partially or fully suspend contract activity.

(k) A decision issued either by TREC in open meeting, or in writing by the Executive Director or his or her designee, shall constitute the final administrative action of the agency.

