

Texas Real Estate Commission

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Procurement Plan  
FY 2023



[procurement.plans@cpa.texas.gov](mailto:procurement.plans@cpa.texas.gov) by November 30, 2022

## Section 1. General Information

Agency Name: Texas Real Estate Commission  
Agency Number: 329

## Section 2. Contact Information

### 2.1 Financial Services Director

Name: Ranada Williams  
Phone Number: 1-512-936-0102  
E-mail Address: [ranada.williams@trec.texas.gov](mailto:ranada.williams@trec.texas.gov)

### 2.2 Purchasing Manager Contact Information

Name: Regina B. Durden  
Phone Number: 1-512-936-3190  
E-mail Address: [regina.durden@trec.texas.gov](mailto:regina.durden@trec.texas.gov)

## Section 3. Purchasing Capacity Assessment

- 3.1 Dollar value of agency delegated purchases for FY22: \$1,314,803.00
- 3.2 Number of purchasing FTEs: 4
- 3.3 Automated purchasing tools used by the agency (if applicable): CAPPS

## Section 4. TREC Purchasing and Contract Management Procedures

- 4.1 Purchasing and Contract Management Procedures – Attachment A
- 4.2 Bid Protest Procedures - Attachment A – Pages 40-2
- 4.3 Credit card procedures – Attachment A – Pages 30-34
- 4.4 SAO audits of purchasing and contract management functions for FY22-FY23 - **NONE**

## Section 5. Audits – FY 21-22

- 5.1 SAO audits of purchasing and contract management functions for FY21-FY22 - **NONE**
- 5.2 Comptroller post payment or procurement audits for FY21-FY22 – **NONE**

**Section 6. Certified Procurement Professionals**

6.1 Number of Certified Procurement Professionals

- Number of certified Purchasing FTEs: 4
- Number of certified contract management FTEs: 3

6.2 Name, title, and certification numbers

Certified Texas Contract Developer

| Type       | Name              | Title             | Certification Number |
|------------|-------------------|-------------------|----------------------|
| Purchasing | Regina B. Durden  | Purchasing Manger | 1900010526           |
| Purchasing | Sandy Jones       | Purchaser         | 1900016950           |
| Purchasing | Kimberly Donnelly | Purchaser         | 1900026348           |
| Purchasing | Athena Brown      | Purchaser         | 1900038747           |

Certified Texas Contract Manager

| Type                | Name              | Title                          | Certification Number |
|---------------------|-------------------|--------------------------------|----------------------|
| Contract Management | Regina B. Durden  | Purchasing Manger              | 1900014618           |
| Contract Management | Sandy Jones       | Sr. Purchaser/Contract Manager | 1900016950           |
| Contract Management | Kimberly Donnelly | Purchaser                      | 1900026349           |

6.3 Training Projections for the Fiscal Year

- Number of seats needed for CTCD certification courses for FY23: 0
- Number of seats needed for CTCM certification courses for FY23: 0

**Section 7. Delegated Purchasing Assessment**

7.1 Proprietary Justifications – Delegation

- Justification - See Attachment B

7.2 Proprietary Justification – Signature Authority

Signature Authority: Chelsea Buchholtz - Executive Director & Commissioner  
Delegated Authority Tony Slagle - Executive Director & Deputy Commissioner

7.3 Five delegated purchases anticipated to have the highest expenditure for commodities or services (excluding professional services) not available on an existing contract through CPA or DIR for FY23:

| <b>Delegated Purchase</b>                            | <b>Anticipated Value for FY23</b> | <b>Previous FY Value for same/similar purchase:</b> | <b>Name of current vendor:</b> | <b>Has the agency looked for the item on CPA or DIR contract? (Y/N)</b> |
|--|-----------------------------------|---|--------------------------------|---|
| Regulatory Applications Modernization Project (RAMP) | \$3,700,000.00                    | n/a   | New system                     | Yes   |
| Software Maintenance Versa (Tyler Technologies)      | \$175,000.00                      |   | Tyler Technologies             | Yes   |
| Video Services                                       | \$23,000.00                       |   | Adm Monitor                    | Yes   |

# Attachment A

Purchasing and Contract Management Procedures

Bid Protest Procedures

Credit card procedures



Financial Services  
Purchasing Section

2023  
Contract Management Guide and Procedures Manual

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# Part 1. Introduction & General Requirements

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## 1.1 Introduction

The Financial Services Division, Purchasing Section has developed this purchasing and contract management procedures manual. The purpose of the manual is to establish purchasing and contract management procedures and best practice guidelines for the Texas Real Estate Commission (TREC) purchasing staff. This document will be updated as processes and procedures are updated or established.

## 1.2 Public Information Requests.

Public Information Requests (PIR or Open Records Requests) must be submitted in writing. The agency has created a [public information request form](#). The form is not required.

For more information about Public Information requests, go to the following links:

TREC: <https://www.trec.texas.gov/public/request-public-information>

TALCB: <https://www.talcb.texas.gov/public/public-information-request>

NOTE: PIRs are time sensitive and must be addressed immediately. Notify the Purchasing Manager immediately when a PRI is received.

All PIRs sent directly to a purchaser should be forwarded to the Public Information Officer (PIO). The purchaser should send the following note requesting the notice be sent directly to the agency's PIO office:

Sample Email:

“The Texas Public Information Act requires that public information requests be submitted via email or fax directed to the public information officer for the agency. Please direct your request to [public.information@trec.texas.gov](mailto:public.information@trec.texas.gov) or by fax to (512) 936-3798. The public information officer or the officer's designee will respond to your request.”

Thanks,

Purchaser Salutation

## 1.3 Executive Management Review and Approval

The Purchasing Team (PT) includes the Purchasers, Contract Specialist, and Purchasing Management. The PT has the authority to sign Purchase Orders. All other documents must be reviewed and signed by Executive Management.

### 1.3.1 Document examples: (included but not limited to):

- a. Vendor documents requiring signature
- b. Two-party contract document
- c. Government documents requiring agency signature

### 1.3.2 Signature Authority

- a. Purchasing
  - o Purchase Orders
- b. Financial Services Director
  - o Agency reports and certifications
- c. The Executive Director and specified designees
  - o Two party agreements
  - o Vendor quotes
  - o Other vendor documents
  - o Agency reports and certifications

### 1.3.3 Review and Approval Process

Purchasers are required to obtain approval prior to issuing certain documents, purchases, contracts, and reports submitted outside of the agency. Purchasers should allow adequate time to route documents for approval or signature.

### 1.3.4 Signature Routing

1. All contracts requiring signature must be routed via DocuSign using one of the following templates.
  - o Contract Routing Form – Agency Certification Document
  - o Contract Routing Form – Formal Contract
  - o Contract Routing Form – Vendor Documents
2. To access DocuSign templates, go to the 3<sup>rd</sup> tab titled “Templates”. If a customized template is needed, contact the purchasing manager.
3. Vendor Signature  
The vendor or other signee should sign the document before routing to the agency’s Executive Management. The Purchasing Manager, the Financial Services Director, and General Counsel must review before routing outside of the agency.

### 1.3.5 DocuSign Routing Role

1. Purchaser should
  - a. confirm the signature order prior to sending or moving to the next step and
  - b. insert the (1) date, (2) title, and (3) the initial or signature lines.
2. “Allow to Edit” – the Purchasing Manager and Finance Director - Do not change. This feature requires action before the document can move forward.
3. “Needs to View” – this is an FYI only setting and should not be used.
4. “Needs to Sign” – The document approver and signee must sign to complete the document process.

## 1.4 Review and Approval Process

Purchasers are required to obtain approval prior to issuing certain documents, purchases, contracts, and reports submitted outside of the agency. Purchasers should allow adequate time to route documents for approval or signature.

## Part 2. Purchasing Methods

### 2.1 Introduction

The Texas Comptroller of Public Account's (CPA's), Statewide Procurement Division (SPD) delegates certain purchases to state agencies. This authority depends on an agency's continuing satisfactory performance. Although the agency processes the order and makes the award, SPD sets minimum requirements. The SPD has the authority to revoke delegated authority if an agency fails to comply with established procedures, therefore it is crucial that the purchasing staff adhere to agency purchasing procedures and the SPD Contract Management Guide.

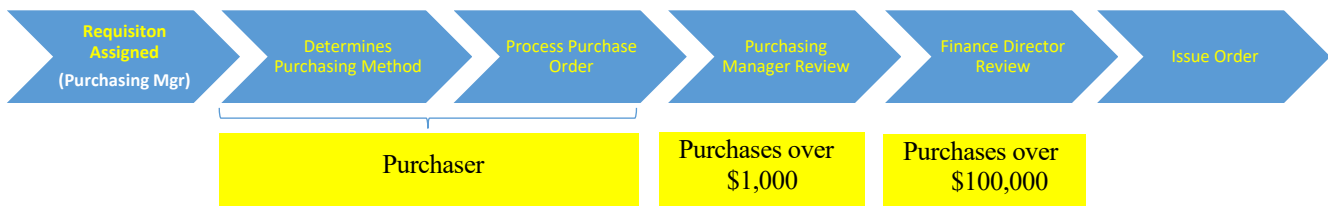
The Texas Real Estate Commission (TREC) launched the CAPPs Financial System, September 1, 2020. CAPPs is a web-based eProcurement system that integrates the agency's budget, approvals, purchasing, accounts payables, and asset management processes.

There are two-main process flows: the requisition and the purchase order. The requisition flow begins after the end user recognizes a need and requests that a requisition be submitted for required goods or services. Next, the requisition is routed to be budgetarily coded and other approvals, as required. The requisition is then assigned to purchasing who will follow specific purchasing guidelines and processes the order.

#### Requisition Workflow.



#### Purchase Order Approval Workflow



## 2.2 Process Determination

| SPD Non-Delegated Purchases   | SPD Delegated Purchases   | Automated Information Services   | Other Purchases  |
|---|---|--|--|
| <ul style="list-style-type: none"><li>•Set-a-side Programs</li><li>•Texas Correctional Industries</li><li>•The State Use Program</li><li>•Term Contracts</li><li>•TxMas</li><li>•Proprietary Purchases</li><li>•Printing Services</li></ul> | <ul style="list-style-type: none"><li>•Under \$10K</li><li>•Goods \$10K - \$50K</li><li>•Svcs \$10K - \$100K</li><li>•Svcs Over \$100K</li><li>•Direct Publications</li><li>•Internal Repair</li><li>•Emergency Purchases</li></ul> | <ul style="list-style-type: none"><li>•DIR Contracts</li><li>•DIR Exemptions</li><li>•RFO Procurement Method</li></ul> | <ul style="list-style-type: none"><li>•Professional Services</li><li>•Consulting Services</li><li>•Interagency Contracts</li><li>•Request for Qualifications</li></ul> |

## 2.3 Electronic Posting Requirements

All procurements with an estimated value greater than \$25,000 regardless of the source of funds to be used for the contract must be posted on the Electronic State Business Daily (ESBD). The ESBD is managed by the SPD. The contract value for posting to the ESBD means “the estimated dollar amount that an agency may be obligated to pay during the life of the contract and all executed and proposed amendments, extensions, and renewals.”

The minimum ESBD posting requirements (see CPA contract management guide for full description of the requirements).

### 2.3.1 14 Calendar days

The entire solicitation package (including all parts, exhibits and attachments posted to the ESBD).

### 2.3.2 21 Calendar days

A notice of the procurement that includes all information necessary to make a successful bid, proposal, or other applicable expression of interest for the procurement contract.

## 2.4 Purchase Requisition Numbering

Requisition numbers are automatically assigned in the order they were entered in CAPPS. The numbering is sequential and continuous without regard to the fiscal year change.

## 2.5 Purchase Order Numbering

### 2.5.1 General Numbering

Purchase Orders start with the three-digit agency number, followed by the fiscal year, and four numbers (ex: 329-22-1234). The last four numbers in the purchase order will reset each fiscal year. The last four digits will be assigned as follows:

- 0000 – Numbering for all purchases except the following:
- 5000 – Interagency Purchases
- 6000 – Credit Card Purchases
- 9000 – Cancelled Purchase Orders

## 2.5.2 Credit Card Numbers

Credit card PO numbers are assigned by purchaser. For each fiscal year, PO numbers will be assigned to purchasers in the following number series:

| Purchaser: | One-time CC Purchase | Contract Purchase   |
|------------|----------------------|---------------------|
| Sandy      | FY-6100              | xx-6101, 6102, etc. |
| Kim        | FY-6300              | xx-6301, 6302, etc. |
| Athena     | FY-6500              | xx-6501, 6502, etc. |
| Regina     | FY-6700              | xx-6701, 6702, etc. |

One time credit card purchases will be processed under the purchaser’s One-Time CC Purchase Order number. Purchases that require contract tracking will be processed as a separate purchase order under the Purchasers Credit Card numbering series.

Background: CAPPs allows only one contract per PO. Rather than assigning the line-item number to the contract number (ex. C21.0230.4) for purchases with a contract as doing in FY22, starting in FY23 we will add a new PO number within an assigned series (below) for credit card purchases that have a contract. Example: PO # 23-6101, Contract, C23-6101, etc. This will allow the contract to be attached to the PO. All credit card purchases that are a one-time purchase will be added to the main PO (Example 23-6100).

Examples of credit card purchases:

1. One time purchase: Registration fee to a class
  - Create PO #23-6100.
  - Subsequent one-time purchases will be completed as a POCN to #23-6100 and will appear as a new line item (no change to current process).
  
2. Purchase for a subscription with contract term:
  - SurveyMonkey subscription 9/1/22 – 8/31/23
    - Create new PO # 23-6101
    - Create contract #C23-6101
    - Attach to PO #23-6101

## 2.6 Solicitation Method Guide

The following should be used to determine the appropriate solicitation method when obtaining formal and informal bids or quotes.

| Solicitation Document | Examples                            | IT (DIR)       | IT Non-DIR    | Non-IT                                   |
|-----------------------|-------------------------------------|----------------|---------------|--|
| Email                 | Spot purchase for goods or services | Under \$25K    | Under \$5K    | Under 10K                                |
| Pricing Request       | IT hardware, software, and services | \$25K - \$100K | \$10K - \$25K | \$10K - \$25K                            |
| IFB                   | Office equipment, services          | ----           | -----         | \$25K – 50K goods<br>\$25K - \$100K Svcs |

| Solicitation Document | Examples   | IT (DIR)     | IT Non-DIR   | Non-IT         |
|-----------------------|--|--------------|--------------|----------------|
| RFO                   | IT hardware, software & services; i.e.,<br>Implementation svcs;<br>IT hardware, software | \$50K - \$1M | \$10K - \$1M | -----          |
| RFP                   | Exam svcs  | ----         | ----         | \$25K and over |
| RFQ                   | Auditing svcs; Appraisal review  | ----         | ----         | \$25K and over |

## 2.7 How to Process a Requisition

Purchasers should use the following chart as a guide to process purchase requisitions and issue purchase orders.

|    | Step                                | Description  |
|----|-------------------------------------|--|
| 1. | Receive the Requisition             | Review the requisition workload.<br>Identify requisition line item(s) to be processed.<br>Determine the appropriate Procurement Method.  |
| 2. | Process the Requisition             | Go to the specific category and type of purchase for specific processing information.<br><br>Ensure that the requisition includes adequate funding to process the order. If additional funds are required contact the division to obtain approval to add funds and work with the budget analyst to increase funds.<br><br>Determine if bidding is required<br>If yes, prepare an informal or formal solicitation (See Section 2.6 Solicitation Guide).<br>If no, obtain a quote or process through SmartBuy. |
| 3. | Determine if a Contract is required | A CAPPs contract should be established if the purchase is for (1) services with an associated period of time (i.e., subscription, maintenance) or (2) a blanket contract for goods or services.<br><br>Contracts are not required for training services or services less than one month or less than \$2,500.<br><br>If a contract is required, contact the Requisitioner to determine the Contract Monitor.   |

|    | Step   | Description   |
|----|--|---|
| 4. | Move the requisition line(s) to the purchase order               | <p>Designate a vendor.<br/>           Pull the line items into the purchase order.<br/>           Update the line-item description to match the bid or SmartBuy order description.<br/>           Include vendor contact name, phone, and email.<br/>           Designate Appropriate PCC Code.<br/>           Verify and update the class and item codes.<br/>           Include agency contact or contract monitor, name, phone, and email.<br/>           Add start and end date, if applicable.</p> <p>Note: Ensure that quote and PO information, quantities, and dollars match.</p> |
| 5. | Attach back-up documentation to the Purchase Order file in CAPPS | <p>Backup Documentation may include:</p> <ul style="list-style-type: none"> <li>• Quotes</li> <li>• Bids</li> <li>• PCC Checklist</li> <li>• Email correspondence</li> <li>• Proprietary Justifications</li> <li>• Unauthorized Purchase Justifications</li> <li>• Other back-up verification documentation</li> </ul>  |
| 6. | Process PO   | <p>Attach TREC Terms and Conditions, when applicable.</p> <p>If purchase is over \$1,000 notify purchasing manager to review PO.<br/>           Upon approval issue PO.</p>   |
| 7. | Issue PO   | <p>Send PO and appropriate backup documentation to vendor.<br/>           Include requisitioner and PO contact on the email notification.<br/>           If a contract number is assigned, send a notice to the contract monitor.<br/>           If receipt is required, include the Inventory Specialist.<br/>           Place a copy of the signed PO in Purchase Order common drive.</p>   |



## Part 3. SPD Non-Delegated Services

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There are multiple methods to purchase goods and services using pre-established contracts. The CPA's SPD and DIR have specific statutory authority, rules, procedures, and processes that must be followed when procuring goods and services under their respective contracts. The following sections provide information about the contracts established and the general steps required to procure equipment, goods, or services available through the SPD non-delegated purchase methods.

### 3.1 Set-a-sides Programs

The Texas Legislature established special programs through WorkQuest and Texas Correctional Industries. Agencies are required to purchase certain goods and services through these programs.

#### 3.1.1 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 [tci@tdcj.texas.gov](mailto:tci@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.

#### 3.1.2 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.

#### 3.1.3 How to Process WorkQuest or TCI Orders

PCC: A, C

**Statutory Reference:** [Texas Human Resources Code Chapter 122](#) and the Texas Correctional Industries governed by [Texas Government Code Chapter 497](#)

Purchasers are required to utilize the WorkQuest or Texas Correctional Industries (TCI) contracts before considering other purchasing methods. If the requested commodity or service is not available under either of these contracts, then and only then, should the purchase proceed under a different method.

Most WorkQuest and TCI products and services are available under state term contracts.

WorkQuest or TCI Procedures

| Who       | What   |
|-----------|--|
| Division  | 1. Recognizes need and submits requisition.  |
| Purchaser | 2. Reviews requisition requirements and determines if requested items are available on SmartBuy, WorkQuest or TCI.   |
|           | 3. If available on Smartbuy, follows SmartBuy Procedures.  |
|           | 4. If not, <ul style="list-style-type: none"> <li>i. confirms that good or service is not TCI or WorkQuest</li> <li>ii. Obtains TCI waiver or report WorkQuest Exception.</li> </ul> |
|           | 5. Determines the appropriate procurement method.  |
|           | 6. Process order in CAPPs.   |
|           | 7. Issues PO to vendor and the ordering division.  |
|           | 8. Saves all backup documentation with signed purchase order in CAPPs.   |

**3.2 Term Contracts**

The 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 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. Purchasers should notify the purchasing manager if goods or services available through term contracts are not purchased.

**3.2.1 SmartBuy**

PCC: A, C, H or X

SPD establishes statewide term contracts for goods and services commonly ordered by all agencies. The term or length of each contract may vary, depending on the commodity or service.

**3.2.2 Types of Term Contracts**

SPD establishes two basic types of term contracts:

- Automated Contracts are used to order goods and services available through SPD's on-line purchasing system.
- Managed Contracts must be processed manually due to the more specialized nature of the good or service.

**3.2.3 Smart Buy Instructions**

The SPD provides detailed information about how to use the SmartBuy system. For specific information about SmartBuy go to: <http://www.txsmartbuy.com/help>.

**3.2.4 TREC Specific Requirements**

When processing SmartBuy orders, the following must be taken into consideration:

- Purchasers cannot purchase items that are above their certification requirements.
- All Purchasers must obtain and use their own login.
- All SmartBuy orders must also be entered into CAPPs.

### 3.2.5 Automated Contracts

The agency processes automated contracts directly through an on-line connection with CPA. Commodity codes and quantities are entered onto an electronically transmitted purchase order.

The Procedure:

| Who       | What   |
|-----------|--|
| Purchaser | Obtain or verify commodity codes from the SPD Term Contract. Items designated “Available on SmartBuy” must be entered via the SmartBuy system. |
|           | Confirm that all required options are listed (i.e., color, finish, accessories).   |
|           | Enter the order into CPA's on-line SmartBuy system – or pick up Requisitioner’s shopping cart (see Requisitioner’s instructions below).        |
|           | Print out and retain the initial copy of the order with the CAPPED PO in CAPPED.   |
|           | Complete PCC Checklist and attach in CAPPED.   |
|           | Prepare TREC PO to include the SmartBuy PO number and indicate “For Internal Tracking Purposes Only”.  |
|           | Distribute purchase order copies to the ordering division.   |
|           | Save TREC PO in CAPPED.  |

### 3.2.6 Managed Contracts

Managed Contracts are processed manually by preparing and emailing a purchase order directly to the vendor. A copy of the purchase order must be forwarded to CPA for the purchase history file.

The Procedure:

| Who       | What   |
|-----------|--|
| Purchaser | Obtain or verify commodity codes from the CPA Term Contract.   |
|           | Process TREC purchase order. Include agency contact or contract monitor, name, and phone on the PO. Add start and end date, if applicable. |
|           | Complete PCC Checklist.  |
|           | Email the purchase order to the contract vendor. CC the requisition and contract monitor when applicable.                                  |
|           | Save PO in CAPPs.  |

- Obtain or verify commodity codes from the CPA Term Contract.
- Complete PCC Checklist.

### 3.3 TXMAS

The SPD established as an alternative purchasing method the use of multiple award schedule contracts that have been competitively awarded (primarily) by the federal Government’s General Services Administration (GSA). Once the SPD authorizes use of the contract, it is posted on the SPD website.

These contracts may be utilized by the agency only after consideration of the set aside programs (TCI and WorkQuest), as well as any other statewide term contracts. A best value determination is made if there are multiple vendors within a TXMAS schedule who have like products or services. A best value determination may include obtaining information and/or quotes from the TXMAS vendors offering the similar product or service. TXMAS quotes are required if the purchase value is \$50,000 or more. Once an order is placed, the agency is also required to electronically submit information to SPD for historical reporting, as well as post a procurement award notice on the state’s electronic bulletin board if the value is \$25,000 or greater.

A TXMAS order may be processed as an SPD automated or Managed order depending on how the contract is established through the SPD.

### 3.4 Change Orders

A purchase order change notice, or POCN, is created when a purchaser goes back to a previous order and makes changes to an order. Purchasers can edit purchase order details in Texas SmartBuy including quantity, delivery date, and shipping address. The Purchaser and Contractor will receive an email with a PDF attachment of the POCN.

## 3.5 Proprietary Purchases

A purchase is proprietary when the specifications or conditions of the proposed purchase are proprietary to one vendor and do not permit an equivalent product or service to be supplied. The term “proprietary” refers to a product or service that has a distinctive feature or characteristic which is not shared or provided by competing or similar products or services. Proprietary purchases include products or services manufactured or offered under exclusive rights of ownership, including rights under patent, copyright, or trade secret.

The Purchasing Section will work with the division to evaluate whether the purchase is proprietary as a proprietary purchase may limit competition.

A proprietary justification is required when conducting a sole procurement with an estimated value greater than \$10,000. A procurement under \$10,000 does not require a proprietary justification. Below is a general description of the types of proprietary purchases and the general steps for processing proprietary purchases.

### 3.5.1 Types of purchases

There are three types of purchases which should be considered:

1. 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.

2. Sole Source

The specified good or service is only available from a single source.

Example: back issue of a magazine available only from the publisher; education conference available only from the conference sponsor.

3. Competitive

The specified good or service is available for purchase through more than one vendor. Example: software that is available through multiple resellers.

### 3.5.2 Proprietary Purchase Procedure

PCC: Varies

| Who                | What  |
|--------------------|---|
| Division           | Recognizes the need.<br>Determines if the purchase is proprietary or sole source.<br>Submits requisition with (1) a proprietary justification included in the requisition comments, (2) a quote, if applicable.<br><br><b>NOTE:</b> The division should contact purchasing if assistance or clarification is required to determine if the good or service is proprietary.   |
| Purchasing         | Reviews requisition and proprietary justification; submits justification to the purchasing manager.   |
| Purchasing Manager | Reviews the proprietary justification, if approved go to the next step; if not approved, notify division for options.   |
| Purchaser          | Processes the requisition.<br>If estimated value is over \$25,000 (goods) or \$100,000 (service), work with the division to develop specifications and <ul style="list-style-type: none"> <li>- Follow appropriate solicitation process.</li> <li>- Verify the appropriate VID number.</li> <li>- Include all other back-up verification documentation.</li> <li>- Complete the PCC Checklist.</li> <li>- Dispatch order and submit to vendor.</li> </ul> |

- If the estimated purchase price is greater than \$25,000, post the solicitation and award information to the ESBD.
- If the order is over \$100,000 and solicitation required, prepare contract file.
- For contracts over \$1M, obtain the Ethic’s Commission’s Certificate of Interested Parties (Form 1295) submitted by the vendor.
- If additional funds are required obtain purchase requisition for the additional funds and issue a Purchase Order Change Notice (POCN). NOTE: Competitive award is not required for an internal repair.
- Save all backup documentation with purchase order in CAPPs.

### 4.1. Introduction

The Texas Comptroller of Public Accounts (CPA) has delegated agencies the authority to procure goods or services that are not available from state contracts, or which are exempt from CPA authority. Each agency must follow established CPA guidelines but is authorized to obtain bids and place the orders.

A delegated purchase is a procurement in which the authority to manage the competitive process is delegated to an agency by CPA rule or by statutory exemption. The delegated purchase procedure does not apply to mandatory state use set-aside purchasing programs or purchases that can be satisfied by other purchasing methods specifically authorized by state statutes.

The Comptroller of Public Accounts Procurement Manual (Section 2.10 Delegated Purchase Procedure and Strategic Sourcing Principles) provides the following summary of minimum requirements for Delegated purchase.

### 4.2 How to Locate Vendors

Resources to locate vendors include Centralized Master Bidders List, HUB Directory, vendor mailings or catalogs, Minority Development Centers, Chambers of Commerce, business card file, local source, internet, or recommendation from the end user.

### 4.3 Delegated Purchase Categories

PCC E, F, G, Q, S, T

Delegated Purchases are broken into four (4) categories: (1) spot purchases, (2) informal bids, (3) formal bids for goods or services, and (4) delegated purchase with approval. This does not include items which are subject to the IT Commodity Purchasing Procedure. Commodities which are available from term contracts may be processed as spot purchases only if they are below the specified spot option limit.

Agencies are audited for compliance with CPA rules and any violation may cause the delegated authority to be withdrawn. Each agency is accountable for all purchases made on behalf of the agency.

#### 4.3.1 Commodities

A commodity purchase is a procurement of supplies, materials, or equipment and does not include the purchase of real property or services. CPA delegates to all state agencies the authority to purchase commodities whose estimated purchase price does not exceed \$25,000.

All commodity purchases that exceed that amount will require CPA review and approval prior to purchase. The purchaser must ensure that the commodity purchases do not fall within the requirements provided in Category 1 or 2 described in the previous sections.

### 4.3.2 Services

A service is defined as the furnishing of skilled or unskilled labor or professional work.

Delegated purchases of services do not include professional services.

When procuring services, it is important that the vendor is provided a clear scope of the requested services. Note: Purchasers should not sign any vendor's maintenance agreements or other documents which contain Terms and Conditions. The agency's contract attorney must review these documents prior to signature by the Executive Administration.

### 4.4 Spot Purchases

PCC: E

A "Spot Purchase" is a purchase of a good or services from one vendor that does not require competitive bidding. A spot purchase cannot exceed \$10,000 and the good or service must not be available from a pre-established contract. HUB vendors who can provide the needed good or service at a reasonable price should be contacted whenever possible. Purchasers may supplement the CMBL for procurements at this dollar amount.

### 4.5 Informal Bids

PCC: F or Q

An informal bid is required when purchasing goods or services with an estimated value between \$10,000.01 and \$25,000.00. The informal bid should be in writing using a pricing request form. Purchasers must attempt to solicit from at least 2 HUBs and utilize the CMBL.

#### Informal Bid Procedures

1. Review Purchase Requisition received from the division.
2. Collect the detailed specifications or scope of work for the required good or service.
3. Determine NIGP class and Item codes.
4. Use the "CMBL Only" search criteria and the applicable NIGP class(es) and Item(s) to locate at least three (3) vendors in the appropriate county, city, or district that provide the required good or service, two (2) of which must be HUB vendors. If a purchaser is unable to locate two HUBs, the purchaser must make a written notation in the purchase file of all reference sources used.
5. Non-CMBL vendors (including HUBS) may be added to the final vendor list to enhance competition with written approval from the agency's Executive Director. If applicable, also attempt to solicit a response from the vendor who last held the contract for the required good or service.
6. Print the CMBL vendor list including the approved supplemented vendors and include in the procurement file.
7. Solicit a response from each vendor identified in the previous steps. Include requirement that the responses remain firm for 30 days from the solicitation due date. The acceptable methods for receiving informal responses may include (a) in person, (b) direct mail or (c) electronic mail.
8. Tabulate the responses and select the vendor that provides best value to TREC. Include the following information in your tabulation:
  - a. CMBL vendors contacted, including those supplemented.
  - b. Corresponding response amounts.



- c. For HUBs, the ethnicity/gender of the Certified HUB
- d. Awarded vendor.
- e. Statement of reasons for non-awards.
- f. Keep a record of all responses.  
NOTE: Make tabulations available for public inspection and retain the tabulation for inspection during any audit.
- g. Print out CMBL detail for awarded vendor.
- 9. Process the award through issuance of a PO to the vendor.
- 10. Attach the following in CAPPs. Prepare and document the file with:
  - a. Copy of Pricing Request or IFB sent out.
  - b. Bid opening date.
  - c. Bid list (with HUB vendors designated).
  - d. Vendors' original responses.
  - e. Tabulation form including vendor contact name, address, and phone number.
  - f. Purchase order.
  - g. Proprietary statement, if needed.
  - h. All other back-up verification documentation.
- 11. Complete PCC Checklist.
- 12. Distribute purchase order copies to the ordering division and contract monitor, when applicable.
- 13. Save PO in CAPPs.

## 4.6 Formal Bids

Delegated Purchase of Goods over \$25,000; Services over \$100,000

A formal bid is required when purchasing services with an estimated value over \$25,000.00 for goods and \$100,000 for services if delegated by SPD or through statutory authority. Formal bids at this level require that bids are solicited to all vendors on the CMBL. Either the IFB, RFP, or RFO form may be used to obtain responses from bidders.

PCC: S

**Note:** A purchaser should not sign vendor maintenance agreements or other documents which contain Terms and Conditions. The contract attorney must review these documents prior to signature by the Executive Management.

### 4.6.1 Solicitation Methods

#### 1. Invitation for Bid (IFB)

An invitation for bid (IFB) is an invitation to vendors to submit a proposal on a specific commodity or service through a bidding process. The IFB is focused on pricing. The award is based upon the lowest bid meeting the minimum criteria for the specifications/requirements. Negotiations are not authorized when utilizing an Invitation for Bid (IFB) procurement method.

#### 2. Request for Proposals (RFP)

An RFP is a competitive solicitation that allows for negotiations. RFP evaluations may be based on factors other than cost and are typically associated with contracts for services,

although the use of RFPs is encouraged for commodities as well. Additionally, the RFP method allows for Best and Final Offer (BAFO) negotiations prior to award.

### 3. Request for Information. (RFI)

A request for information (RFI) is a document often distributed before initiation of the RFP process. It is used to gather vendor information from multiple companies to generate a pool of prospects providing a short list of candidates who meet the desired qualifications.

#### 4.6.2 Formal Bid Procedures

1. Determine if purchase is an emergency.  
If yes, require emergency justification form and notify the Procurement Manager immediately.
2. Collect the detailed specifications or scope of work for the required good or service.
3. Develop a Procurement Plan.
4. Review risk and needs assessment provided by Division if purchase is \$100,000 or more.
5. Determine if good or service is proprietary or sole source, if yes complete proprietary justification form.
6. Work with the division to develop the specifications or the statement of work to create a written Invitation for Bid (IFB) or Request for Proposal (RFP).
7. Require division staff to review and sign non-disclosure form.
8. Determine if HUB subcontracting is a probability if purchase is \$100,000 or more.
9. Finalize solicitation document.
10. Using the CMBL Only search criteria and the applicable NIGP class(es) and Item(s) to locate all vendors who provide the required commodity or service and service the county, city, or highway district.
11. Print out and save list.  
**NOTE:** If the procurement is a service purchase more than \$100,000, do not limit the search to your highway district. Print the vendor list from the CMBL and include it in the procurement file.
12. With written approval from the Executive Director non-CMBL vendors may be added to the final vendor list to enhance competition. If applicable, also attempt to solicit a response from the vendor who last held the contract for the required good or service.
13. Finalize solicitation document.
14. Determine if Comptroller's SPD review and approval is required.
  - Commodities exceeding \$25,000 or Services exceeding \$100,000 must be submitted to the Comptroller's State Purchasing Division (SPD) for review.
  - Commodities exceeding \$25,000 - submit an Open Market Requisition to SPD via email or through the CPA portal.
  - Services over \$100,000 - submit a delegation request through the CPA portal.
15. Obtain SPD approval, if applicable.
16. Print the CMBL vendor list including the approved supplemented vendors to include in the procurement file.
17. Determine evaluation team and develop evaluation plan.
18. Require all evaluation team members to sign conflict of interest/non-disclosure forms.
19. Solicit a response for the required commodity or service from each vendor identified in the previous steps. If applicable, also attempt to solicit a response from the vendor that last held the contract for the required commodity or service. The acceptable

- methods for receiving responses to formal solicitations may include: (1) in person, (2) direct mail, or (3) electronic mail.
20. Post the solicitation information to the Electronic State Business Daily (ESBD) unless the purchase is specifically exempted under Texas Government Code §2155.083 for 14 (if posting the solicitation or 21 days (if posting a notice).
  21. Collect bids and track Responses on a Bid Receipt Forms. Note the form must include the date/time stamped. No Responses should be accepted after the solicitation deadline.
  22. Response due date and release of respondent information:
    - a. For the Invitation for Bid process, a public opening is typically conducted announcing the respondents and pricing. If a public opening is not in the best interest of the solicitation, the solicitation documentation should state that there will be no release of information until after award.
    - b. For the Requests for Proposal process, there should not be a public reading of the respondents in order to protect negotiations and to comply with statutory requirements. (Texas Government Code §§ 2156.123 – 2156.124).
  23. Conduct Pre-bid conference, when applicable.
  24. Collect the responses, purchasing to ensure all responses are date and time stamped.
  25. Purchasing conducts an initial administrative review to verify responsiveness to the minimum requirements, including the HSP, when applicable.
  26. Purchasing schedules evaluation team meeting to instruct the team and distribute responses.
  27. The evaluation team will evaluate responses in accordance with the established evaluation criteria, including conduct vendor reference checks and submit scores to the Purchaser or the Evaluation Team Lead.
  28. The Purchaser will consolidate all evaluation team scores on a combined bid tabulation form. With the recommended vendor for award or that provides best value to the TREC.
  29. Review tabulation results with the evaluation team to determine recommended vendor for award.
  30. Purchasing will maintain an electronic copy of all responses.
  31. For contracts over \$1M, obtain the Ethic's Commission's Certificate of Interested Parties (Form 1295) submitted by the vendor.
  32. Print out all back-up verification documentation (i.e., Vendor List, Debarred, SAMs, etc.) to verify good standing.
  33. Prepare PCC Checklist.
  34. Route contract if applicable.
  35. Process the award through issuance of a PO.
  36. Send PO to vendor.
  37. Save PO in CAPPS.
  38. Post Award on ESBD.
  39. Submit contract to LBB, when applicable.
  40. Prepare and attach the following to the CAPPS PO:
    - a. PCC Checklist.
    - b. Copy of Pricing Request or IFB sent out.
    - c. Bid opening date.
    - d. Bid list (with HUB vendors designated).
    - e. Vendors' original responses.
    - f. Tabulation form including vendor contact name, address, and phone number.
    - g. Purchase order.
    - h. Proprietary statement, if needed.
    - i. All back-up verification documentation.

## Part 5. Other Delegated Services

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The SPD has delegated purchasing authority to agencies in the following categories of purchase:

- Emergency purchases
- Internal repair purchases
- Direct publications

### 5.1 Emergency Purchases

PCC: D, F, Q, S, T

An emergency purchase occurs when an unforeseen circumstance occurs that requires an immediate response to avert an actual or potential public threat or to avoid undue additional cost to the agency or the state. Lack of planning or pending expiration of funds is not considered an acceptable justification for an emergency. Also, a Declaration of Disaster by the Governor is similar, but will be handled in accordance with the CPA's Contract Management Guide.

The decision to declare an emergency purchase is the sole responsibility of TREC. If an emergency exists, a written determination must be included in the procurement file. A division requesting an emergency purchase must complete an emergency justification form and submit to the Purchasing Section with the requisition. The emergency justification form must be approved by the Purchasing Manager and will be included in the procurement file.

All procurements conducted as emergencies should be made as competitive as possible under the circumstances. For situations where a solicitation is not posted to the ESBD, the purchasing section should make a reasonable attempt to obtain at least three informal bids. Emergency purchases greater than \$25,000 must be posted to the ESBD; however, the minimum time for posting of the solicitation does not apply to the extent necessary to address the emergency. Emergency purchases are subject to CAT and QAT reviews and the period of service should not exceed the scope or duration of the emergency. In addition, emergency purchases of goods or services exceeding \$25,000, require TREC to send a full written explanation of the emergency along with other required documentation to the Comptroller's Statewide Procurement Division (SPD).

#### 5.1.1 Emergency Purchase Procedure

| Who                | What   |
|--------------------|--|
| Division           | Completes the emergency justification, submits a requisition and contacts purchasing.  |
| Purchasing Manager | Reviews request for emergency justification .<br>If approved go to the next step; if not approved, the order should be processed using regular purchasing processes. |
| Purchaser          | Determines if bids are required and the appropriate procurement method.  |
| Purchaser          | Processes the order using the appropriate procurement method*.   |
| Purchaser          | Completes PCC Checklist.   |
| Purchaser          | Dispatches order and submit to vendor.   |

- For contracts over \$1M, obtain the Ethic’s Commission’s Certificate of Interested Parties (Form 1295) submitted by the vendor.
- Save all backup documentation with the purchase order in CAPPS.
- Post PO to LBB site (when applicable).

## 5.2 Internal Repair

An internal repair is a repair to state-owned equipment that cannot be reasonably defined prior to the actual repair and the extent of the repair needed cannot be determined until the equipment is disassembled and examined. Internal repairs are usually the result of an unexpected, basic service outage. For example, the unexpected failure of a building’s air conditioner may result in unanticipated repair to electrical circuitry, which would constitute an internal repair. Internal repairs should include labor and parts.

### 5.2.1 Internal Repair Procedure

PCC: E, F, Q, S

| Who                    | What   |
|------------------------|--|
| Division               | Recognizes need; determines requested service required; contacts Purchasing.   |
| Purchasing             | Determines if purchase meets internal repair requirements.   |
| Division or Purchasing | Identifies potential vendor(s) and obtains estimate from vendor.   |
| Division               | Prepares a requisition; attach quote to the requisition and submit the requisition in CAPPS. NOTE: expedite order when required.   |
| Purchaser              | Processes the order; the following statements must be included on the purchase order: “Internal Repair”<br><br>“Note to vendor: Not-to-exceed (insert reasonable dollar limit) for repair services unless prior authorization is provided by the agency.”<br><br>Obtain appropriate VID number and verify with TREC Accounts Payables Section. |
| Purchaser              | Completes PCC Checklist; Check ESB, SAM and Debarred Vendor List and attaches all required documentation.  |
| Purchaser              | Dispatches order and submits to vendor.  |

- If the estimated purchase price is greater than \$25,000, post the solicitation and award information to the ESB.
- If order over \$100,000 and solicitation required, prepare contract file.
- For contracts over \$1M, obtain the Ethic’s Commission’s Certificate of Interested Parties (Form 1295) submitted by the vendor.
- If additional funds required obtain a purchase requisition for the additional funds and issue a Purchase Order Change Notice (POCN). NOTE: Competitive award is not required for an internal repair.
- Save all backup documentation with purchase order in CAPPS.

### 5.3 Direct Publications

Publications may be purchased directly from the publisher or a professional membership only when the publication or membership is not available through a set-aside program, CPA term contract, TXMAS contract or through competitive bidding with no dollar limits. All SPD guidelines must be followed when ordering direct publications. Purchasers are required to post direct publications more than \$25,000 for a minimum of 14 days on the Electronic State Business Daily.

The following statement must be added to all POs for direct publication purchases:

*“Direct Publication – Not available from any other source.”*

#### 5.3.1 Direct Publication Examples

1. Direct subscriptions only available from the Publisher
2. Electronic data service directly from the publisher (not to be confused with on-line information services such as CompuServe)
3. Foreign publications
4. Back issues of magazines, journals, and newspapers
5. Publications of professional societies
6. Professional Memberships
7. Prepared videos, films, audio tapes, and laser disks only available from the Publisher
8. Computer software
9. Collections of any of the foregoing items, and microfilm or microfiche copies
10. Library of Congress cards
11. Thesis, dissertations, research findings, academic publications

#### 5.3.2 Direct Publication Procedure

PCC: K; Doc Type: 2

| Who       | What  |
|-----------|---|
| Purchaser | Reviews requisition and back up documentation.  |
|           | Processes the requisition.<br><br>If estimated value is over \$25,000 (goods) or \$100,000 (service), work with the division to develop specifications; follow appropriate solicitation process.<br>Obtain appropriate VID number.<br>Check ESBD, SAM and Debarred Vendor List. |
|           | Completes the PCC Checklist.  |
|           | Dispatches order and submit to vendor.  |
|           | Saves and attaches PO to CAPPs.   |
|           |   |

### 5.4 Statutorily Exempt

Specific goods and services are exempt from competitive bidding by statute. Exempt purchases require a legal cite which exempts it from competitive bidding be referenced on the purchase order. For additional statutorily exempt purchases go the Comptroller Contract Management Guide.

PCC: None; Doc Type 9

- State Treasury Funds - Purchases made with funds other than general revenue appropriations and funds not held in the state treasury.
- Employee Payroll Exempt by Statute - Employee payroll and other employee salary related items, e.g., salary, FICA, Federal Income Tax, Health Insurance.
- Exempt by Statute - Commodities and services that are exempt from the procurement process by legal statute.

| Description   | Statutory Cite  |
|---|---|
| Auxiliary enterprises   | Tex Gov't Code § 2155.141   |
| Goods or services made or provided by blind or visually impaired persons and offered for sale to state agencies   | Tex Gov't Code § 2155.138   |
| Consulting services or services of a consultant   | TEX GOV'T CODE § 2254.021 Et Seq. Must Use 7239, 7240, Or 7242 Comptroller Object Codes To Process Expenditures. 2155.001 |
| Items required by statute to be purchased from a particular source  | TEX GOV'T CODE § 2155.132(F)(2)   |
| Texas Department of Criminal Justice made goods   | TEX Gov't Code § 2155.065   |
| Professional services & fees  | TEX GOV'T CODE § 2254.001 Et Seq. Must Use 7253 Or 7356 Comptroller Object Codes To Process Expenditures. 2155.001        |
| Purchases of products and services: WorkQuest set-aside contracts   | Tex Gov't Code § 2155.441   |
| Services of an employee of a state agency   | Tex Gov't Code § 2155.001   |
| Utilities (services of public utilities): natural gas, electric, water, sewage & garbage services, other services - cell phone or cable services not included | Tex Gov't Code § 2155.001   |
| Vehicle maintenance & repair: any contract for repair of vehicles made by the Office of Vehicle Fleet Management of SPD.                                      | TEX GOV'T CODE § 2171.102(C)  |
| Professional memberships  | Tex Gov't Code § 2113.104.<br><br>164 34 Tex. Admin. Code § 20.82(D)(7).  |

## Part 6 Automated Information Systems

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There are various methods that can be used to procure Automated Information Systems (AIS) procurements of equipment, goods, or services. All AIS purchases will either be processed through a pre-established DIR contract, or the agency will be required to obtain a waiver (through the blanket exemption or waiver process) and purchase through the open market.

Department of Information (DIR) goods or services PCC: I

### 6.1 Types of DIR Contracts

The Department of Information Services (DIR) contracts include:

- Cooperative Contracts
- DBITs Contracts
- IT Staff Augmentation Contracts
- TXMAS Contracts

### 6.2 DIR Thresholds

The purchaser must determine the appropriate method to purchase. First determining if the requested hardware, software, or service is available through a DIR contract. The following criteria should be used to determine how to obtain quotes. (<https://dir.texas.gov/it-solutions-and-services/buying-through-dir/procurement-professionals-guide-dir>)

| Contract Value                                  | # Of Vendors  |
|---|---|
| Up to \$50,000                                  | State Agencies may directly award a contract to DIR Cooperative Contracts vendor(s) or reseller(s) in the category to which the contract relates.   |
| Over \$50,000 but not exceeding \$1 Million     | State Agencies must submit a request for pricing to at least <b>three (3)</b> DIR vendors or resellers in the category to which the contract relates.   |
| Over \$1 Million but not exceeding \$5 Million  | State Agencies must submit a request for pricing to at least <b>six (6)</b> DIR vendors or resellers in the category to which the contract relates.   |
| Over \$5 Million but not exceeding \$10 Million | State Agencies have the option to enter into a contract through the DIR Cooperative Contracts program. If using DIR contracts, state agencies must submit a request for pricing to at least six (6) DIR vendors or resellers in the category to which the contract relates. |
| Over \$10 Million                               | May not enter into a contract through the DIR cooperative contracts program to purchase a commodity item  |



### 6.3 Services

DIR offers contracts for the following services:

- a. IT Staffing Services
- b. Support Agreements
- c. Maintenance Agreements
- d. Hardware or Software Only Contracts

A statement of work must be established for purchases over \$50,000 and are for the requested:

- a. Cloud Services
- b. Deliverables Based Information Technology Services (DBITS)
- c. Managed Services for Information Technology
- d. IT Security Services
- e. Comprehensive Web Development

### 6.4 DIR Waiver

The Department of Information Resources (DIR) establishes contracts for the State of Texas for use in obtaining information technology goods and services. Should an information technology item or service not be available from these contracts, TREC obtains an exemption from DIR to proceed with the procurement using procurement methods approved by CPA.

### 6.5 Non-Department of Information Services

PCC: D

If the requested equipment, good or service is not available under a DIR contract, Purchasing may follow the delegated purchase process. Before proceeding however, the purchaser must follow the DIR Exemption process. (<https://dir.texas.gov/it-solutions-and-services/state-agencies/exemptions>)

If it is determined that an exemption is not required, the purchaser should purchase under the delegated purchase process. If a competitive bid is required, a Request for Offer template should be used to issue the solicitation.

#### 6.5.1 Processing tips

- If the purchase is under \$5,000 and not available through DIR, the purchase can be made to a non-DIR vendor without obtaining an exemption from DIR. The PO must reference the DIR blanket exemption and the PO file must include all back-up verification documentation and the PCC D checklist. NOTE: If multiple bids are obtained, a bid tabulation must be included in the PO file.
- If the purchase is over \$5,000, the purchaser must submit an exemption request to DIR. The order cannot be processed until DIR issues an approved exemption request.

### 6.6 Contracts Over \$1M

6.6.1 The Ethic's Commission's Certificate of Interested Parties (Form 1295) must be obtained from the vendor.

6.6.2 Post contracts on LBB website.

### 7.1 Introduction

The procurement card should be used in accordance with and in compliance with the State of Texas and TREC policy and procedures. The procurement card holder should use the procurement card when a purchase order is not accepted, or an expedited procurement process is required.

### 7.2 How to Obtain a Procurement Card

A procurement card application must be completed and signed by the employee's division director and submitted to the TREC purchasing manager. Once the application form has been received and approved, the employee requesting the procurement card must complete procurement card training.

The employee must successfully complete the training program before a card will be ordered and issued. The purchasing manager will issue the card to the cardholder in person or via express mail when received.

NOTE: At this time procurement cards will only be issued to Purchasers in Financial Services.

### 7.3 Procurement Card Agreement

Each person assigned a procurement card must sign an Acknowledgement of Receipt Form before activating the card. The form must be immediately returned to the purchasing manager.

### 7.4 Requirements

1. All purchases made using the procurement card must be made by the cardholder only.
2. The cardholder is responsible for the security of the procurement card and the transactions made with it.
3. The procurement card must be kept in a safe, locked location at all times.
4. The cardholder must use the procurement card for official state business only.
5. The cardholder can use the procurement card with any vendor or service provider that accepts it, is not on the restricted list, and is in good standing with the State of Texas.
6. The procurement card may be used for in-store purchases, mail, telephone, or fax orders.
7. The cardholder may use the procurement card to purchase specific approved items and services less than the established single transaction limit.
8. The total amount spent must not exceed the credit limit assigned to the procurement card in a given month.
9. The cardholder must reconcile the statement received from the bank to ensure all charges are accurate.
10. The procurement card is not intended to avoid or bypass appropriate purchasing or payment procedures.
11. The procurement card is not for personal use.
12. The procurement card must be returned to the program administrator before transfer or termination.

NOTE: If TREC's guidelines are not followed by the TREC employee when using the procurement card, disciplinary action up to and including termination of employment may occur.

## 7.5 Credit Limits

All procurement cardholders have a monthly spending limit. Limits may vary for each cardholder and will be established by the State program administrator.

A cardholder maintenance form must be completed to change procurement card limits. The form must be approved by division management and sent to the purchasing manager. The purchasing manager will forward the request to the bank for processing.

## 7.6 Faxed, Email, or Verbal Transactions

Verbal, Faxed, and Email transactions must be carefully vetted. Credit card purchase must be confirmed. The purchaser should contact the vendor to confirm that they accept faxed, verbal or email credit card transactions. Once the transaction is complete, the purchaser must confirm that the credit card transaction was processed and received by the vendor.

## 7.7 Requisition Submission Requirements

**All procurement card transactions must be placed on a purchase order prior to transaction execution.** A requisition submitted by a division but not placed on a purchase order is considered an unauthorized purchase unless approved in writing by the purchasing manager.

## 7.8 Purchase Order Assignments

A purchase order number will be assigned to each procurement card holder. A requisition will be processed by adding the transaction to the purchaser's procurement card purchase order. A new purchase order will be issued each fiscal year and tracked by the procurement card holder using a transaction log.

## 7.9 Procurement Transaction Verification

A procurement card transaction will be added to the PO with the following line-item detail. The quantity and unit of measure should coincide with the purchase. Example: 3 @ \$5.00, extension \$15. The credit card transaction will be \$15.00.

The procurement card holder will track all purchases on a transaction log for every billing cycle.

Each requisition added to the PO must include the appropriate back-up documentation including but not limited to receipts, PO checklist and vendor check documents. A warrant hold check must be printed and added to the file for all transactions over \$500.

NOTE: The cardholder must obtain a receipt or confirmation for every transaction. The transaction log must be maintained, reconciled, and submitted to accounts payables at the end of each billing cycle and with the procurement card monthly statement.

### 7.9.1 Transaction Log format

Format: Excel – Column, File name: **FY\_CC\_buyer(lastnamefirst initial)\_FY** example:  
**2020\_CC\_durdenr**

| PO Line Item | NIGP Class/Item | Transaction Date | Vendor | Description | Best Value | Check list | Receipt Link | Amount |
|--------------|-----------------|------------------|--------|-------------|------------|------------|--------------|--------|
|              |                 |                  |        |             |            |            |              |        |
|              |                 |                  |        |             |            |            |              |        |
|              |                 |                  |        |             |            |            |              |        |

The transaction logs will be saved at: K:\Purchasing\1. Purchase Orders\PURCHASE ORDERS FYXX, within the purchaser’s individual credit card folder.

### 7.9.2 Procurement Card Statement Reconciliation

The procurement card holder must:

- a. Reconcile log with the statement
- b. Confirm and/or update the transaction log
- c. Attach all receipts to the PO online folder for each line item
- d. Contact Accounts Payables if there is a discrepancy

### 7.10 Sales and Use Tax

The cardholder must ensure that sales and use tax are not included on the order.

### 7.11 Capital or Controlled Assets

The procurement card **should not be used to purchase capital or controlled items** unless approved in writing by the Director of Finance. If approved, the correct expenditure object code established for the type of assets being purchased must be used. The Texas Identification Number/Payee Identification Number/Vendor Identification (TIN/PIN/VID) of the selling vendor must be entered into USAS, rather than the TIN/PIN/VID of the state credit card issuer.

### 7.12 Cardholder Security

The cardholder is responsible for the security of the card. The procurement card should be treated with the same level of care as the cardholder would use with his/her own personal charge cards, even though the liability associated with the use of this card lies with the agency. The cardholder must guard the procurement card account number carefully, keeping it confidential at all times. It should not be posted in a work area or left in a conspicuous place. It should be kept in an accessible but secure location.

\*The only person authorized to use the procurement card is the cardholder whose name appears on the card. The card is to be used for business purposes only.

### 7.13 Prohibited Purchases

The card holder may use the card for items specifically identified on the PO. If the item or service is not specifically listed, the procurement card should not be used.

In addition, Per **Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter E, Section 5.57(g)**, a TREC cardholder may not use the card and may not reimburse an officer or employee for the use of a payment card for:

- A purchase of a personal nature or any other purchase not connected with official state business
- A cash advance
- A purchase of a consulting service
- A purchase of a good or a service that may not be purchased without the prior approval of another state agency
- A purchase that the office of the Texas Comptroller of Public Accounts audits before payment
- A purchase from a vendor if a payment to the vendor is prohibited by:
  - o Government Code [§403.055](#) or [§2107.008](#)
  - o Education Code [§57.48](#), or [§57.482](#)
  - o Family Code [§231.007](#)
- A purchase that violates any provision of the General Appropriations Act regarding the occurrence of excess obligation provisions
- The purchase of automotive fuel

#### **7.14 Liability Requirements**

TREC may be liable for late payment fees and transactions charged to lost and stolen cards if lost or stolen cards are not reported immediately. The agency will have no liability for transactions that occur after notification of a card being lost or stolen. For unauthorized charges made prior to the card being reported lost or stolen, Customer's liability is limited to a maximum of \$50 per card (up to \$100,000).

If a procurement card is lost or stolen, it is imperative that Citibank be notified immediately by calling 1-800-248-4553. Inform the bank that the card in question is a Texas Real Estate Commission procurement card. Next, notify the Procurement Card Administrator immediately.

The bank will deactivate the old card and send a new one to the program administrator. The cardholder will be notified by email when the new procurement card arrives. TREC will have no liability for transactions that occur after notification of a card being lost or stolen. For unauthorized charges made prior to the card being reported lost or stolen, TREC's liability is limited to a maximum of \$50 per card (up to \$100,000).

#### **7.15 How to Handle Returns, Credits, and Disputed Charges**

In the case of a return, credit or dispute of a purchased item, service or other charge, every attempt should be made to first resolve the issue directly with the supplier. Next, ensure that the account is properly credited for the return, credit, or disputed charge in question. The returned, credited, or disputed item should be noted on the Cardholder's Procurement Card Transaction Log.

By rule of the State Comptroller, cardholders are not allowed to receive a cash refund for returned merchandise. All credits or refunds must be applied to the same cardholder account that was used for the original purchase.

- **Returns:** If a cardholder needs to return an item to a supplier, contact the supplier and obtain instructions for return. Note that some suppliers may charge a restocking or handling fee for returns. All returns should be indicated in the cardholder's transaction log.

- **Credits:** If an item is accepted as a return by the supplier, a credit for this item should appear on a future month's statement. All credits should be indicated in the cardholder's transaction log.
- **Disputed Charges:** A cardholder may dispute a charge that appears to be incorrect or is not recognized as part of the authorized purchase. The cardholder should first make a good-faith effort to settle a claim or dispute for purchases directly with the vendor. If an agreement cannot be reached with the vendor, contact Citibank at 800-248-4553 and complete and submit a Citibank Cardholder Dispute Form to Citibank within 60 days of the statement date on which the disputed transaction was posted. All disputed items should be indicated in the cardholder's transaction log. Disputes must be sent to Citibank within 60 days of the billing close date. The closing date for the previous billing cycle is on the 3rd of the next month. The Non-Travel Related Dispute form may be requested by the Citibank Chargeback Specialist and should only be completed upon their request.

#### **7.16 Reporting of Fraudulent Use of a Procurement Card**

- Financial Services, Director of Finance at 512-936-0102
- CitiBank Fraud Department 800-945-3114

#### **7.17 Employee Separation or Termination**

The procurement card must be returned to the program administrator upon the transfer, separation, or termination of employment. The program administrator should deactivate the card immediately upon notification of termination or separation.

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## Part 8. Contract Management

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The Texas Real Estate Commission (TREC) has established contract management procedures in compliance with the State of Texas Contract Management Guide (CMG), the State of Texas Procurement Manual and the Department of Information Resources (DIR) rules.

### 8.1 Conflict of Interest

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.

All purchasing staff and other staff involved in contract approval must sign a conflict-of-interest statement certification.

Each signatory in the workflow approval 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 Executive Director.

TREC staff that has knowledge of any conflict of interest by any staff involved in the procurement process that has previously not been disclosed must report it to the General Counsel and the Executive Director.

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

- a. A member of the agency's governing body.
- b. The governing official, Executive Director, General Counsel, Chief Procurement Officer, or Procurement Director of the agency; or
- c. Family member related to an employee or official within the second degree by affinity or consanguinity.
- d. A state agency employee or official has a financial interest in a vendor if the employee or official: owns or controls, directly or indirectly, an ownership interest of at least one percent in the vendor, including the right to share in profits, proceeds, or capital gains; or awarding a contract to the vendor could result in a financial benefit to the employee or official. 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.

## 8.2 Steps in the Contract Process

### 8.2.1 Identify Need

The Purchaser will serve as the contract manager and consult with the requesting users to identify a clear understanding of the need. This may involve requesting additional details from the end users, asking for clarification, calling vendors or service providers (vendor), consulting with CPA Statewide Procurement Division (SPD) or Department of Information Resources (DIR), performing research or finding other state approved sources. Obtain a quote or verify a quote received from requesting department.

### 8.2.2 Submission of Purchase Requisition

The requesting department must submit an approved Purchase Requisition in accordance with the memorandum from Chelsea Buchholtz dated 3/27/2020, "Delegation of Authority to Approve Purchases".

### 8.2.3 Plan the Procurement

Planning the procurement is the first and most important step in Contract Management. The more planning, the less risk and better the solicitation will be to result in a solid contract that can be monitored and managed efficiently. The requesting department will consult with purchasing and legal as necessary, identifying needs and planning accordingly. The senior team members, General Counsel, and Executive Director will be involved as deemed appropriate in the initial planning stages of a contract. This will avoid issues later in the process.

### 8.2.4 Perform risk assessment

Once the required services are decided, the Purchaser consults with the requesting department and team members to determine the risk level for the agency and how to minimize risks through contract requirements. Based on the risk level, develop a detailed statement of work with written performance measures that minimizes risk. Contracts requiring enhanced monitoring will be identified during the risk assessment. Risk factors to be considered include, but are not limited to:

1. Type of purchase (competitive/non-competitive)
2. Payment type/structure
3. Dollar amount of the contract
4. Scope of goods/services being procured
5. Vendor background and experience

### 8.2.5 Identify Procurement Method

Determine proper procurement method in compliance with the State of Texas Procurement and Contract Management Guide. Prepare competitive solicitation process when required following procedures set forth in the State of Texas Procurement and Contract Management Guide and DIR's Statement of Work procedures.



#### 8.2.6 Prepare a Statement of Work

A Statement of Work (SOW) is used in solicitations to minimize risk by describing in detail what parties are required to do. Including clearly defined performance measure and deliverables in the contract will minimize risk to the agency. The requesting department will assist in developing a detailed statement of work, deliverables, and performance measures.

#### 8.2.7 Evaluation

The Purchaser receives the responses and distributes them to the evaluation team members with an evaluation scoring matrix and a non-disclosure form. The Purchaser ensures that all Evaluation Team Members understand their responsibilities (refer to CMG).

The Evaluation Team meets to review responses. The team may decide to invite vendors to conduct a presentation and discuss their responses in further detail.

#### 8.2.8 Negotiate/Best & Final Offer

1. Negotiate with the vendors to find the best value based on best value standards; Best and Final Offers may be requested from responsive vendors.
2. An agreement is reached with the other party on the terms of the contract. Certain standard legal terms are non-negotiable.
3. Purchasing tabulates total scores from the evaluation score sheets completed by each of the Evaluation Team Members.
4. In some situations, a second evaluation scoring matrix may be required. Purchasing prepares a final Scoring Tabulation and recommends selection of the best vendor in accordance with state purchasing rules.

#### 8.2.9 Best Value Standards

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

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

The best value standard used to determine the award of a contract will be documented on the purchase order or supporting documentation.

The purchaser will acknowledge in writing that the procurement is in compliance with the State of Texas Procurement and Contract Management Guide.

### 8.2.10 Award

1. Select the best vendor in accordance with state purchasing rules.
2. Present recommendation of award to Commission if approval is required.
3. Notify vendor of award.
4. Issue purchase order and/or contract to the awarded vendor.

### 8.3 Issuing a Contract

For larger, complex purchases, in addition to a purchase order, it may be appropriate that a contract be written and signed by both parties. The contract is generally drafted by the General Counsel and reviewed by the Purchaser, the Executive Director and other appropriate team members as required for the procurement.

For contracts over \$14,000, the Purchaser will route via the contract routing process and attach documents relating to the purchase as required.

Contracts over \$1M must be signed by the Chair of the Texas Real Estate Commission or Texas Appraiser Licensing & Certification Board. The Chair may delegate authority to the Executive Director to sign contracts over \$1M.

### 8.4 Contract Management

Generally, the Purchaser serves as the Contract Manager and is the designated agency staff that has primary responsibilities for the day-to-day management of contracts, including but not limited to:

1. Monitoring vendor performance and fiscal, financial, and record keeping requirements;
2. Reporting vendor performance in the Comptroller's Vendor Performance Tracking System;
3. Taking timely and appropriate action to resolve performance and compliance issues;
4. Receiving, reviewing and approving deliverables;
5. Documenting receipt of contract deliverables and communicating acceptance of these deliverables to the appropriate section;
6. Processing contract modifications, addendums, Purchase Order Change Notices, etc.
7. Settling contract disputes;
8. Recommending renewal or non-renewal of the contract;
9. Handling contract termination and closeout;
10. Providing complete and accurate contract correspondence and documentation, and;
11. Attending contract management continuing education to maintain certification as a Certified Texas Contract Manager (CTCM).

For specialized contracts, after a contract has been awarded, the requesting department will:

1. Apply specialized knowledge, skills, and techniques to support program activities;
2. Administer and manage daily operations of required services established in contract;
3. Manage and monitor performance as required in the contract. This may require involvement of the Purchaser should a dispute arise;
4. Ensure vendor meets required performance objectives defined in the contract;
5. Oversee delivery and receipt of services;
6. Certify services were performed and deliverables met; and
7. Approve invoice for payment, if applicable.

## 8.5 Vendor Performance

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

## 8.6 Records Retention of Contracts

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

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 (7) years after contract expires, is terminated, or is completed, and after all issues have been resolved. Along with the contract, all solicitation documents shall also be retained.

For contracts and purchase orders entered into prior to 9/1/2015, the records retention period is four (4) years.

Authority:

Texas Government Code, Title 10, Subtitle F, Chapter 2262 – Statewide Contract Management

## **Part 9. Vendor Protest Procedures**

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**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

# Attachment B

Proprietary Justifications – Delegation



## *Protecting Texans' Dreams*

### TREC Commissioners

R. Scott Kesner  
Chair

Bob Leonard  
Vice Chair

TJ Turner  
Secretary

Jason Hartgraves

Jan Fite Miller

Barbara Russell

Rayito Stephens

DeLora Wilkinson

Micheal Williams

Douglas E. Oldmixon  
Executive Director

**TO:** Director of Staff & Support Services, and Agency Purchasers

**FROM:** Chelsea Buchholtz, Executive Director/Commissioner

**RE:** Delegation of Authority to Approve Purchases

**DATE:** April 7, 2020

This is to confirm that authority is hereby delegated to the following deputies and division directors to approve purchases up to the indicated amounts. This remains in effect until amended or revoked, provided the position description can be reasonably determined to be equivalent to the position named below. The Director of Staff & Support Services/Chief Financial Officer (CFO), or Accounting Manager in the absence of the CFO, will continue to certify the availability of funds for each requisition.

Deputy Executive Director/Deputy Commissioner = unlimited when acting for the absent Executive Director/Commissioner; otherwise \$5,000

Division Director, or Acting Director if currently unfilled = \$2,500

In addition, the CFO or Accounting Manager has the authority to replenish the following accounts:

Postage = not to exceed \$5,000 per order

Routinely stocked supplies = not to exceed \$2,500 per order

Proprietary, emergency purchases and memberships require written approval by the Executive Director/Commissioner, or Deputy Executive Director/Deputy Commissioner in absence of the Executive Director/Commissioner.

cc: Tony Slagle, Vanessa E. Burgess, Steve Rapp, Troy Beaulieu, Mark Moore, Jennifer Wheeler, Denise Sample, Robert Hood, Priscilla Pipho, Melissa Huerta, Sandy Jones, Mary Beth Hanna, Ron Hunter



### TALCB Board Members

Sara Oates  
Chair

Martha Gayle Reid Lynch  
Vice Chair

Chance Bolton  
Secretary

Clayton P. Black

James J. Jeffries

Tony F. Peña

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Stephanie Robinson

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Douglas E. Oldmixon  
Commissioner