

TEXAS BOARD OF NURSING
CONTRACT PROCUREMENT AND MANAGEMENT HANDBOOK
JULY 2018

I. Introduction

a. Purpose

- i. All staff involved with procuring goods and services for the agency must comply with proper purchasing procedures. The purpose of this Handbook is to provide the agency with a consistent policy that delineates staff roles and responsibilities for contract procurement and management.

b. Authorities

- i. State of Texas Procurement and Contract Management Guide;
- ii. Texas Government Code;
- iii. Texas Administrative Code;
- iv. General Appropriations Act;
- v. Comptroller Contract Advisory Team;
- vi. Comptroller of Public Accounts (CPA) Rules;
- vii. Department of Information Resources (DIR) Rules;
- viii. DIR Cooperative Contracts;
- ix. The Texas Board of Nursing's Contract Procurement and Management Handbook; and
- x. Any other federal or state law that affects agency procurement and contract management.

II. Ethical Standards

- a. It is the policy of the State of Texas and of the Texas Board of Nursing that a state officer or state employee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the officer's or employee's duties in the public interest.¹
- b. A former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept

¹ Tex. Gov't Code § 572.001.

employment from that person before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.²

III. Contract Procurement and Contract Management

- a. The Texas Comptroller of Public Accounts (the “Comptroller”) defines **Purchasing** as:
 - i. “The receipt and processing of requisitions, development of specifications, development of scope of work, the issuance of purchase orders against existing cooperative or agency contracts, and the verification of the inspection of merchandise or receipt of services by the agency. The term does not include the development of solicitations and contract awards that must be posted to the Electronic State Business Daily or in the Texas Register.”³
- b. The Comptroller defines **Contract Development** as:
 - xi. “[A]ctions taken prior to contract execution, including the receipt and processing of requisitions, assessment of need, development and review of specifications, development and review of scopes of work, identification and selection of procurement methods, identification and preparation of evaluation criteria, preparation of and advertising solicitation documents, tabulation of respondent bids, evaluation of respondent proposals, negotiation of proposals, and the preparation and completion of contract award documents. The term does not include invoice or audit functions.”⁴
- c. The Comptroller defines **Contract Management** as:
 - xii. “[A]ctions taken following contract execution, including the assessment of risk, verification of contractor performance, monitoring compliance with deliverable and reporting requirements, enforcement of contract terms, monitoring and reporting of vendor performance, and ensuring that contract performance and practices are consistent with applicable rules, laws and the State of Texas Procurement Manual and Contract Management Guide.”⁵

² Tex. Gov’t Code § 572.069.

³ <https://comptroller.texas.gov/purchasing/training/purchasing-personnel/>

⁴ *Id.*

⁵ <https://comptroller.texas.gov/purchasing/training/contract-manager/>

IV. Most Common Types of Contracts for Goods or Services

- a. DIR Cooperative Contracts
 - i. Texas Government Code Chapter 2157
- b. Expert Witness Agreements
 - i. Texas Government Code Section 2151.005
- c. General Services Agreements
 - i. Texas Government Code Chapter 2155
- d. Interagency Cooperation Contracts
 - i. Texas Government Code Chapter 771
- e. Professional/Consulting Services Agreements
 - i. Professional Services: Texas Government Code Chapter 2254, Subchapter A
 - ii. Consulting Services: Texas Government Code Chapter 2254, Subchapter B

V. Contract Procurement, Development, and Management Procedures

1. Identify need:

- a. **Who:** Agency Staff, Operations Director, Legal Department
- b. Does the agency have the purchasing authority to procure the good or service?
- c. What is the type of good or service being procured?
 - i. Are the goods or services required to be purchased from a specified source?
 - 1. Automated Information Systems: [Department of Information Resources](#)
 - 2. Non-IT Goods and Services: [Texas Smart Buy](#)
 - ii. Is the agency delegated the authority to purchase this good or service?
 - iii. Is there a law that governs the procurement of this good or service?
 - 1. These laws have their own requirements for who may serve as the contractor. Some examples include:
 - a. The Internal Auditing Act⁶
 - b. The Professional Services Procurement Act⁷
- d. Other considerations:
 - i. What does the agency specifically need?
 - ii. How will this good or service benefit the agency?
 - iii. How will the agency know when the need has been met?

⁶ Tex. Gov't Code Chapter 2102

⁷ Tex. Gov't Code Chapter 2254

2. Define need:

- a. **Who:** Agency Staff, Operations Director, Legal Department
- b. Scope/Statement of Work (the “SOW”) - the “Who, what, when, where, why, and how” of the contract. The SOW must include the following elements:
 - i. A description of the work;
 - ii. A standard for performance;
 - iii. Test conditions, method, or procedure to verify that the deliverables meet the standard;
 - iv. A method or process to monitor and/or ensure quality in the deliverable;
 - v. An acceptance process for each deliverable; and
 - vi. A compensation structure that is consistent with the type and value of work performed.

3. Determine the total value of the good or service, including renewals, if any.

- a. **Who:** Agency Staff, Operations Director, Accounting Department
- b. Will there be a lump-sum payment, or will the contractor be paid hourly?
- c. Will the Executive Director have the discretion to exceed the total contract value?
 - i. Even with the Executive Director’s approval, the total contract value must still comply with the procurement requirements. For example, a contract with a total value of \$3,500 may not exceed \$5,000 if competitive bidding was not used in procuring the contractor’s services.⁸
- d. Will the contractor be reimbursed for travel?
 - i. What rates will the reimbursement for travel be based on?
 - ii. Reimbursement for travel must be factored into the total value of the services.

4. Determine the proper procurement method:

- a. **Who:** Legal Department, Purchaser/Contract Manager
- b. Must comply with the State of Texas Procurement Manual
- c. Must comply with the Comptroller’s [Vendor Communications Policy](#)
- d. Does procurement of the good or service require competitive bidding?
 - i. Depends on the contracting party, type of good or service, and the total value of the contract.
 - 1. If the procurement requires competitive bidding, what is the proper solicitation method?
 - a. Competitive Bids
 - i. Invitation for Bids
 - b. Competitive Proposals

⁸ See Tex. Gov’t Code § 2155.132; see also 32 Tex. Admin. Code § 20.82.

- i. Request for Proposals
 - ii. Request for Offers
 - c. Request for Qualifications (Professional or Consulting services)
 - e. Must document and maintain records of the competitive bidding process.
- 5. Contract Formation:** Ensure the contract provisions hold the contractor accountable for results.
- a. **Who:** Legal Department, Agency Staff, Operations Director
 - b. Must comply with the State of Texas Contract Management Guide.
 - c. Must include required contract provisions.
- 6. Contract Execution**
- a. **Who:** Legal Department, Agency Staff, Contract Manager
 - b. Obtain contractor's signature, followed by the Executive Director's signature.
- 7. Contract Reporting**
- a. **Board's website-** Must post all executed contracts with a contractor for which there is a cost.⁹
 - b. **Legislative Budget Board-** Must report the following contracts:
 - i. All contracts over \$50,000.¹⁰
 - ii. Professional/Consulting Services contracts over \$14,000.¹¹
 - c. **Secretary of State for publication in the *Texas Register*:**
 - i. Major Consulting Services Contracts¹²
- 8. Contract Oversight:** Monitor and enforce the terms of the contract.
- a. Must ensure that payments do not exceed the total value of the contract.
- 9. Vendor Performance Tracking System.**¹³ No later than 30 days after the completion or termination of a purchase order or contract, the agency shall submit a report on a contractor's performance to the vendor performance tracking system for any purchase of goods or services:
- a. Of \$25,000 or more from contracts administered by the comptroller;
 - b. Made through an agency's delegated authority;
 - c. Made pursuant to the authority in Government Code, Title 10, Subtitle D; or
 - d. For which a state agency is required to use the best value standard.

⁹ Tex. Gov't Code § 2261.253.

¹⁰ General Appropriations Act Article IX, § 7.04.

¹¹ Tex. Gov't Code § 2254.006.

¹² Tex. Gov't Code § 2254.030.

¹³ Tex. Gov't Code § 2155.089; 34 Tex. Admin. Code § 20.509.

VI. General Areas of Responsibilities

a. Purchaser/Contract Manager

- i. Serves as the agency purchaser, contract manager, and Historically Underutilized Businesses (HUBs) Coordinator
- ii. Serves as the contract manager and is the designated agency staff that has primary responsibility for the day-to-day management of contracts, including, but not limited to:
 - Receiving, reviewing, and approving deliverables;
 - Documenting receipt of contract deliverables and communicating acceptance of these deliverables to appropriate section;
 - Reporting contracts that are required to be reported to the Legislative Budget Board;
 - Monitoring vendor performance and fiscal, financial and record keeping requirements;
 - Monitoring the vendor's performance to ensure that vendors comply with the terms, conditions, and specifications of the contracts;
 - Reporting vendor performance data required for the Comptroller of Public Accounts, who manages the Vendor Performance Tracking System;
 - Taking timely and appropriate action to resolve performance and compliance issues;
 - Recommending renewal or non-renewal of the contract;
 - Handling contract termination and closeout;
 - Providing complete and accurate contract correspondence and documentation;
 - Providing timely contract updates to appropriate section;
 - Attending contract management continuing education to maintain certification as a Contract Manager; and
 - Attending contract developer continuing education to maintain certification as a Contract Developer.

b. Accounting Manager

- i. Serves as back-up to the agency Purchaser.
- ii. Audits financial records for compliance with purchasing and contracting guidelines.

c. **Legal Department**

- i. Provides legal review, guidance, assistance, and oversight for all aspects of the Board's contracting process, and is responsible for ensuring that the Board adheres to the statutory requirements of the contract.
- ii. **Contract Procurement:** assists with the procurement and development of contracts for the purchase of goods or services, including, but not limited to:
 - Advising Agency Staff on the proper contract procurement method;
 - Working with the Purchaser during the solicitation process, ensuring that all the procurement and reporting requirements have been met;
 - Drafting contracts, including amendments and renewals, ensuring that all the required provisions are included in the contract;
 - Reviewing contracts, including amendments and renewals, ensuring that all the required provisions are included in the contract; and
 - Participating in the coordination of contract amendments, renewals, and contract management plan changes.
- iii. **Contract Reporting**
 - Works with the IT department to post each contract the agency enters into on the Board's website.
 - Identifies contract reporting requirements.
- iii. **Contract Management/Oversight**
 - Identifies contracts that require a performance review to be submitted to the Vendor Performance Tracking System on the comptroller's webpage.
 - Works with assigned staff as applicable, assessing contract claims, disputes and deficiencies, whether initiated by the vendor or the agency, and taking appropriate action.

d. **Operations Director**

- i. Serves in the capacity of contract oversight, compliance, and financial resources.

e. **Agency Staff**

- i. Must use proper purchasing procedures.
- ii. Must request contract review from the legal department before executing any contract.
- iii. Must submit either the original or a copy of the fully executed contract to the Contract Manager and the legal department.

- iv. If applicable, may be required to work with Contract Manager to report Vendor Performance to the Comptroller.

VII. Enhanced Contract and Performance Monitoring: Contracts with a Value Exceeding \$1 million

- a. The following contracts require enhanced contract or performance monitoring:
 - i. A contract for the purchase of goods or services that has a value exceeding \$1 million; and
 - ii. A contract with a value of less than \$1 million, if the Board's contract manager determines enhanced contract or performance monitoring is appropriate.
- b. For contracts that require enhanced contract or performance monitoring, the Board's contract manager or designated staff member shall submit the following information to the Board:
 - i. The general purpose of the contract;
 - ii. The name of the vendor;
 - iii. The legal authority under which the contract was entered;
 - iv. The current cost of the contract; and
 - v. The total cost of the contract, including contract renewals.
- c. The Executive Director shall be immediately notified of any serious issue or risk that is identified with respect to a contract that requires enhanced contract or performance monitoring.

VIII. Risk Assessment and Management

- a. **Risk Factors:**
 - i. The total value of the contract
 - 1. **High Risk:** > \$100,000
 - 2. **Medium Risk:** > \$25,000 and ≤ \$100,000
 - 3. **Low Risk:** ≤ \$25,000
 - ii. How experienced the contractor is with the type of work to be performed
 - 1. **High Risk:** The contractor does this type of work but has never contracted with the state before.
 - 2. **Medium Risk:** The contractor has contracted with the state before but not for this type of work.
 - 3. **Low Risk:** The contractor has previously worked with the state for the same type of work.
 - iii. The contractor's past performance (and past performance of similar contractors)

1. **High Risk:** The contractor has had more than three reported instances of performance issues with the agency in a single fiscal year.
 - a. The performance issue(s) must be reasonably related to the terms of the contract.
 2. **Medium Risk:** The contractor has had less than three reported instances of performance issues with the agency in a single fiscal year.
 - a. The performance issue(s) must be reasonably related to the terms of the contract.
 3. **Low Risk:** The contractor has never had any performance issues with the agency.
- iv. The length of time the contractor has been contracting with the agency
 1. **High Risk:** The contractor has never contracted with the agency.
 2. **Medium Risk:** The contractor has been contracting with the agency for more than three (3) years but less than five (5) years.
 3. **Low Risk:** The contractor has been contracting with the agency for five (5) or more years.
 - v. Significant problems with service requests;
 1. **High Risk:** The contractor is generally responsive to service requests, but occasionally requires follow-up.
 2. **Medium Risk:** The contractor is generally responsive to service requests.
 3. **Low Risk:** The contractor is always responsive to service requests.
 - vi. Significant problems with payment requests;
 1. **High Risk:** The contractor generally includes the required information in the invoices he or she submits to the agency for payment, but occasionally requires follow-up.
 2. **Medium Risk:** The contractor generally includes the required information in the invoices he or she submits to the agency for payment.
 3. **Low Risk:** The contractor always includes the required information in the invoices he or she submits to the agency for payment.
- b. **Assessment of Risk Factors**
- i. **Mostly High Risk:** Must obtain the Executive Director's approval before procuring the contractor's services, and must obtain the Legal Department's review before procuring the contractor's services.
 - ii. **Mostly Medium Risk:** May require obtaining the Executive Director's approval before procuring the contractor's services, and must obtain the Legal Department's review before procuring the contractor's services.

- iii. **Mostly Low Risk:** May require obtaining the Executive Director's approval before procuring the contractor's services, and may obtain the Legal Department's review before procuring the contractor's services.