

Employees Retirement System of Texas Contract Management Handbook

ERS

EMPLOYEES  RETIREMENT
SYSTEM OF TEXAS

January 2017

TABLE OF CONTENTS

Table of Contents	2
Introduction.....	4
Purpose of the Contract Management Handbook	4
Updates to the Handbook.....	4
ERS Roles and Responsibilities.....	4
Office of Procurement and Contract Oversight	4
Office of the General Counsel	5
The Business Divisions	5
Executive Management and the Board of Trustees	5
ERS Procurement and Contracting Ethics.....	5
Standards of Conduct.....	5
Confidentiality	6
Conflicts of Interest.....	6
Reporting Ethics Violations.....	6
Contract Management Lifecycle.....	7
The Framework	7
Planning	8
Defining and Identifying the Need	8
Project Proposal and Project Approval.....	8
Determining the Contract Value	8
Determining the Procurement Method	8
Formal Solicitations	9
Selection of Formal Solicitation Type	9
OPCO Request Form	9
OPCO Lead Time/Fiscal Year Deadlines.....	9
Solicitation Planning Documents.....	10
Risk Assessment: Accountability and Risk Analysis	10
Procurement.....	10
Preparing the Solicitation Documents	10
Statement of Work.....	10
Determination of Payment Type	10
Proposal Criteria	10
Scoring Tool.....	11
Contract Term.....	11
Contract Drafting	11
Historically Underutilized Business Requirements	11
CAT Review of Contracts of a Value of at least \$10 Million.....	12
OAG Review of Health Care Contracts Valued at \$250 Million or More	12
Advertising the Solicitation	12

ERS' List of Potential Respondents 12

Formal Notification for Solicitation and Post-Award 12

Post-Award Texas Register Notification 13

Communications with Respondents During Solicitation Process 13

Written Questions 13

Response Receipt 13

Solicitation Evaluation Process 13

 Preliminary Review 13

 Evaluation Kick-off Meeting 13

 Review by Evaluation Team Members 13

 Past Performance 14

Contract Formation and Rate/Price Establishment 14

 Contract Negotiations 14

 Best Value Verification 14

 Form 1295 14

 Contractor Selection and Award 14

Contract Oversight 15

 Planning 15

 Monitoring Performance 15

 Enhanced Contract Monitoring 15

 Performance Measures 15

 Contractor Reporting 16

 Change Management 16

 Payment Approval 16

 Performance Review 16

 Records Retention 16

INTRODUCTION

The Employees Retirement System of Texas (“ERS”) is a constitutional trust fund established as mandated by Article XVI, Section 67, Texas Constitution, and further organized pursuant to Subtitle B, Title 8, Texas Government Code, as well as 34 Texas Administrative Code § 61.1, *et seq.* ERS invests and administers trust funds as a fiduciary for the exclusive benefit of the members and annuitants of the system. ERS administers all operations funded by trust assets for the same purpose. ERS is also trustee for the Employees Life, Accident, and Health Insurance Benefits Fund within the Texas Employees Group Benefits Program (“GBP”). ERS administers health insurance benefits, life insurance and other optional benefits on behalf of participants in the GBP. Participants are those persons eligible to participate in these programs per the Texas Employees Group Benefits Act as set forth in Chapter 1551 of the Texas Insurance Code.

Purpose of the Contract Management Handbook

The ERS Contract Management Handbook (the “Handbook”) is intended as a guide defining the roles and responsibilities of ERS’ personnel when procuring and administering, or managing, the agency’s contracts. The Handbook applies to the management of ERS’ contracts for goods and services. It focuses on and is most applicable to contracts resulting from a formal solicitation process.

The Handbook does not address all procurement and contracting issues that may arise, but is intended to delineate core procurement and contracting elements to guide ERS staff. Particular situations may require deviation from the guidelines included in the Handbook. Any questions relating to the Handbook shall be directed at the Office of Procurement and Contract Oversight (“OPCO”) with advice and counsel from the Office of the General Counsel (“OGC”).

Updates to the Handbook

The Handbook is scheduled to be reviewed every five (5) years. OPCO may update this Handbook during the interim as needed, including, but not limited to, revising the Handbook to reflect changes in applicable procurement and contracting laws, regulations, and internal policies.

ERS ROLES AND RESPONSIBILITIES

Per Texas Government Code § 2155.146, ERS “is delegated all purchasing functions relating to the purchase of goods or services from funds other than general revenue funds for a purpose the retirement system determines relates to the fiduciary duties of the retirement system.” Because ERS is delegated such purchasing authority, ERS’ personnel play crucial roles during the procurement and contracting processes. As a trust fund, all purchasing decisions must be made in a manner consistent with ERS’ fiduciary duty to the trust.

The key players in the procurement and contracting processes are OPCO, the OGC, each ERS Business Division (“Business Division”), executive management and the ERS Board of Trustees (the “Board”). OPCO manages the procurement process and provides high level oversight of ERS’ contracts, while Business Divisions provide day-to-day contract oversight and management. OGC provides legal counsel throughout both processes. Each Business Division plays a significant role in the procurement process for each of its contracts and manages the contract and vendor relationship after award. Executive management and/or the Board play an integral role at key points in the procurement and contracting processes.

Office of Procurement and Contract Oversight

ERS formed OPCO to centralize and standardize the agency's procurement processes and provide additional oversight over the management of its contracts. OPCO works closely with the Business Division ultimately responsible for day-to-day contract management. OPCO is involved in each phase of the procurement and contract lifecycle from planning through contract close-out. Working with the Business Divisions and, as appropriate, the OGC, OPCO advises on procurement-related issues, oversees informal solicitations, manages the formal solicitation process, and provides ongoing contract oversight from contract execution to contract close-out.

Office of the General Counsel

OGC works in collaboration with OPCO to ensure that all legal concerns arising during the procurement and contract management processes are timely and appropriately addressed. OGC provides legal assistance, guidance, and review during these processes from the planning stages through contract close-out. OGC's participation includes providing input during the solicitation process, drafting contractual agreements, participating in response evaluation from a legal perspective, negotiating contractual agreements, and advising on legal issues during the contract term and any legal issues that may arise upon or following contract termination or expiration.

The Business Divisions

ERS is organized by Business Divisions that specialize in different areas aimed at accomplishing the agency's strategic goals. Some Business Divisions focus on providing support to ERS staff and building operations while others focus on the functions the agency performs for its members and participants. The Business Division is often responsible for identifying the need for a particular good or service, and then plays a significant role in the resulting procurement and contract by drafting the Statement of Work, participating in the evaluation of responses, and performing day-to-day management of the contract.

Executive Management and the Board of Trustees

ERS' executive management, including ERS' Executive Director, plays an active role in the procurement and contracting processes. ERS cannot move forward with a solicitation without executive management approval. For the majority of ERS' contracts, the contractor is selected by the Executive Director or his/her designee, as such decisions were delegated by the Board. A select few contracts are presented to the Board for contractor selection. Upon award, the contract must be executed by the Executive Director or the Deputy Executive Director. During the contract management process, executive management is generally provided with regular briefings on the performance of its contractors and consulted with on major decisions. For large contracts, certain performance measures are reported to the Board during the quarterly public meetings. Additionally, for those contracts referenced under Texas Government Code § 2261.251(b), ERS timely reports to the Board any issues that may arise.

ERS PROCUREMENT AND CONTRACTING ETHICS

All ERS employees involved in procurement and/or contracting must act in an ethical, impartial, transparent, and professional manner in accordance with state law and the ERS Ethics policy. Any erosion of public trust or appearance of impropriety is detrimental to the integrity of the purchasing and contracting processes.

Standards of Conduct

All ERS employees are required to comply with the ERS Personnel Policy and Procedure Manual ("Manual"). ERS expects its employees involved in procurement and contracting to maintain the highest level of ethics as public servants and to follow the standards of conduct outlined in Texas Government Code, Chapter 572, and the Texas Penal Code, Chapters 36 and 39, which are also reflected in the Manual.

ERS employees shall perform their official duties in a lawful, professional, and ethical manner befitting the state of Texas and ERS. Additionally, ERS expects employees to avoid behavior that has the perception of a conflict of interest when performing work on behalf of ERS. When participating in a procurement or contract matter, employees must use sound judgment in making ethical decisions and seek guidance from the ERS Deputy Executive Director and General Counsel, who is ERS' Ethics Officer, or management if they have any doubt as to the right course of action.

In accordance with ERS' Manual, an ERS employee shall not:

- Accept or solicit any gift, favor, or service that might reasonably tend to influence the discharge of official duties or the ERS employee knows or should know is being offered with the intent to influence their official conduct;
- Accept other employment or compensation that could reasonably be expected to impair the ERS employee's independence of judgement in the performance of his/her official duties;

- Accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
- Intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the ERS employee's official powers or performed official duties in favor of another; or
- Make personal investments that could reasonably be expected to create a substantial conflict between the ERS employee's private interest and the public interest.

Confidentiality

All ERS employees and independent contractors must sign a confidentiality and no communications certification ("Nondisclosure Agreement"). The Nondisclosure Agreement requires ERS employees and independent contractors to agree not to disclose or otherwise divulge any confidential information gathered during any solicitation process.

Conflicts of Interest

There are multiple situations in which ERS employees are required to disclose a conflict of interest or verify that no potential or actual conflict of interest will occur should he/she participate in the procurement and/or contract management processes, including the following:

- All staff subject to § 1.2 of the Texas Procurement Manual must sign an annual conflict of interest statement.
- Under Texas Government Code § 2262.004, ERS purchasing personnel, as defined by statute, must disclose certain relationships with stakeholders of a business entity before a contract for the purchase of goods or services that has a value of at least \$1 million can be awarded to that business entity. This is done so on the Disclosure Statement for Purchasing Personnel, also referred to as the Nepotism Disclosure Form.
- For formal solicitations, ERS requires subject matter experts evaluating the responses ("Evaluation Team Members") to sign a form verifying his/her participation in the evaluation process will not result in an actual or perceived conflict of interest and that his/her will participate in the process in an unbiased manner, to the best of his/her ability, and in line with the best interests of ERS and its Participants ("No Conflict Form").
- For those contracts referenced under Texas Government Code § 2261.251(b), ERS employees or officials involved in the procurement or the contract management must certify his/her participation will not result in either an actual or perceived conflict of interest per Texas Government Code § 2261.252(a). For these same contracts, Texas Government Code § 2261.252 prohibits ERS from contracting with a private vendor if certain agency employees or officials identified by statute have a financial interest, as defined by statute, in that private vendor.

In its solicitation documents, ERS also requires a potential contractor to warrant and represent in its response to ERS' request that it does not have, nor shall it permit, any conflicts of interest that would impair its ability to perform the services required under the relevant contract. ERS' standard contract also contains extensive conflicts of interest provisions, including a provision stating that the contractor warrants and represents that, to the best of its knowledge and belief, there are no relevant facts or circumstances that could give rise to any actual or perceived conflict of interest.

ERS' Deputy Executive Director and General Counsel evaluates each disclosed potential conflict of interest to determine whether it is necessary to address any disclosed potential or actual conflict of interest and the best means of adequately addressing such potential or actual conflict of interest.

Reporting Ethics Violations

ERS employees shall report any conduct or activity they believe to be in violation of ERS' ethics policy to the Deputy Executive Director and General Counsel. Employees may also seek the guidance of the ERS Deputy Executive Director and General Counsel for any ethics-related concerns or questions or utilize the ["Report an Ethics Violation"](#) link on FocalPoint to notify ERS management of possible violations of this policy.

CONTRACT MANAGEMENT LIFECYCLE

The Framework



The procurement and contract management or contract oversight processes are often collectively referred to as the contract management lifecycle. An effective contract management lifecycle includes the following steps:

- **Planning:** It is during this step that ERS identifies and defines the need for the goods and/or services.
- **Procurement:** The purpose of the procurement process is to select the most qualified contractor that is in the best interest of the trust fund and provides the best value. The complexity of the selection process depends on the value of the contract, ERS' fiduciary responsibility and other pertinent factors identified in the relevant risk analysis.
- **Contract Formation and Rate/Price Establishment:** Depending on the solicitation, OGC will either require the respondents to agree to or negotiate off of ERS' standard contract or request the submittal of the respondents' contracts which the parties will use as the basis for negotiations. OGC makes every effort to ensure the contract contains provisions that hold the contractor accountable for producing desired results.
- **Contract Oversight:** The Business Division manages and oversees the contract on a day-to-day basis and acts as the contractor's primary point of contact once the contract is executed. OPCO provides additional oversight and acts as a resource to the Business Division should issues arise. OGC advises on and addresses legal issues.

The Handbook is organized to address each of these steps in greater detail.

PLANNING

Defining and Identifying the Need

During the planning stages, ERS identifies and defines the need for the goods and/or services that require either a formal or informal solicitation process. Once the need is identified and the Business Division has the appropriate approvals to move forward with the procurement (including, but not necessarily limited to, those discussed below), OPCO is engaged to assist with defining the need, as applicable, and otherwise help with the planning process.

In some instances, OPCO or the Business Division may determine additional information is required to define the need before beginning the procurement process. Depending on the circumstances, such information may be gathered informally. A more formal tool for gathering additional information is the Request for Information (“RFI”) process. RFIs are used to identify industry standards, best practices, potential performance measures and cost or price structures, or to generally ascertain the level of interest of prospective respondents. OPCO provides guidance to the Business Division on the appropriate means for collecting information depending on the information sought and the deadlines associated with the solicitation and resulting contract.

Project Proposal and Project Approval

For most formal solicitations, the Business Division (in cooperation with a project manager and business analyst) completes a proposal which provides details about the project to executive management, including deadlines and information about the project team (the “Project Proposal”). Executive management reviews the Project Proposal and determines if the project is appropriate for ERS. Before OPCO and the Business Division begin developing a formal solicitation, the project must be approved by ERS’ Executive Director. The project may be approved explicitly as part of ERS’ strategic plan or it may be separately agreed to by the Executive Director once the need is identified.

Determining the Contract Value

Early in the planning process, the Business Division must estimate the contract value. The contract value may dictate the procurement method and whether the procurement requires additional review, such as review by the Contract Advisory Team (“CAT”). The contract value is estimated based on the proposed length of and compensation paid to the contractor during the term of the contract.

The Business Division shall not artificially split (or parcel) the procurement in order to avoid the procurement dollar thresholds, discussed below, or to circumvent any additional required review submissions, such as CAT review. The Business Division must make a good faith determination as to the estimated total value at the time of planning.

Determining the Procurement Method

A crucial step in planning is determining the proper procurement method to utilize. OPCO works with the Business Division to determine the appropriate procurement method for the project. OPCO is guided by applicable laws and the State of Texas Procurement Manual when selecting a procurement method. Thus, the procurement method selected may be one of the following depending on the specific procurement:

- **Spot Purchase:** This method is generally used for purchases valued at \$5,000 and below. A competitive procurement is not generally required.
- **Informal Solicitation:** The informal solicitation process may be used for purchases valued at over \$5,000 but no more than \$25,000.
- **Formal Solicitation:** The formal solicitation process is generally used for purchases valued at more than \$25,000.
- **Set-aside Purchase:** These procurements do not require a competitive procurement. Examples of set-aside purchases include procurements using the State Use Program authorized by Texas Human Resources Code, Chapter 122 and the Texas Correction Industries governed by Texas Government Code, Chapter 497. OPCO advises on which purchases should be made as a set-aside purchase.
- **Cooperative Purchase:** These are procurements that rely on the solicitation efforts of another agency. Examples of cooperative purchases include those made under the Texas Multiple Award Schedule program and Department

of Information Resources technology purchasing program. OPCO advises on additional requirements attached to cooperative purchases.

- **Sole Source or Proprietary Purchase:** These are purchases in which only one provider can meet ERS' needs. The Business Division works with OPCO when identifying a purchase as such and the proper documentation is produced.
- **Emergency Purchase:** These are purchases made when unforeseeable circumstances require the purchase to avert a hazard to life, health, safety, welfare, property, or to avoid undue additional costs.

A more thorough list and description of procurement methods as well as more detailed guidance on which procurement method is appropriate may be found in the State of Texas Procurement Manual. ERS staff should contact OPCO with any questions.

Formal Solicitations

This Handbook focuses on and is most applicable to contracts resulting from a formal solicitation procurement. Formal solicitations are more complex and require more planning, lead time, and resources than other solicitation methods.

Selection of Formal Solicitation Type

Once the project is approved, the Business Division and OPCO determine which formal solicitation process is most appropriate. The main formal solicitation processes utilized by ERS include:

- **Invitation for Bids ("IFB"):** IFB utilizes the competitive sealed bid method. For this method, the requirements must be clearly defined and price is generally the major determining factor for selection.
- **Request for Proposal ("RFP"):** The RFP method is used when competitive sealed bidding is not practicable or advantageous. The RFP method allows for the consideration of factors other than price and is less prescribed than the IFB. The key difference between an IFB and RFP is that negotiations are allowed in an RFP. Discussions are allowed with the respondents and best and final offers may be solicited.
- **Request for Qualifications ("RFQ"):** The RFQ must be used for the professional services specified under Texas Government Code § 2254. Respondents are evaluated based on their qualifications and competence. Price is then negotiated with the most qualified and competent respondent. If negotiations fail, ERS may negotiate with the next most qualified and competent respondent.

OPCO Request Form

The Business Division formally notifies OPCO of the approved project and requests assistance with the procurement process by submitting an OPCO Solicitation Request Form, which must include the associated strategic roadmap item. The OPCO Solicitation Request Form can be found on OPCO's internal SharePoint site.

OPCO Lead Time/Fiscal Year Deadlines

Based on the formal solicitation type selected and any pertinent deadlines, OPCO and the Business Division then develop a timeline for the solicitation process. The timeline should include all key milestones for completing the solicitation within required deadlines.

The below table provides a general timetable for the formal solicitation process. The timetable for a specific solicitation will vary depending on a variety of factors including its complexity, the availability of resources, and any deadlines related to the project.

Task	Suggested Lead Time from Contract Start Date
Plan Procurement and Prepare Solicitation Documents	180 days
Legal Review by OGC	150 days
Advertise and Post Solicitation	120 days
Receipt of Responses	90 days
Evaluation of Responses and Contract Negotiation	60 days
Contractor Selection and Contract Execution	15-60 days
Performance Begins (effective date)	0 days

Solicitation Planning Documents

OPCO, in conjunction with the Business Division, then prepares the planning documents. The planning documents may include the following: the Charter, Contract Management Guideline Procurement Checklist, Communications Plan, and the applicable risk assessment. Some degree of risk assessment is done for each project. It is an essential part of planning, and is further discussed below.

Risk Assessment: Accountability and Risk Analysis

A risk assessment is first completed during the planning stage. Risk assessment, however, is an ongoing process and risk should be reassessed throughout the contract lifecycle. OPCO is responsible for risk management during procurement initiation through contract award, and maintains high level contract oversight responsibilities through contract closure.

OPCO works with the Business Division to complete a risk assessment. For the risk assessment, OPCO and the Business Division identify potential risks, determine the risk level, and identify means of minimizing or mitigating the identified risk. These risk responses may affect the rest of the procurement and contract management processes. The risks are documented in the Procurement Risk Register, if applicable.

PROCUREMENT

Preparing the Solicitation Documents

The first step in the procurement process is to develop the solicitation documents. The standard solicitation language utilized depends on the solicitation type, the complexity, and the service or good being procured.

Statement of Work

While OPCO relies on standard boilerplate solicitation language that is only moderately revised to fit the particular procurement, the Statement of Work (“SOW”) must always be specific to the procurement. An important tool in effective contract management is a clearly written and sufficiently detailed SOW.

The SOW can be performance-based, a design-based specification, or a mixture of both. Performance-based specifications focus on results rather than process, and they also focus on the required goods and services rather than how the goods and services are provided. This type of specification allows the respondent to demonstrate and rely on his/her own expertise, creativity and resources to the process without restricting it to predetermined methods or detailed processes. Design-based specifications outline exactly how the contractor must perform the services or how the goods must perform. Regardless of the specification type, the SOW must clearly define what is important to ERS.

OPCO relies on the Business Division and other subject matter experts for the SOW content. OPCO, however, operates as a resource during the drafting of the SOW and reviews and offers input once the Business Division has completed its draft.

Determination of Payment Type

The solicitation documents must include information regarding contract payment type. The payment type utilized must be one that best ensures delivery of services, encourages efficiencies and effectiveness of service, and provides the best value. Most ERS contracts are either based on a fee-for-service or fixed price. Other payment types include: cost reimbursement, cost plus incentive, progress, rate based, variable rate, blended variable rate, and payment for time and materials.

Proposal Criteria

During the solicitation development process, the Business Division will document the criteria that define best value for a particular solicitation. OPCO will review and discuss these criteria with the Business Division. In conjunction with determining the criteria defining best value, the Business Division will also determine the appropriate scoring weights for

each criterion. Both the criteria and associated weights are included in the solicitation documents and incorporated into the scoring tool.

Evaluation Team Members will evaluate the respondents' responses based on the criteria provided in the solicitation documents, and as reflected on the scoring tool.

Scoring Tool

Based on the proposal criteria and the associated weights, OPCO oversees the development of the scoring tool to be utilized on a given solicitation. The scoring tool includes more granular weights, if applicable. The granular breakdown of weights for each solicitation is signed off on by the Business Division, the Director of OPCO ("DOPCO"), and Procurement Manager before publication of the solicitation document. The scoring tool must be finalized before receipt of responses.

Contract Term

OPCO will work with the Business Division to determine the appropriate contract term that is most appropriate and consistent with the performance of ERS' fiduciary duties. For contracts with a term longer than four years, the Business Division will prepare a form stating the justification for the longer term ("Term Justification Form"). OPCO, OGC, and the Business Division may discuss and review the proposed contract term in connection with the solicitation planning, if applicable, or contractual negotiations. The Term Justification Form must be signed by the Business Division Director or his/her authorized designee and, if the contract is subject to Section 1551.213 of the Texas Insurance Code, it must also be signed by the reviewing attorney. The Term Justification Form will then be submitted to the DOPCO for approval.

Contract Drafting

ERS generally includes its standard contract, tailored to the particular procurement, in its solicitation documents. The contract is prepared by OGC. The solicitation documents permit the respondents to deviate from the contract, but ERS is not obligated to accept such deviations. For some procurements ERS includes pertinent terms in the solicitation documents and requires the respondents to submit their own contracts as a basis for negotiations. The purpose of the contract is to record the terms of the agreement and to create a legal, binding and enforceable obligation for the parties.

Before a contractor provides goods or services, an authorized representative of the contractor and ERS' Executive Director or the Deputy Executive Director must execute the contract. Once executed, the following are included as exhibits to the contract: the solicitation documents, the contractor's response, any clarifications to the solicitation documents or the response, and any other pertinent documents.

Historically Underutilized Business Requirements

The solicitation documents also include information regarding Historically Underutilized Business ("HUB") requirements. Agencies must make a good faith effort to utilize HUBs in state contracts in accordance with the agency's HUB goals. This requirement may be fulfilled by using good faith efforts to contract directly with HUBs or indirectly through subcontracting opportunities in accordance with Texas Government Code, Chapter 2161, Subchapter F and Texas Administrative Code, Title 34 Part 1, Chapter 20, Subchapter D. Specific HUB procedures are detailed in the Texas Comptroller of Public Account's (CPA) Procurement Manual at <http://www.window.state.tx.us/procurement/pub/manual/>.

ERS' current goals are as follows:

Procurement Category	%Actual FY16	Goal FY17
Heavy Construction	0.00%	0.00%
Building Construction	0.00%	0.00%
Special Trade Construction	41.53%	32.90%
Professional Services	0.00%	0.00%
Other Services	27.42%	26.00%
Commodities	31.65%	21.10%

CAT Review of Contracts of a Value of at least \$10 Million

The purpose of CAT is to assist state agencies in improving contract management practices by reviewing and making recommendations on solicitation and contract documents that have a value of at least \$10 million dollars during the full term of the contract, including any extension or renewal periods. Under Texas Government Code § 2262.101(d), agencies must comply with CAT recommendations or provide a written explanation to CAT regarding why a specific CAT recommendation is not applicable to the contract under review.

OPCO is the point of contact for the CAT review process. OPCO is responsible for submission of the solicitation documents to CAT for review. CAT will review the solicitation documents and provide recommendations, identify risks, and offer risk mitigations/strategies within 20 business days of receipt. If the agency does not receive a response from CAT within 20 business days of initial receipt of the solicitation documents, the agency may proceed with issuance of its solicitation.

If the initial solicitation document submitted to CAT changes substantially, agencies are required to resubmit the solicitation document for CAT review. Changes in the major contract solicitation are considered substantial when:

- The solicitation change caused the estimated value for the original term of the contract, not including renewal periods, to increase by 25% or more; or
- The solicitation change includes significant revisions, deletions and/or additions to the specifications, SOW, set(s) of deliverables, performance measures, payment methodology, etc.

OPCO and the Business Division, in consultation with the OGC, will determine if resubmission to CAT is required.

OAG Review of Health Care Contracts Valued at \$250 Million or More

Pursuant to Texas Government Code § 811.009, a representative of the OAG will review the terms of a contract with a contract amount of \$250 million or more under which a person provides goods or services in connection with the provision of medical or health care services, coverage, or benefits before it is entered into by ERS. ERS generally sends the solicitation documents, including the contractual agreements, to the OAG at or around the same time that such documents are sent to CAT for review.

Advertising the Solicitation

ERS' List of Potential Respondents

ERS maintains a notification list for potential respondents interested in responding to certain solicitations. A potential respondent may request to be added to the list by registering at the follow link: <http://www.ers.state.tx.us/Register/>. When a solicitation is published, ERS notifies those potential respondents that have expressed interest in that type of solicitation. ERS also publishes notification on its website at <http://www.ers.state.tx.us/Vendors/Benefits-Administrators/Opportunities/>.

Formal Notification for Solicitation and Post-Award

ERS also ensures compliance with applicable law when posting notice of solicitations and awards. ERS posts notices for formal solicitations exceeding \$25,000 on the Electronic State Business Daily ("ESBD").

At a minimum, ERS follows the statutorily mandated time frames for ESBD postings:

- For at least 14 calendar days – the entire solicitation (including all documentation) must be posted.
- For at least 21 calendar days – only the notice must be posted.

ERS includes in the notice the elements mandated by statute at Texas Government Code § 2155.083(g). Additionally, the notice generally instructs respondents to email ivendorquestions@ers.state.tx.us to request access to the solicitation documents. Upon receipt of the request, ERS will email the requisite user name and password to access the solicitation documents.

In addition to sending notification to potential respondents that have registered with ERS, ERS also sends notification of the solicitation to all potential respondents on the Comptroller's Centralized Master Bidders List for the advertised

commodity code (<https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>). OPCO is responsible for the posting and notification requirements.

ERS also posts notification on ESBD for any contract valued at more than \$25,000 once the contract is awarded. The post-award notification complies with the requirements of the Texas Government Code.

Post-Award Texas Register Notification

ERS is required by statute to post notification in the Texas Register not later than the 20th day after the date of entering into a major consulting services contract, which is defined as a contract exceeding \$15,000. The notification must include a description of the activities the consultant will conduct; the name and business address of the consultant; the total value and the term of the contract; and the dates on which the deliverables under the contract are due to ERS.

Communications with Respondents During Solicitation Process

From publication of the solicitation through contract award, respondents must direct any communications relating to the solicitation to the designated OPCO contact unless otherwise directed by ERS. Respondents that contact someone other than the OPCO contact or, when directed, other authorized staff with regard to the open solicitation may be disqualified from consideration.

Written Questions

Generally, ERS does not hold a solicitation conference for potential respondents. Instead, the solicitation document may invite potential respondents to submit written questions during a set time period after publication, but before responses are due. If applicable, the date and time for submission of the written questions are specified in the solicitation document. Written questions should be submitted as instructed in the solicitation. Responses to relevant questions will be posted as indicated in the solicitation.

Response Receipt

ERS generally requires responses to be delivered to ERS as stated in the solicitation documents. ERS must receive responses prior to or at the designated time and date advertised in the solicitation. ERS staff is responsible for certifying the date and time of delivery.

Solicitation Evaluation Process

Preliminary Review

For the preliminary review, OPCO evaluates all of the responses to verify which responses both meet minimum requirements and comply with the solicitation documents. OPCO also performs respondent due diligence, which includes, but is not necessarily limited to, ensuring each respondent is current on payment of franchise taxes and verifying each respondent is not listed on the Comptroller's Debarred Vendor List or the federal debarment list found on the System for Award Management, or SAM. Responses that do not pass this scrutiny will be deemed nonresponsive and ineligible for subsequent evaluation by the Evaluation Team Members.

Evaluation Kick-off Meeting

Once OPCO has completed its preliminary review, OPCO holds an Evaluation Kick-off Meeting for the Evaluation Team Members. The evaluation team is comprised of ERS staff, and sometimes outside consultants, contractors and/or actuaries, who have the necessary technical or program expertise to evaluate the responses. During the Evaluation Kick-off Meeting, OPCO explains the evaluation process, schedule, and scoring tool to the Evaluation Team Members and answers any questions regarding the terms of the Nondisclosure Agreement and No Conflict Form and Disclosure Statement for Purchasing Personnel, also referred to as the Nepotism Disclosure Form.

Review by Evaluation Team Members

After the Evaluation Kick-off Meeting, Evaluation Team Members review the responses based on their areas of expertise, as reflected on their individual scoring tools. The Evaluation Team Member shall provide scores for each response for each area to which he/she is assigned. In some instances, an Evaluation Team Member may determine a response does

not fully answer the question or the answer is otherwise unclear or further information is required to adequately evaluate the response. The questions may be asked in the form of a clarification. Clarifications may be asked during any evaluation phase. Finally agreed-upon clarifications become part of the final contract for the selected contractor.

The solicitation documents will dictate whether responses are evaluated on other bases such as best and final offers, references (further discussed below), interviews and/or site visits. The solicitation documents will also dictate how these other factors will be scored. The solicitation documents may indicate that these factors will only be evaluated for finalists.

Past Performance

Typically, the solicitation documents will indicate how past performance is considered in the scoring process. Past performance generally includes reference checks, as well as reliance on ERS' own experience and the Comptroller's Vendor Performance Tracking System ("VPTS"). The reference checks will typically be conducted by assigned Evaluation Team Members. OPCO will check the VPTS.

CONTRACT FORMATION AND RATE/PRICE ESTABLISHMENT

Contract Negotiations

Negotiating specification terms and price is allowed for certain solicitations. When allowed, negotiations may not be used for technical leveling and/or technical transfusion. Technical leveling is the method of encouraging a respondent to bring his/her response to the level of other responses through successive rounds of discussion, usually by pointing out response weaknesses. Technical transfusion is the method of disclosing technical information or approaches from one response to other respondents. ERS may use a variety of negotiation strategies and techniques to determine the best value. Specification and price negotiations typically involve the appropriate Evaluation Team Members with OGC and OPCO support. The legal terms are typically negotiated by OGC with OPCO and Business Division support. Generally, the solicitation documents indicate that ERS may fail a respondent if the parties cannot agree on the terms of the contract.

Best Value Verification

Before selection of the contractor and throughout the evaluation process, the DOPCO or his/her designee will review the solicitation documents, scoring tool, all responses, and related materials to ensure the top ranked respondent was evaluated based on the best value standard documented in the solicitation documents and as reflected on the scoring tool. The DOPCO shall sign off on the purchasing method and solicitation process utilized. Once the contractor is selected and the contract is finalized, the DOPCO or his/her designee shall sign a form indicating that the final executed contract comports with applicable state law, agency policy, and consistent with the Comptroller's Contract Management Guide.

Form 1295

Texas Government Code § 2252.908 prohibits agencies from entering into the following contracts with a business entity unless the business entity first submits a disclosure of interested parties form: (1) contracts with a value of \$1 million or more; or (2) contracts that require action or vote by the governing body of the agency before the contract may be signed. The disclosure form ("Form 1295") is an online form administered by the Texas Ethics Commission. The contractor must submit the signed and notarized Form 1295 to ERS before the contract is executed. Within 30 days of ERS' receipt of the signed and notarized Form 1295, OPCO staff must formally acknowledge the form on the Texas Ethics Commission's website.

Contractor Selection and Award

ERS awards a contract for the purchase of goods and/or services to the respondent providing goods or services that are in the best interest of the trust and that provide the best value. For most solicitations, the evaluation process results are presented to the Executive Director or his/her designee for contractor selection. The Board has delegated to the Executive Director the authority to negotiate, enter into, and to administer contracts on behalf of ERS. This delegation is consistent with the broad grant of authority found in ERS' Rules of the Board of Trustees, which provides that "[a]ll the administrative and decisional powers granted by statutes administered by the board are vested in the executive director...." 34 Texas Administrative Code § 65.1. The Rules further delegate this authority to the Deputy Executive Director by providing that

“[a]ny right, power, or duty imposed or conferred on the executive director by law or by rule may be exercised or performed by the deputy executive director.” 34 Texas Administrative Code § 65.9. The Board also specifically delegated authority to the Executive Director to execute contracts on behalf of ERS that exceed \$1 million. For certain solicitations, the evaluation process results are presented to the Board during a public board meeting for contractor selection. Once the contractor is selected, the Executive Director, or Deputy Executive Director if delegated by the Executive Director, negotiates, executes and administers the contract on behalf of ERS.

As noted previously, ERS posts the requisite contract award notification to the ESBD and Texas Register, as required.

CONTRACT OVERSIGHT

Contract oversight includes the below general processes:

- Planning
- Monitoring Performance
- Change Management
- Payment Approval
- Termination
- Contract Closeout

Planning

Planning for contract administration and oversight begins with the development of clear and concise solicitation documents. Once the contract is executed, the planning activities should focus on ensuring the solicitation documents are inclusive of the terms and conditions of the contract.

ERS engages in ongoing communications with the contractor to discuss expectations and timelines. A post-award meeting or teleconference will be held after contract award. The contractor and the ERS staff responsible for administering and/or overseeing the contract will attend or participate in the meeting. If a project manager is assigned to the contract, the project manager may oversee the meeting and any future meetings, if applicable, related to implementation of the contract. The meeting provides an orientation for the contractor to ensure a proper and timely implementation of the contract.

Monitoring Performance

The Business Division is primarily responsible for monitoring a contractor’s performance while OPCO provides additional contract oversight. The Business Division or OPCO informs the OGC as soon as it becomes aware of a legal issue arising in connection with a contract.

Methods for monitoring contractor performance should be specified in the solicitation documents and further discussed during the implementation meetings, if applicable. Effective and efficient contract monitoring is important for early detection and mitigation of problems that may arise. The level and frequency of performance monitoring is dependent on the value, term, risk level and complexity of the contract and may be done through meetings, conferences, site visits, reporting, third parties and risk management.

Enhanced Contract Monitoring

The contracts described under Section 2261.251(b) of the Texas Government Code are subject to ERS’ enhanced contract and performance monitoring procedures. For these contracts, information must be submitted to the Board on a timely basis if certain issues arise. OPCO ensures these procedures are complied with for this subset of contracts.

Performance Measures

One means of monitoring contractor performance is through performance measures. The most common means of measuring performance is performance guarantees or service level agreements. Contracts may include performance guarantees or service level agreements that set clear expectations to which contractors are held accountable. During the

contracting process, proposed contracts will be assessed on the level of risk, and the Business Division, in cooperation with the OGC and OPCO, as applicable, will determine the need and level of performance guarantees, service level agreements, and other means of measuring performance. The performance measures will vary based on the contract. Clearly defined performance measures encourage routine improvement, effectiveness, and efficiency. A key component of contract oversight is ensuring the contractor complies with these performance measures.

Contractor Reporting

Another means of monitoring contractor performance is through contractor reporting. The contractor shall provide reports as provided in the contract, if applicable. These may include status reports, HUB subcontracting reports, performance and activity reports.

Change Management

In some circumstances, it may be necessary to amend the contractual terms. As soon as the Business Division becomes aware of a potential contractual change, it should contact OGC and, when applicable, OPCO.

Payment Approval

Payment due to the contractor is based on the contractual terms, often reflected in a fee schedule. ERS staff must confirm that billing is in accordance with the contract's progress and performance. After review by ERS staff, payment of correct invoices that are not being disputed by ERS shall be made within 30 days and in compliance with the Texas Prompt Payment Law. However, a mechanism should be in place that allows ERS to withhold payments in the event of poor performance or other violations of the contract under a service contract. The Business Division should consult with OGC when determining whether to dispute invoices or other contract payments.

Performance Review

After contract termination or expiration, ERS shall review a contractor's performance for those contracts specified under Texas Government Code § 2155.089(c)(2). These reviews and any resulting classification grades shall be posted on the VPTS as provided for under Texas Government Code § 2262.055. ERS may, at its discretion, complete reviews on all other contractors in the manner described above.

Records Retention

In accordance with Texas Government Code § 441.1855, ERS shall retain each contract entered into and all contract solicitation documents related to the contract, and shall not destroy such documentation before the seventh anniversary of the date (a) the contract is completed or expires; or (b) all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents are resolved. Specific questions regarding records retention should be directed at the Records Management Supervisor.