

RAILROAD COMMISSION OF TEXAS

CONTRACT MANAGEMENT GUIDE AND HANDBOOK



Procurement and Contract Management Division

Last Updated: May 2016

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I. INTRODUCTION

Pursuant to Tex. Gov't Code §2261.256, the Railroad Commission of Texas ("RRC") has developed this Contract Management Guide ("Guide") for all RRC employees who request the procurement of goods and services. The Procurement and Contract Management Department ("PCM") is responsible for the oversight and integrity of the procurement and contracting process from the development of specifications, the solicitation, and through award to a vendor. PCM coordinates all contracting activities closely with the RRC's Office of General Counsel ("OGC").

PCM staff stays current on all purchasing rules, policies, and regulations and should be your primary source to provide guidance on procurement and contracting processes. The intent of this Guide is to assist RRC staff in understanding the contracting processes that must be followed in accordance with statutory requirements. The Guide will be updated periodically to reflect changes in procurement rules and policies. All comments, questions, or suggestions should be directed to the Director of PCM at 512-463-7682 or to sandy.williams@rrc.texas.gov.

Purchases require the input of a requisition into the Centralized Accounting and Payroll/Personnel System ("CAPPS") by the requesting department. Once a requisition is approved, the requisition is converted to a Purchase Order ("PO"). Once a PO has been created it will be sent directly to the contractor by email (preferred) or facsimile. An email notification will transmit to the requester advising them once the PO is completed. Any documents or information relating to a purchase must reference the PO number.

A requisition entered into CAPPS is not an official PO and should not be used or construed as an official PO. Any employee who makes a financial commitment (verbal or written) to vendors/contractors is acting outside of established procedures.

Upon the receipt of goods or services, a receipt document must be entered into CAPPS before payment can be processed. The State of Texas "Prompt Payment Act," Chap. 2251, Tex. Gov't Code, states that a payment must be made 30 days after the goods are received or 30 days after the invoice is received—whichever occurs last. Therefore, it is vital to accurately enter the date that the goods, services, or invoice was received.

Please see **Appendices L and M** for definitions of words and acronyms commonly used in this Guide.

II. CONTRACT OVERVIEW

A contract is a written document referring to promises or agreements for which the law establishes enforceable duties and remedies between a minimum of two parties. The following are considered contracts: an original Contract, Amendment, Modification, Extension, Purchase Order ("PO"), Purchase Order Change Notice ("POCN"), Interagency Agreement ("IAC"), Inter-local Agreement, Inter-cooperative Contract, and a Memorandum of Understanding ("MOU").

III. EXECUTION AUTHORITY

Only the RRC, its designee, or a trained certified purchaser has the authority to accept an offer, bind the RRC to a contract, or commit agency funds. A contract may be considered void and unenforceable if signed by an unauthorized party.

Contracts issued by the RRC must contain a statement indicating that only the authorized representative of each party can execute the contract. Procurement staff may sign a PO if a requisition was properly submitted and approved in CAPPS, which in turn authorizes a procurement staffer to commit the funds. All RRC procurement staff must be trained and certified to the level of the dollar amount of any PO they sign.

IV. PROCUREMENT AND CONTRACT SERVICES

PCM is part of the RRC's Administrative Services Division. PCM staff members are available to assist all RRC Divisions with procurement and contracting needs. PCM's efforts are focused on the purchasing and contracting activities which obtain the best value for the RRC. The mission of PCM is to employ highly-trained professional staff to approve, record, and process the procurement of goods and services for the RRC at the right time, the right price, and in compliance with laws, regulations, purchasing procedures, and sound business judgment.

V. DELEGATED PROCUREMENT AUTHORITY AND STATUTORY EXEMPTIONS

The RRC's procurement authority is found in Tex. Gov't Code §2155.150:

- (a) The Railroad Commission of Texas is delegated all purchasing functions relating to purchases under:
 - (1) Chapter 89, Natural Resources;¹ or
 - (2) Sections 81.067 and 81.068, Natural Resources Code.²
- (b) The Railroad Commission of Texas shall acquire goods and services, under Subsection (a), by any procurement method that provides the best value to the railroad commission. The railroad commission shall consider the best value standards listed in Texas Government Code, Section 2155.074.
- (c) The commission shall procure goods and services, under Subsection (a), for the Railroad Commission of Texas at the request of the railroad commission, and the railroad commission may use the services of the commission in procuring goods and services.

The RRC is not required to follow any purchasing procedures prescribed by or under Subchapter E, Chapter 2155, Tex. Gov't Code (which requires a state agency to use the CPA's Centralized Master Bidder's List ("CMBL")) when the RRC makes a purchase in connection with the remediation of surface locations or well plugging. *See* Tex. Nat. Res. Code §81.057.

VI. STATE PROCUREMENT STATUTES, RULES, AND GUIDANCE

The Texas Comptroller of Public Accounts ("CPA") identifies a list of governing statutes and rules that state agency purchasing programs must follow:

Texas Government Code, Title 10, Subtitle D, Chapter 2155. Purchasing: General Rules and Procedures.

Texas Administrative Code, Title 34, Part 1, Chapter 20: Texas Procurement and Support Services:

- Subchapter A: General Provisions
- Subchapter B: Historically Underutilized Business Program
- Subchapter C: Procurement
- Subchapter D: Payments
- Subchapter E: State Support Services--Mail And Printing
- Subchapter F: State Support Services--Travel And Vehicles

¹ Relating to Abandoned Wells.

² Relating to the Oil and Gas Regulation and Cleanup Fund and Purposes of Oil and Gas Regulation and Cleanup Fund, respectively.

VII. ETHICAL STANDARDS

GENERALLY

State officials and employees are responsible for protecting the safety and welfare of the public's monies. All state officials and employees should endeavor to pursue a course of conduct that does not raise suspicion among the public. Therefore, state officials and employees shall avoid acts which are improper or give the appearance of impropriety. This conduct is particularly important for state procurement and contract management personnel who are charged with the disposition of state funds.

State procurement personnel must adhere to the highest level of professionalism in fulfilling their official duties. Both purchasing processes and personnel must remain independent and free from the perception of impropriety. Any erosion of public trust or any shadow of impropriety is detrimental to the integrity of the purchasing process. Consequently, the credibility of a purchasing program requires that a state agency establish a clear set of guidelines and rules. The guidelines are designed to prevent actual and potential contractors from influencing state officers or employees in fulfilling their official duties. Furthermore, the guidelines help prevent the independent judgment of state officials and employees from being compromised.

CERTIFIED TEXAS CONTRACT MANAGER TRAINING AND CERTIFICATION REQUIREMENTS

In accordance with Tex. Gov't Code §2262.053, designated contract management staff must be certified through the Certified Texas Contract Manager ("CTCM") process administered by the CPA.

Contract managers must:

- Complete the following three training sessions:
 - Contract management;
 - Project management; and
 - Negotiation skills and strategies.
- Take and pass the certification exam; and
- Maintain certification by:
 - Completing 80 hours of additional training over the course of five years (no more than 36 CEH's may be applied per year); and
 - Apply for recertification.

Additionally, executive staff must complete the 45 minute *Governing Bodies Webinar Training S.B. 1681* and fill out and submit the acknowledgement form to the CPA's office.

CONFLICTS OF INTEREST AND REQUIRED DISCLOSURES

"It is the policy of this state 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." Tex. Gov't Code §572.001.

State law specifically prohibits employees who participate³ in the procurement process from having an interest in or receiving benefits from a contract or solicitation for a purchase of goods or services. To ensure the integrity of the RRC's procurement processes, RRC employees who are involved in the development, award and management of contracts with private contractors must disclose any known or potential conflicts of interests. An employee may not work on a contract if the employee, or member of the employee's immediate family, has an actual or potential financial interest in the contract, including but not limited to prospective employment. RRC's procurement staff annually certifies compliance with these provisions on a "Conflict of Interest" form, which is maintained by PCM (see **Appendix A**).

State law also requires the completion of a "Disclosure Statement for Purchasing Personnel" (also known as the "Nepotism Disclosure" form) for major contracts for the purchase of goods and services over 1 million dollars (the form is found at <https://www.sao.texas.gov/Resources/forms/NepotismDisclosureForm.pdf>).

Additionally, each signatory in the workflow approval of a contract, by approving the contract, certifies that they:

- Have no interest in or connection with the contract;
- Have 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
- Have disclosed any possible conflicts of interest to the Executive Director or the RRC Governing Body.

CONTRACTORS

State law prohibits contracts for goods and services with private contractors in which certain RRC officials have a financial interest. Accordingly, the RRC's Commissioners, Executive Director, and General Counsel will disclose any known financial interests to PCM to ensure that the RRC does not contract with those contractors.

Contractors may not offer, give, or agree to give a state employee anything of value. Any gift or benefit must be declined by a state officer or state employee.

During the procurement process, the RRC requires potential contractors to certify and disclose any known conflicts of interest, including any proposed personnel who are former RRC employees, related to any current employees of the RRC, and any known financial interest of or foreseeable financial benefit to any RRC Commissioner, Executive Director, Deputy Executive Director, General Counsel, or Chief Procurement Officer, and their family members.

The RRC's contract terms also address conflicts of interest and require contractors to provide notice to the RRC of any actual, apparent, or potential conflict of interest regarding the contractor or any entity or individual performing any portion of the work contemplated by the contract. The RRC retains sole discretion to determine the existence and remedies for any conflict.

FRAUD, WASTE, AND ABUSE

Employees who are involved in the procurement process or contract management have the duty to report any potential fraud, waste or abuse to the RRC's OGC or to the PCM Director. A description of fraud, waste, and abuse is below:

³ The term "participate" includes, but is not limited to, decision making, approval, disapproval, recommendation, giving advice, investigation or similar action.

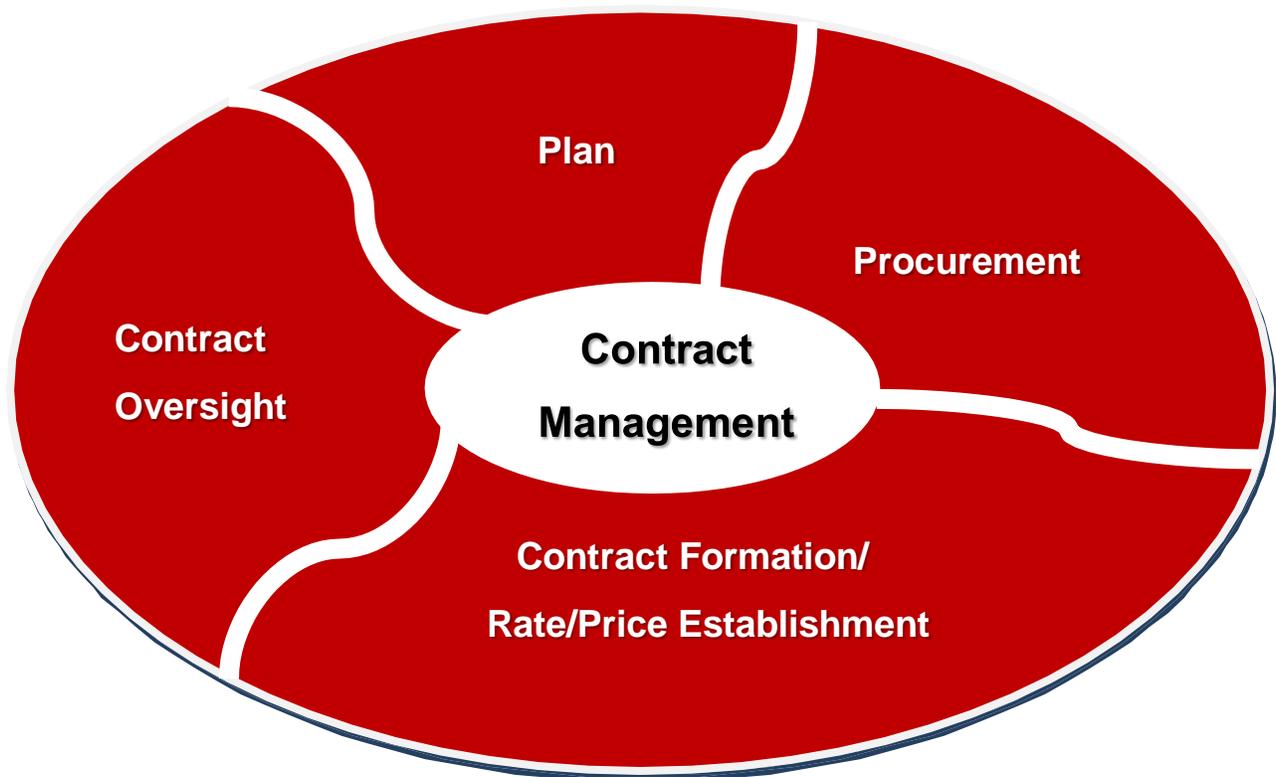
FRAUD: Any intentional deception designed to unlawfully deprive the state of something of value or to secure from the state for an individual a benefit, privilege, allowance, or consideration to which he or she is not entitled. Such practices include, but are not limited to, the offer, payment, or acceptance of bribes or gratuities; making false statements; submitting false claims; using false weights or measures; evading or corrupting inspectors or other officials; deceit either by suppressing the truth or misrepresenting material fact; adulterating or substituting materials; falsifying records and book of accounts; arranging for secret profits, kickbacks, or commissions; and conspiring to use any of these devices. The term also includes conflict of interest cases, criminal irregularities, and the unauthorized disclosure of official information relating to procurement matters.

WASTE: The extravagant, careless, or needless expenditure of state/government funds, or the consumption of state property that results from deficient practices, systems, controls, or decisions. The term also includes improper practices not involving prosecutable fraud.

ABUSE: The intentional or improper use of state resources that can include the excessive or improper use of one's position in a manner contrary to its rightful or legally intended use. Examples include misuse of position or authority or misuse of state resources.

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VIII. OVERVIEW OF CONTRACT MANAGEMENT



PLAN – IDENTIFY CONTRACTING OBJECTIVES AND CONTRACTING STRATEGY.

PROCUREMENT – FAIRLY AND OBJECTIVELY SELECT THE MOST QUALIFIED CONTRACTORS.

CONTRACT FORMATION/RATE/PRICE ESTABLISHMENT – ENSURE THAT THE CONTRACT CONTAINS PROVISIONS THAT HOLD THE CONTRACTOR ACCOUNTABLE FOR PRODUCING DESIRED RESULTS, INCLUDING ALL RELEVANT TERMS AND CONDITIONS. ENSURE THAT THE CONTRACT ESTABLISHES PROCESSES THAT ARE COST-EFFECTIVE AND ALIGNED WITH THE COST OF PROVIDING THE GOODS AND SERVICES.

CONTRACT OVERSIGHT – MONITOR AND ENFORCE THE TERMS OF THE CONTRACT.

The level of risk associated with each of the four elements listed above varies depending on the type of business relationship. For example, the nature and extent of contract monitoring will vary considerably between fee-for-service and cost-reimbursement types of relationships.

All contracts and POs must be processed through PCM. PCM, in coordination with OGC, will determine the type of contract required.

THE CONTRACT PROCESS

To assist with preparing required documents, the following steps must be followed by the RRC Division requesting procurement for all contracts:

1. **Planning.** This is a critical first step that often gets overlooked. Decide what the departmental contracting needs are prior to the beginning of each fiscal year. Plan scheduling of resources to have contracts in place to cover needs. This may involve scheduling meetings with stakeholders, reviewing current contracts, reviewing performance of service providers, and meeting with service providers to identify areas of improvement.
2. **Identify need.** Does your Division have existing contracts that need to be renewed or revised? Does your Division need new contracts to cover its needs?
3. **Perform risk assessment.** Once you decide on required services, determine the risk level for the RRC and how to minimize that risk through contract requirements. The Contract Manager will assist all RRC Divisions with completing a risk analysis. Based on risk level, develop detailed Statement of Work with written performance measures that minimize risk.
4. **Identify budget to pay for services or products.** Make sure proper budget codes are used and that there is sufficient budget to cover the cost.
5. **Submit requisition in CAPPs for funding approval.** Make sure the requisition passes budget checking, is approved through the CAPPs requisition workflow, and is ready to source to a PO or contract.
6. **Attach all documents.** Ensure that all documents related to the purchase request including proposals, quotes, contract documents or agreements needing signature, and any other correspondence related to the purchase are attached.
7. **Manage your requisitions.** Periodically check on the status of your requisitions in CAPPs to make sure requisitions are working their way through workflow approval and pass budget check. If not, correct any budget errors and notify approvers that have not approved the requisition.

GENERAL PLANNING BY THE REQUESTOR

General Planning includes several areas which assist in getting the project started—such as assessing risk, developing a communication plan, determining the procurement method, planning for the content of the procurement, and determining a cost estimate.

ACCOUNTABILITY AND RISK ANALYSIS PROCEDURE

In ethics and governance, accountability is answerability, blameworthiness, liability, and the expectation of account giving. Risk analysis has been defined in many different ways, and much of the definition depends on how risk analysis relates to other concepts. Risk analysis can be broadly defined to include risk assessment, risk characterization, risk communication, risk management, and policy relating to risk. The data analyzed will include identifying assets and threats, prioritizing the related vulnerabilities, and identifying appropriate measures and protections.

The RRC has developed a Project Planning procedure (see **Appendix B**) which provides for purchasing accountability and risk analysis procedure.

RISK ASSESSMENT

Risks are inherent in all the stages of the procurement process. Risk factors are indicators that assess the risk of the contract or project objectives not being achieved. General risk factors may include, but are not limited to:

- The contractor's past performance (and past performance of similar contractors);
- Turnover in key personnel;
- The dollar amount of the contract;
- Factors from desk reviews, such as the variance between expected and actual performance;
- Significant problems with payment requests;
- Results of previous monitoring visits;
- Results of monitoring visits completed by other agencies or divisions within the same agency that contract with the same contractor;
- The length of time since the last monitoring visit; and
- How experienced the contractor is with the type of work to be performed.

Risk assessment is a dynamic process that should be updated regularly to reflect the results of monitoring visits, reviews of payment vouchers, and desk reviews, etc.

RISK MANAGEMENT

Risk management process includes:

- Risk identification;
- Risk analysis;
- Risk evaluation;
- Risk treatment and contingency plan; and
- Risk monitoring.

Contract management risks are as varied as are the types of contracts. Risk categories common to contract management include product risk, process risk, financial risk, and schedule risk.

Risk determination is based on subjective experience. Several factors that may be useful in identifying the level of risk may include:

- The complexity and subject matter of the procurement;
- The dollar amount of the procurement, and whether the procurement will result in a major contract;
- The anticipated payment methodology;
- The experience RRC staff have with the type of procurement;
- Whether the results of the procurement will impact the public or only impact the RRC;
- Time constraints or the expected duration of the procurement; and
- The type, availability or experience of staff resources required to implement the objectives of the procurement.

A preliminary risk assessment should be conducted to make an initial determination about the level, type and amount of management, oversight and resources required to plan and implement the contract from beginning to end. Risk assessment is an ongoing process. Risk should be reviewed and re-evaluated by the contract manager on a continual basis until the contract is fully performed and final payment is made.

COMMUNICATIONS PLAN

A key factor to a successful contract is communication. It is essential that individuals engaged in contract management activities understand the provisions of the contract, have the ability to communicate contract obligations to all parties involved, and maintain control over the performance of the contract. Each Project Planning packet must contain a Communication Plan for each specific project.

Good contract management includes ensuring that the contract requirements are satisfied, that the goods and services are delivered in a timely manner, and that the financial interests of the RRC are protected. Individuals engaged in contract management activities must have sufficient knowledge of contracting principles as it relates to their responsibilities in administering the contract. It is the Contractor's responsibility to perform and meet the requirements of the contract. To do so, Contractors on occasion need technical direction and approval from RRC personnel. Individuals engaged in contract management activities must provide this technical direction and approval in a timely and effective manner established by each Division. All guidance provided to a Contractor must be within the scope of the contract. The individuals engaged in contract management activities must be careful to not impose additional requirements upon the Contractor or manage the Contractor's operations to the extent that the Contractor is relieved of their responsibility to perform. It is important to document all communication with your Contractor.

If there are any unresolved issues, please contact PCM and OGC for guidance on working with the Contractor on a solution.

ENHANCED MONITORING

Enhanced monitoring is an increased level of monitoring beyond the regular contract monitoring normally used. Such increased monitoring may include, but is not limited to: frequency of site visits, provider meetings, and documentation requirements deemed necessary to assess progress of the contractor toward meeting the identified goals and outcomes established in response to assessments of unsatisfactory performance in accordance with this procedure.

In accordance with Tex. Gov't Code §2261.253(c), the RRC's OGC is in the process of drafting a rule to establish a procedure to identify each contract that requires enhanced contract or performance monitoring. The rule will include a process for RRC's PCM Director to immediately notify the Commissioners of any serious issue or risk that is identified with respect to a contract monitored under this process.

PCM will be responsible for monitoring enhanced monitoring applicability and reporting progress and outcomes in accordance with the new rule.

Please see **Appendix C** for a list of statutes and requirements for enhanced monitoring and transparency.

CONTRACT MANAGEMENT RESPONSIBILITIES

The primary functions of contract management include:

- Participating in developing the solicitation and writing the draft SOW, identifying specifications for and deliverables to be required, and identifying needs unique to the contract that may require special terms and conditions and other contract documents;
- Determining during solicitation development if the Contractor's compensation structure is appropriate for the work;
- Serving as the point of contact for disseminating the instructions regarding the work to the Contractor;
- Receiving and responding to communications between RRC and the Contractor;
- Managing, documenting, and ensuring appropriate approval of any changes to the contract;
- Managing any state property used in contract performance, e.g., computers, telephones, identification badges, etc.;
- Identifying and resolving disputes with Contractor in a timely manner;
- Implementing a quality control/assurance process;
- Maintaining appropriate records;
- Documenting significant events;

- Monitoring the Contractor's progress and performance to ensure goods and services conform to the contract requirements;
- Exercising state remedies, as appropriate, when a Contractor's performance is deficient;
- Monitoring the budgeting and accounting process to ensure sufficient funds are available;
- Verifying accuracy of invoices and authorizing payments consistent with the contract terms; and
- Performing contract closeout process, ensuring that the contract file contains all necessary contract documentation, that formal acceptance is documented, and any lessons learned are documented.

ROLES

Contract Management refers to the entire contracting process from planning to closeout. This includes tracking tasks, monitoring contractor performance, invoice payment processing, negotiating amendments, assessing penalties, and updating contract data. PCM, OGC, the Divisions, and the HUB staff work together during the planning phase for solicitation and/or contract development. Once the contract has been awarded, it is the responsibility of the specific Division to administer the contract.

DIVISIONS

- Understands the contract;
- Manages the contractors;
- Manages the operational aspects of the contract;
- Receives goods and processes receiving reports in CAPPs;
- Reviews invoices;
- Verifies costs are within approved budgets;
- Manages financial obligation of the contractor;
- Requests contract and budgetary amendments;
- Requests amendments to HUB Subcontracting Plan (HSP);
- Initiates and manages work orders and task orders;
- Completes contractor/vendor performance evaluations and submits to PCM;
- Notifies the OGC and PCM of performance issues and monitors corrective action plans;
- Performs risk based routine and enhanced monitoring;
- Periodically perform risk assessments throughout the life of the contract;
- Monitors funding; and
- Monitors contract budget.

PCM

- Facilitates and provides technical assistance on state procurement law and options for contracting;
- Works with RRC Divisions and OGC to create procurement documents such as solicitations and contracts;
- Creates and maintains official procurement file (hard copy and/or CAPPs automated);
- Processes contract amendments and change requests;
- Reviews and approves work orders and task orders documentation;
- Requests the applicable RRC Division to provide contractor performance documentation;
- Enters contractor performance evaluations into CPA portal;
- Partners with OGC to review and approve insurance and bonding requirements;
- Publishes and reports contract information to the public and state oversight agencies;
- Provides training on procurement requirements and contract management functions to

the RRC;

- Ensures insurance and bonding requirements are being met;
- Partners with OGC to determine risk factors during the solicitation process; and
- Provides guidance during the solicitation process.

OFFICE OF GENERAL COUNSEL

- Provides legal assistance on procurement laws and regulations to PCM and the applicable RRC Division;
- Assists in the development, review and approval of solicitation, contract and amendment documents;
- Provides legal support for contract negotiations;
- Provides legal assistance for contractor performance concerns, including initiating remedies and defending disputes;
- Assists in the development, review and approval of subsequent contract documents such as amendments, work orders and task orders;
- Partners with PCM to review and approve insurance and bonding requirements; and
- Partners with PCM to determine risk factors during the solicitation process.

HUB STAFF

- Participates in specification and SOW development;
- Reviews and approves Program Area identified HUB opportunities for solicitations and contracts;
- Reviews and approves HUB Subcontracting Plan and any amendments;
- Reviews and approves HUB Progress Assessment Reports (“PARs”) monthly as a condition of payment for Prime Contractors (34 Tex. Admin. Code §20.14(f)(1)).

UNDERSTANDING PAYMENT TERMS AND RATES

If you have been tasked to track, approve, or process invoices for a contract, it is important that you read the contract to understand:

- The frequency of when the contractor will be invoicing the RRC;
- How the contractor will invoice the RRC;
- What format should the invoice be submitted;
- What supporting documents are required;
- What are the pay rates;
- What are the pay items and deliverables;
- What is the acceptance criteria for pay items and deliverables;
- Who is responsible for approving pay items and deliverables;
- What the policy is on changes to the contract terms;
- If a pay item is eligible for payment; and
- If there is a process for disputing an invoice outlined in the contract.

IX. THE STATEMENT OF WORK, SPECIFICATIONS AND DELIVERABLES

PREPARING THE STATEMENT OF WORK

The Statement of Work (“SOW”) is a detailed description of what is required of the Contractor to satisfactorily perform the work. The SOW includes all the information needed for a particular project to be

carried out systematically and successfully. Essentially, it is the description of all goods and services required to fulfill the project.

The success or failure of a contract can usually be linked to the adequacy of the planning, analysis, and thoroughness of the SOW. Time spent planning, analyzing, and drafting the SOW will result in saved time, resources, and money, and will improve the quality of the goods or services provided.

When preparing the SOW, it is important to:

- Be clearly defined;
- Be contractually sound;
- Be unbiased and non-prejudiced toward respondents;
- Encourage innovative solutions to the requirements described, if appropriate; and
- Allow for clear, open and constructive communication.

ORGANIZATION OF THE STATEMENT OF WORK

The SOW and all deliverables should include:

- A clear description of the work;
- An unambiguous standard for performance;
- A method/process to monitor progress on delivery of the good/service;
- A delivery date for the work;
- Explicit test conditions, methods, or procedures to verify that the deliverable meets the performance standard;
- A method or process to monitor and/or ensure quality in the deliverable;
- An acceptance process for each deliverable;
- A compensation structure that is consistent with the type and value of work performed; and
- A contractual remedy, if appropriate.

ELEMENTS OF THE STATEMENT OF WORK

The following should be considered and/or included in the SOW:

- Elements of a Deliverable;
- Contract Term;
- Historically Underutilized Business (HUB) Requirements;
- Payment Types;
- Define the RRC's Role;
- Quantity;
- Quality;
- Established Standards;
- Contractor Qualifications;
- Bonding Requirements;
- Evaluation Criteria;
- Best Value Considerations;
- Proposal Submission Requirements;
- Monitoring;
- Reporting;
- Inspection and Testing;
- Financial Acceptance and required documentation;
- Open to allow maximum competition; and

- Lessons learned from previous vendor performance on this type of work.

SPECIFICATIONS

A specification is a description of a product or service a user seeks to procure. A specification is also a description of what a bidder must offer to be considered for an award. Specifications are the primary means of communication between the RRC and a contractor.

CHARACTERISTICS OF AN EFFECTIVE SPECIFICATION

SIMPLE: Avoid unnecessary detail, but be complete enough to ensure that requirements will satisfy their intended purpose.

CLEAR: Use terminology that is understandable to the RRC and bidders. Use correct spelling and appropriate sentence structure to eliminate confusion. Avoid legalese type language and jargon whenever possible.

ACCURATE: Use units of measure that are compatible with industry standards. All quantities and packing requirements should be clearly identified.

COMPETITIVE: Identify at least two commercially available brands, makes, or models (whenever possible) that will satisfy the intended purpose. Avoid unneeded “extras” that could reduce or eliminate competition and increase costs.

FLEXIBLE: Avoid totally inflexible specifications which prevent the acceptance of a proposal or bid that could offer greater performance for fewer dollars. Use approximate values such as dimensions, weight, speed, etc. (whenever possible) if they will satisfy the intended purpose.

ELEMENTS OF A DELIVERABLE

Each deliverable in a solicitation should include the following elements:

- A description of the work;
- A standard for performance;
- Test conditions, method or procedure to verify that the deliverable meets with the standard;
- A method or process to monitor and/or ensure quality in the deliverable;
- An acceptance process for each deliverable;
- A compensation structure consistent with the type and value of work performed; and
- A contractual remedy, if appropriate.

BEST VALUE CONSIDERATIONS

Best value considerations should also be included in the SOW. The best value selection of a contractor is based on a determination of which proposal offers the best trade-off between price and performance. Quality is considered an integral performance factor. However, it is important to note that the lowest cost is not necessarily the best value for all procurements.

Some items which may typically be considered when performing a best value consideration:

- Installation costs;
- Life cycle costs;
- The quality and reliability of the goods and service;
- Delivery terms;
- Indicators of probable vendor performance under the contract such as past performance;
- The contractor’s financial resources and ability to perform;
- The contractor’s experience or demonstrated capability and responsibility;
- The contractor’s ability to provide reliable maintenance agreements and support;

- The cost of any employee training associated with a purchase;
- The effect of a purchase on the RRC's productivity;
- The contractor's anticipated economic impact to the state or a subdivision of the state, including potential tax revenue and employment;
- Other factors relevant to determining the best value for the state in the context of a particular purchase;
- Total cost of ownership (i.e., the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime);
- The evaluated technical merit of the contractor's proposal;
- The contractor's past performance; and
- The evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance.

In accordance with Senate Bill No. 20 (84th Legislature), for each contract using the best value standard, the procurement director of the RRC must:

- Approve the contract;
- Ensure that the RRC has documented the best value standard utilized for the contract; and
- Acknowledge in writing that the RRC complied with this Guide and with the CPA's Contract Management Guide in the purchase.

After any contract is completed or otherwise terminated, the RRC is required to review the contractor's performance by filing a report through the Vendor Performance Tracking System maintained by the CPA pursuant to Tex. Gov't Code §2155.089. For each purchase of goods or services for which the RRC is required to use the best value standard, the CPA shall ensure that the Vendor Performance Tracking System will include information on whether the contractor satisfied the best value standard.

ADDITIONAL ISSUES TO CONSIDER

Listed below are additional issues the RRC shall consider when writing the SOW. These items may affect pricing, so it is important that respondents are aware of these requirements. Remember, the SOW answers who, what, when, where, why, and how. If these questions are answered, it is a reasonable assumption that the SOW is complete.

- Licenses or permits required;
- Use of RRC equipment;
- Storage space for contractor materials/supplies;
- Intellectual property/copyright issues;
- Subcontractor requirements (please see **Appendix D** for a list of provisions that must be included in any subcontracts);
- Insurance requirements; and
- Conflict of interests/organizational restrictions.

X. DETERMINING THE PROCUREMENT METHOD

Determining the correct procurement method is important and should be a major factor in the planning process. Below is a list of the different procurement methods used to award a contract.

INVITATION FOR BIDS

An Invitation for Bid (“IFB”) uses the competitive sealed bid method. The competitive sealed bid method is used when the requirements are clearly defined, negotiations are not allowed, and price is the major determining factor for selection. Best value considerations can also be used with the IFB method.

REQUEST FOR PROPOSAL

A Request for Proposal (“RFP”) is used when competitive sealed bidding is not practicable or advantageous. Generally, competitive sealed bidding is not practicable when factors other than price are to be considered or when objective criteria cannot be defined. One of the key differences between an IFB and an RFP is that negotiations are allowed in an RFP. Discussions are allowed with the respondents and best and final offers are solicited. The RFP offers more flexibility and options in proposal evaluations than an IFB.

REQUEST FOR OFFER

A Request for Offer (“RFO”) is used for IT Commodity Purchases exempt from the Department of Information Resources IT Commodity Program. The process is generally the same as the RFP process. RFO purchases include the purchase of automated information systems and are covered under 34 Tex. Admin. Code §20.391.

REQUEST FOR QUALIFICATIONS

A Request for Qualifications (“RFQ”) is generally used for professional services wherein the respondents are evaluated based solely on their qualifications. Price is not considered until after selection is made based on qualifications. Professional services are covered under Tex. Gov’t Code §2254.004.

REQUEST FOR INFORMATION

A Request for Information (“RFI”) is used primarily as a planning tool. The RFI is an optional method that may be used to gather information when the RRC does not have the necessary information to prepare a complete and accurate solicitation document. RFIs are used to identify industry standards, best practices, potential performance measures, cost or price structures, or to generally ascertain the level of interest of prospective respondents. A preliminary solicitation document, which provides an initial description of the program objectives and specifications, usually accompanies an RFI for review by potential respondents. The RRC may use the information derived from the responses to finalize their solicitation document. Agencies are not required to incorporate any or all of the comments or suggestions made by the contractor, but the hope is that the contractor will provide useful information in the RFP development process.

XI. PROCUREMENT LEAD TIME

Procurement lead time is the interval between a decision to procure an item or service and the delivery of the item or completion of service. Less complex procurements may be accomplished in less time, while more complex procurements may require more time. Examples of tasks that may lessen or increase the lead time include but are not limited to:

- Preparation of the solicitation documents. This is where the planning and research discussed above pays off. This will reduce the time required to prepare the solicitation document.
- The time required for PCM to finalize the solicitation documents can vary depending on how well the scope of work is written by the applicable RRC Division. PCM is responsible for ensuring that the documents are complete, allow for fair competition, and follows all applicable statutes, rules, and procedures.
- A 30-60 day solicitation period is typical for most RFPs. Formal IFBs usually require 21 to 30 days, depending on any applicable Electronic State Business Daily requirements. However, if the procurement is very complex and requires respondents to submit significant documentation and/or complex pricing, additional time for the solicitation period should be allowed. In addition, if the

scope of work is unusual or complex, there may be many questions.

- Time spent on the evaluation of proposals depends on the size of the evaluation team and the complexity of the evaluation. The evaluation period could also increase if oral presentations, discussions, or best and final offers are utilized.
- Contract negotiation and formation timeframes may vary depending on the complexity of the procurement.
- Contract Execution. Depending on the signature requirements of the RRC and the Contractor, the contract execution lead time may need to be adjusted.

XII. TYPES OF CONTRACTS

EMERGENCY PURCHASES/CONTRACTS

Emergencies occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat. If a situation arises in which compliance with normal procurement practice is impracticable or contrary to the public interest, an emergency purchase may be warranted to prevent a hazard to life, health, safety, welfare, or property, or to avoid undue additional cost to the state. Agencies may have specific rules or policies pertaining to emergency purchases.

Notwithstanding the immediate nature of an emergency, all procurements conducted as emergencies should be made as competitive as possible under the circumstances. If an emergency exists, a written determination of the basis for the emergency and for the selection of a particular contractor shall be included in the procurement file in accordance with this section.

Under most circumstances, purchases are based on competitive bids. Negotiations are not authorized when utilizing an IFB method; however, if only one response is received, negotiations are allowed and encouraged. Negotiations of contracts are encouraged for emergency purchases when soliciting is not practical.

Emergency purchases of goods and services should not exceed the scope or duration of the emergency. It is the responsibility of the Division to notify both PCM and Finance immediately if the RRC needs to acquire and/or negotiate an emergency contract. The Division must additionally complete an “Emergency Requisition Justification” form (please see **Appendix E**), which must be approved by the Division Director and the Executive Director.

RRC RESPONSIBILITY

The Texas Procurement and Support Services division of the CPA (“TPASS”) has delegated to all state agencies the authority to make emergency purchases. The decision to declare an emergency purchase is the sole responsibility of the agency. Notwithstanding this delegation, emergency procurements are subject to TPASS’s rules and procedures. TPASS authority does not extend to purchases made under the Texas Disaster Act of 1975. Upon request, TPASS will assist in advising agencies on the proper procedures for emergency purchases, but will not certify the existence of an emergency.

SOLICITATION PROCEDURES

- At least three informal bids are encouraged whenever possible on all emergency purchases. An award should be made based on best value, considering the type of emergency. An agency is responsible for handling any complaints or protests that result from emergency procurements.
- Emergency purchases over \$25,000.00 must be posted in the Electronic State Business Daily publication but the minimum posting requirements do not apply. Posting of the advertisement and/or the award notice satisfies this requirement. These posting requirements are in addition to existing TPASS procedures governing emergency

procurement requirements (*see* 34 Tex. Admin. Code §20.208, relating to Delegated Purchases).

JUSTIFICATION REQUIREMENTS

Emergency purchases require a letter of justification documenting the emergency signed by the purchasing director or an authorized representative as provided in the agency Procurement Plan, and at a minimum should address the following:

- The nature of the emergency such as hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state, and what caused the emergency situation; and
- The estimated impact or damage, financial or otherwise, that will occur by following normal procurement practices (general statements of loss or nominal damage are not acceptable).

AUDIT REQUIREMENTS

Emergency purchases of goods and services over \$25,000.00 may be audited by TPASS and should be coded as document type 3, Purchase Category Code (“PCC”) T.

TPASS strongly suggests that all agencies use the TPASS terms and conditions, including bidder affirmations, for emergency procurements regardless of the dollar amount. If the informal bid process is utilized, the terms and conditions may be included by reference as part of the purchase order.

PROPRIETARY PURCHASES

Proprietary purchases are required to comply with Tex. Gov’t Code §2155.083, which requires posting solicitations for procurements estimated to exceed \$25,000 in value on Electronic State Business Daily, a webpage run by the CPA. A product or service is proprietary if it has a distinctive feature or characteristic that is not shared or provided by competing companies or similar products or services. When the specification requirement limits consideration to one manufacturer, one product, or one service provider, a written justification must be provided and is subject to review by the CPA. The Division must complete a “Proprietary Justification” form (please see **Appendix F**), which must be approved by the Division Director and the Executive Director.

PROFESSIONAL SERVICES CONTRACTS

Tex. Gov’t Code §§2254.001-2254.007 permit an agency to retain the services of consultants with particular expertise in various professional fields. The RRC most commonly uses professional services contracts to retain the services of certified surveyors, registered professional engineers, appraisers, and architects. While these contracts are awarded without competitive bidding, selection of providers must be based on demonstrated ability, competency, and professional qualifications.

Solicitations for the procurement of professional services are in the form of a RFQ. RFQs are drafted by the program area seeking to procure the services with the assistance of the Procurement Division. An RFQ shall adequately set forth the services to be provided. This is very important for two reasons. First, a proper RFQ will provide notice to the potential respondents of the exact services to be provided and the contract provisions, insurance requirements, and other standards to which the selected provider will be held.

Second, if the RRC determines in the future that additional services will need to be provided that were not contemplated in the original RFQ, a new RFQ may be required for the additional services. Therefore, it is important to contemplate and include all services that will be needed in the original RFQ.

Next, an appropriate evaluation team is assembled, and PCM prepares an Evaluation Team Brief, Non-Disclosure Statements (see **Appendix G**), and a Scoring Matrix to be utilized by the team. Upon completion, the PCM verifies the evaluation team scores, tabulates the responses, and produces a ranking of

the evaluated contractors. Please note that there may be times when an evaluation team is not utilized. If so, a Non-Disclosure statement will still need to be signed (please see **Appendix H**).

At this point, the PCM will meet with the appropriate end user to determine the next step, which may include:

- (i) Interviews and/or oral presentations with the top scoring respondents resulting in a second round of scoring and a new tabulation; and/or
- (ii) Negotiation with the top scoring respondent to determine reasonable fees. Upon selection of the potential provider, references are contacted and insurance and bonds, if required, are compiled and verified, which is then reviewed by OGC.

In selecting a professional service provider, the RRC shall:

- (i) Select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and
- (ii) Attempt to negotiate with that provider a contract at a fair and reasonable price. The professional fees under the contract must be consistent with and not higher than the recommended prices and fees published by the applicable professional associations and may not exceed any maximum provided by law. The appropriate agency staff reviews the final fee proposals to make sure they are in accordance with state law and signs off on all contracting and procurement documents before they are forwarded for final execution by the Executive Director.

CONSULTANT CONTRACTS

Tex. Gov't Code §§2254.021-2254.041 permit an agency to contract for services of outside consultants in limited circumstances.

“Consulting service” means the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. “Major consulting services contract” means a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000.00. Tex. Gov't Code §2254.021.

EXCEPTIONS

Certain types of services are not considered consulting services:

- (1) Certain licensed professionals including accountants, appraisers, architects, land surveyors, medical doctors, optometrists, and professional engineers;
- (2) Attorneys/law firms;
- (3) State employee training—consultants providing education and training programs for state employees are subject to Tex. Gov't Code §§656.041-656.049; and
- (4) Information resources—services involving the acquisition of “information resources,” which may be related to computer hardware or software or a combination thereof, are subject to extensive rules by the Department of Information Resources.

DEMONSTRATION OF SUBSTANTIAL NEED

The RRC may enter into a consulting services contract only where there is a substantial need and the RRC cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with another state agency. In selecting a consultant, the RRC shall:

- (1) Base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and
- (2) If other considerations are equal, give preference to a consultant whose principal place of business is in the State or who will manage the consulting contract wholly from an office in the State. *See* Tex. Gov't Code §2254.027.

SPECIAL REQUIREMENTS FOR CONSULTING/PROFESSIONAL SERVICES CONTRACTS IN EXCESS OF \$14,000.00

Tex. Gov't Code §2254.006 requires an agency to notify the Legislative Budget Board within 10 days of entering into a consulting or professional services contract, including an amendment, modification, renewal, or extension of the contract, in an amount greater than \$14,000.00.

MAJOR CONSULTING SERVICES CONTRACTS

There are special requirements for a consulting services contract for which it is reasonably foreseeable that the amount of the contract, including an amendment, modification, renewal, or extension of the contract, will exceed \$15,000.00. *See* Tex. Gov't Code §§2254.021(2), 2254.028(a). There are strict procedural requirements for major consulting contracts that if not followed will render such a contract void. *See* Tex. Gov't Code §2254.028(b). Unless an emergency waiver is obtained from the Governor as provided in Tex. Gov't Code §2254.025, a major consulting services contract requires a finding of fact issued by the Governor that the services are necessary and cannot be performed by the agency with its own staff. *See* Tex. Gov't Code §2254.028(a)(3).

PROCEDURAL REQUIREMENTS

The following steps must be followed prior to entering into a major consulting services contract:

NOTICE OF INTENT. Notice of Intent to enter into a major consulting services contract must be given by the RRC to the Governor's Budget and Planning Office before entering into the contract. A contract may not be entered into prior to the issuance of a finding of fact by the Governor, or in the event of an unforeseen emergency, until a limited waiver has been issued by the Governor. An "unforeseen emergency" is a situation that suddenly and unexpectedly causes a state agency to need the services of a private consultant including the issuance of a court order, an actual or imminent natural disaster, and new state and federal regulations.

INVITATION FOR OFFERS. An invitation for offers for a major consulting services contract must be filed with the Secretary of State for publication in the Texas Register at least 30 days before entering into the contract. The invitation for offer shall:

- Invite consultants to provide offers of consulting services to the RRC;
- Identify the individual employed by the RRC who should be contacted by a consultant intending to provide an offer;
- Specify the closing date for the receipt of offers; and
- Describe the procedure by which the RRC will award the contract. If the services relate to services previously provided by a consultant, the agency must disclose that fact in the invitation for offer. If the RRC intends to award the contract to a consultant that previously provided the services, unless a better offer is received, the RRC must disclose the intention in the invitation for offer.

POST CONTRACT REQUIREMENT

No later than 10 days after entering into a major consulting services contract for which an invitation for offers was issued, a notice of award shall be filed with the Secretary of State for publication in the Texas Register. The notice of award must include:

- A description of the activities that the consultant will provide;
- The name and business address of the consultant;
- The total value and the beginning and the ending dates of the contract; and
- The due dates on which documents, films, recordings, or reports required by the contract are due.

No later than 10 days after entering into a major consulting services contract, notice of award shall be provided to the Legislative Budget Board.

Pursuant to Tex. Gov't Code §2254.036(b), copies of all documents, films, recordings, or reports compiled by the private consultant pursuant to consultant contracts for an amount in excess of \$15,000.00 shall be filed with the Texas State Library by the RRC Central Records Division.

INTERAGENCY AND INTERLOCAL AGREEMENTS

INTERAGENCY CONTRACTS: THE INTERAGENCY COOPERATION ACT

Tex. Gov't Code, Chap. 771, the "Interagency Cooperation Act", provides that a state agency may agree to contract with another state agency for the provision of necessary and authorized services and resources. A contract entered into pursuant to the Interagency Cooperation Act must specify:

- The kind and amount of services or resources to be provided;
- The basis for computing reimbursable costs; and
- The maximum cost during the period of the agreement or contract.

In addition, all interagency contracts must be approved by the administrator of each agency that is a party to the agreement.

Pursuant to Tex. Educ. Code §51.955, a state agency may not contract or spend appropriated funds with an institution of higher education if the contract includes a provision precluding public disclosure of any final data generated or produced in the course of the contract unless the premature disclosure of such data would adversely affect public safety, the protection of intellectual property rights of the university, publication rights in professional scientific publication or valuable confidential information of the university or a third party.

INTERLOCAL CONTRACTS: THE INTERLOCAL COOPERATION ACT

Interlocal cooperation contracts are agreements between a state agency and a local government or between two or more local government agencies, such as cities or counties. Such contracts are authorized and regulated by Chapter 791 of the Texas Government Code, the "Interlocal Cooperation Act", and generally relate to the provision of governmental functions and services. An interlocal contract must:

- Be authorized by the governing body of each party to the contract;
- State the purpose, terms, rights and duties of the contracting parties;
- Specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party; and
- Payment is in an amount that fairly compensates the performing party for the services or functions performed under the contract.

Parties to an interlocal contract must additionally comply with the requirements of Chapter 2161 of the Texas Government Code regarding HUBs. Interlocal contracts may be renewed annually.

INTERAGENCY AND INTERLOCAL CONTRACT ROUTING

All interagency and interlocal contracts are routed through the RRC's contract procedures process. This ensures that the appropriate agency staff is reviewing the proposal to determine that:

- It is an appropriate procurement of services, if the RRC is the receiving agency, or an appropriate project in which the RRC has the proper staff and time to commit, if the RRC is the performing agency;
- The fees associated with the agreement are proper, in existence and subsequently encumbered; and
- All of the provisions of the agreement are legally enforceable and that the RRC will not enter into an agreement that requires or permits it to exceed its duties and responsibilities or the limitations of its appropriated funds.

INFORMATION TECHNOLOGY CONTRACTS (DIR CONTRACTS)

State agencies are required to procure information technology ("IT") products and services and telecom services through the Department of Information Resources ("DIR"). Please see **Appendix I** for a copy of DIR's EIR policy. If a state agency wants to procure an IT commodity outside of a DIR contract or service, it must first obtain an exemption from DIR. Tex. Gov't Code §2157.068 defines a "commodity" as commercial software, hardware, or technology services.

COOPERATIVE CONTRACTS

The Cooperative Contracts Program is designed to generate savings for government entities using taxpayer funds by efficiently leveraging volume-buying power to lower the IT acquisition costs and improve the quality of the state's investment in technology commodities. Tex. Gov't Code §2157.068 establishes DIR's statutory authority to set administrative fees and allows non-state agencies to purchase from DIR contracts. DIR has an administrative fee cap of 2% for the Cooperative Contracts Program. The Cooperative Contracts Program also includes the Deliverables-Based IT Services ("DBITS") which provide deliverables-based, outsourced systems-integration or application development projects, IT staffing services, information security and other telecom services such as wireless, conferencing, and managed services.

DIR has already performed all State of Texas competitive procurement requirements for Cooperative Contracts or "Master Contracts" so an agency does not have to prepare a solicitation or evaluate responses; however, under §2157.068(e-1) and (e-2), a state agency contracting to purchase a commodity item shall use the DIR list of Master Contracts as follows:

- (1) For a contract with a value of \$50,000.00 or less, the agency may directly award the contract to a contractor included on the list without submission of a request for pricing to other contractors on the list;
- (2) For a contract with a value of more than \$50,000.00 but not more than \$150,000.00, the agency must submit a request for pricing to at least 3 contractors included on the list in the category to which the contract relates; and
- (3) For a contract with a value of more than \$150,000.00 but not more than \$1 million, the agency must submit a request for pricing to at least 6 contractors included on the list in the category to which the contract relates or all contractors on the schedule if the category has fewer than 6 contractors.

An agency may not use a Cooperative Contract to purchase a commodity item if the value of the contract exceeds \$1 million.

STATEMENT OF WORK

A Cooperative Contract awarded by DIR always requires a state agency to develop and execute a SOW to initiate services under the contract (and always necessary for DBITS). The RRC must:

- (1) Consult with the department before submission of the SOW to a contractor; and
- (2) Post each statement of work entered into by the RRC on the RRC's website in the manner required by DIR rule.

A SOW executed by a state agency under a contract awarded by DIR is not valid and money may not be paid to the contractor under the terms of the SOW unless DIR first signs the SOW.

DIR CONTRACT EXEMPTIONS

If, for any reason, a state agency wants to procure an item available from DIR's contracts program through an avenue other than a DIR contract, the agency must first obtain an exemption from DIR. Before requesting an exemption, an agency needs to determine if a current blanket exemption applies to the IT commodity the agency wishes to procure. However, if an agency proceeds with the purchase of an IT product or service under a blanket exemption, the procurement must be made in accordance with the exact scope, terms, and requirements specified in the blanket exemptions listed below.

- (1) **Emergency Procurement Exemption.** State agencies are granted an exemption from the requirement to purchase IT commodities through a DIR contract if a situation arises in which compliance with Tex. Gov't Code §2157.068 and/or 1 Tex. Admin. Code, Chap. 212 is impractical or contrary to the public interest, and an emergency procurement is warranted to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the State. The scope and duration of the purchases shall not exceed the duration of the emergency.
- (2) **Critical Need Exemption.** State agencies are granted an exemption from the requirement to purchase IT commodities through a DIR contract if an unforeseeable circumstance occurs that requires immediate attention, but does not qualify as an Emergency Procurement as defined in 1 Tex. Admin. Code, Chap. 212. This exemption is for procurements not to exceed \$1,500 and that are necessary to restore operation or to correct severely impaired operations due to an equipment failure.
- (3) **TIBH Set-Aside Exemption.** State agencies are granted an exemption from the requirement to purchase IT commodities through a DIR contract if those commodities IT items are offered in the Texas Industries for the Blind and Handicapped catalog and designated as a product that is set aside from competitive bidding and offered through a TPASS term contract.
- (4) **Minimum Threshold Procurements.** State agencies are granted an exemption from the requirement to purchase IT commodities through a DIR contract for procurements not to exceed \$1,000.
- (5) **Commodity Item Exceeding \$1 Million.** State agencies are granted an exemption from the requirement to purchase through a DIR contract when purchasing commodity products and/or services when the value of the contract exceeds \$1 million.

See also DIR Cooperative Contracts Blanket Exemption List, <http://dir.texas.gov/>. If a blanket exemption does not exist, or if the scope, terms, and requirements of an existing blanket exemption do not meet an agency's needs, then the RRC must request a one-time exemption by completing and submitting a DIR Exemption Request Form and providing basic information pertaining to the proposed procurement and an

explanation of the reason for requesting the exemption. Reasons for a one-time exemption and the required validation information for an exemption include, but are not limited to the following: cost, necessary terms and conditions are not available, funding source restrictions, compatibility with existing technology infrastructure, proprietary restrictions, and other extenuating circumstances or requirements that would justify why an IT commodity cannot be procured through a DIR contract.

QAT PROCESS

The Quality Assurance Team (“QAT”) implements a consistent and repeatable approach for quality assurance review of technology projects within the State of Texas. Projects are continually assessed to help reduce the likelihood that a project will not deliver a quality solution based on the schedule, budget, and scope commitments made to state leadership. The 73rd Legislature (1993) enacted Article V, Section 133 of the General Appropriations Act which established the QAT. The QAT is comprised of representatives from the Legislative Budget Office, the State Auditor’s Office, and DIR, who approve and review major information resources projects. The 74th Legislature continued emphasis on quality assurance by including an Article IX rider in the General Appropriations Act that established a quality assurance review process that must be followed for all major information resources projects. Such a rider has been continued in all subsequent General Appropriation Acts.

The quality assurance review process supports the primary purpose of the QAT, which is to review the status of major information resources projects and to make recommendations to the legislature to reduce the risk of project overruns and failures. QAT defines project risk as the likelihood that a project will not deliver a quality solution based on the schedule, budget, and scope commitments made to state leadership. QAT conducts quality assurance review for projects designated as major information resources projects. A major information resources project, as defined in Tex. Gov’t Code §2054.003(10) is:

- (1) Any information resources technology project identified in a state agency's biennial operating plan whose development costs exceed \$1 million and that:
 - (a) Requires one (1) year or longer to reach operations status;
 - (b) Involves more than one (1) state agency; or
 - (c) Substantially alters work methods of state agency personnel or the delivery of services to clients; and
- (2) Any information resources technology project designated by the legislature in the General Appropriations Act as a major information resources project.

The QAT has published the Quality and Assurance Team Policy and Procedures Manual that outlines the policies and procedures for agencies to follow for the quality assurance review process.

RRC IT SERVICES CONTRACT PROCESS

All IT services contracts shall be coordinated through the RRC Information Technology Division (“IT Division”). The IT Division will also serve as the liaison between the RRC and DIR for all scope of work approvals and exemptions sought. In addition, the RRC IT Division will coordinate and submit all quality assurance reviews to the QAT. OGC will review all IT service contracts at the request of the Chief Information Officer.

SET-ASIDE PURCHASES

“Set-aside Purchases” are those which do not require competitive procurement. Examples of Set-Aside programs in Texas are the State Use Program authorized by Tex. Hum. Res. Code, Chap. 122 and the Texas Correctional Industries governed by Tex. Gov’t Code, Chap. 497. The RRC shall access and utilize the commodities and services provided by the State’s authorized set-aside programs without the necessity of competition. All purchases issued to either of the State’s authorized set-aside programs, whether directly

issued or issued through TxSmartBuy, are automatically delegated to state agencies, regardless of dollar thresholds. When paying for exempt purchases from the Texas Industries for Blind and Handicapped (“TIBH”) or Texas Correctional Industries (“TCI”) using a warrant or Interagency Transaction Voucher (“ITV”), use the “exempt” code of “document type 9” in the Uniform Statewide Accounting System (“USAS”).

TCI is a department of the Texas Department of Criminal Justice. Using primarily offender labor, TCI manufactures goods and provides services to city, county, state and federal agencies, public schools, public and private institutions of higher education, public hospitals and political subdivisions.

Competitive bidding is not required for items purchased from TCI under the Prison Made Goods Act, except for printing. Printing procurement for state agencies requires adherence to the requirements detailed in Section 2.15.1 of the CPA’s Contract Management Guide and authorized by the Council on Competitive Government.

For all orders placed with TCI, the RRC shall document the following:

- A written quotation is obtained from the Texas Department of Criminal Justice (“TDCJ”) - Institutional Division
- The RRC issues a PO directly to TDCJ - Institutional Division. Note the following on the purchasing documentation, **"the award was made under the Prison Made Goods Act and is noncompetitive."**

Tex. Gov’t Code §497.024 requires state agencies to ensure that the following requirements are met: “If the office produces an article or product under this subchapter, an agency of the state or a political subdivision may purchase the article or product **only** from the office.” (emphasis added).

Tex. Gov’t Code §497.025(c) states that “An agency may decline to purchase goods or articles from [TCI] if the agency determines, after a final opportunity to negotiate on price, and the comptroller certifies, that the goods or articles can be purchased elsewhere at a lower price.”

Prison Made Goods Act waivers: If the RRC desires to purchase a product/service offered by TCI as set forth in its catalog from a source other than TCI, a waiver must be obtained. The waiver request can be based on a substantial difference in specifications which could include delivery, or on price differences, or both. **Note:** TCI is located on the CMBL and bids for printing must include a bid or no bid response (in lieu of the waiver) for this commodity.

To request a waiver from TCI purchasing requirements, the TCI Waiver Form available in the Procurement Forms Library must be completely filled out and submitted to TCI as indicated on the form.

If TCI can provide the commodity, but the agency finds a lower price from a contractor in the private sector, the agency must offer TCI an opportunity to match the lowest price. If TCI cannot lower their price and/or meet all specifications, then TPASS must certify that the goods or articles can be purchased elsewhere at a lower price. This certification process includes an evaluation of the bid tabulation and responses from the solicitation.

The requesting agency will send the appropriate bid documents to TPASS, which will confirm that the goods or articles may indeed be purchased elsewhere, and send confirmation back to the requesting agency. For example, this certification may state: “TPASS has reviewed and certified that....”

Waiver requests will be evaluated on a case-by-case basis. Should a request be denied, an appeal may be made to the CPA. To expedite processing an appeal, be sure to provide the waiver identification number found on your waiver denial letter. Refer to TCI Waiver Request Form for TCI Customer Service.

TERM CONTRACTS

The TPASS division establishes term contracts by using the National Institute of Governmental Purchasing (“NIGP”) commodity/service codes as a source for state agencies, universities, and the members of the Cooperative Purchasing Program.

In accordance with the delegations established by Tex. Gov’t §2155.132, 34 Tex. Admin. Code §§20.40-20.41, and this Guide, state agencies are required to use the established term contracts for procurement of goods and services. All term contracts are accessible online.

TYPES OF CONTRACTS: TERM, MANAGED, CCG, TRAVEL AND TXMAS

When utilizing term contracts, ordering entities shall review specific contracts for minimum purchase limits, delivery terms, and any special conditions. POs generated through the TxSmartBuy on-line ordering system should be reviewed by the agency for completeness and accuracy. Agencies are directly responsible for any errors and the subsequent corrections.

MANAGED AND CCG CONTRACTS

Managed contracts are identified in the term contract listing with the letter “M” as part of the Contract Number (ex: 999-M1) and the contractor specific requirements are listed in the “Details” for each contract. The pricing will be listed in the Contract Details or as a linked attachment.

CCG Contracts are identified in the term contract listing with the NIGP Class/Item applicable to the service or commodity (ex: 645-32 Print Shop Specialty Paper and Supplies).

Managed contract(s) are usually unique to the needs of a specific agency; however, they may be utilized by all qualified entities. Each agency is required to issue one or more internal purchase order(s) referencing the contract number and forward directly to the contractor(s) to be eligible for the contract pricing.

CCG contracts are required to be used by all state agencies. Each agency is required to issue one or more internal purchase order(s) referencing the contract number and forward directly to the contractor(s) to be eligible for the contract pricing.

TXMAS Contracts: As an alternative purchasing method, TPASS utilizes Texas Multiple Award Schedule (“TXMAS”) contracts that have been developed from contracts awarded by the federal government or any other governmental entity of any state.

Many long-term contracts allow the contractor to request price adjustments according to the terms and conditions of the contract. Contract price changes must be submitted in writing by the contractor and approved by the TPASS Contract Management Office (“TCMO”). Requests for price adjustments will be processed within 15 days after receipt or by a date agreed upon by TPASS and the contractor. TPASS communicates changes to any TPASS Contract through the GovDelivery e-mail system.

MULTIPLE CONTRACTS (AWARDS) FROM ONE SOLICITATION

In some cases, it is advantageous to award a contract to multiple contractors from one solicitation, known as multiple award solicitation. The process starts out the same as a regular solicitation, but the solicitation documents must state the possibility of awarding more than one contract from a single solicitation.

UMBRELLA CONTRACT

An Umbrella Contract commits the Contractor to the RRC without obligating any funds until a work order is issued. Under an Umbrella Contract, work cannot begin (except for the development of the work plan in response to the work order) until the Notice to Proceed (“NTP”) or work order has been issued. Umbrella Contracts are a good tool for handling multiple tasks with the same Contractor over a specified period of

time. An Umbrella Contract is beneficial because it permits the RRC to maintain control over the contractor's progress.

WORK ORDERS

To issue a work order, there must be a current Umbrella Contract which specifically states that (1) it is an Umbrella Contract; and (2) work orders will be issued to obtain services. Work Orders can be phases of work or tasks that build upon one another or individual services related to the overall umbrella.

The work order process is as follows:

- The RRC sends a work order request to Contractor and directs Contractor to provide a work plan in response. In most cases, the work order request must have prior approval from PCM and OGC before being sent.
- A SOW must be included outlining services.
- Once the SOW is received by Contractor, the Contractor will send the RRC a work plan that outlines the tasks to be performed; how the tasks are to be completed; the timeframe for task completion; and the total dollar amount to complete all task in the work order.
- The RRC and Contractor can negotiate the terms and items within the work plan.
- Once the Work Plan is approved, the RRC will issue Contractor a NTP. Work cannot begin before an NTP has been issued.

There may be times when the Work Order, Work Plan, and NTP are created as one document. This is done when the RRC knows what task needs to be accomplished, how the complete task is to be accomplished, and the duration of the task. This type of document will have dual signatures and the work can begin as soon as both parties execute the document.

“AFTER THE FACT” PURCHASES

An “After the Fact” purchase is defined as a requisition that is not justified as an emergency purchase but is dated after the receipt or order date of the requested goods and/or services. The requisition must state that the PO is an “after the fact and is for payment purposes only”. This alerts the Purchaser not to purchase the item or service and the PO is for the vendor to receive payment.

“After the Fact” purchases are recognized as inappropriate procurement actions and reported monthly to executive management. The documentation of the “after the fact” purchase and the issuance of a PO allow both the vendor/contractor to be paid in a timely manner and direct attention to the inappropriate purchase at the Executive level. An “after the fact” purchase must be reported to Executive management by filling out a “Request for Approval” form, found in **Appendix J**, and an approved form must be attached to requisition before submitted to PCM.

The RRC fulfills a monitoring and training function by both documenting the purchase as “after-the-fact” and advising RRC staff of the incorrect procedure followed and which procedures should be followed in the future to prevent policy violations.

XIII. PLANNING FOR CONTRACT CONTENT

Clearly identifying general contracting objectives, assumptions, and constraints is an important step in the contracting process. This step may seem obvious, but when a contract fails, it is often because expectations were not met and there was no true meeting of the minds. A clear understanding of the contracting objectives is essential to success. The RRC must carefully consider how the objectives, assumptions, and constraints integrate into the project. A sample contract will always be included with the solicitation package.

WELL FORMED CONTRACTING OBJECTIVES AND PURPOSE

A well-formed statement of the contracting objectives should provide a general understanding of what will be accomplished by a contractor. Well-formed objectives will help guide and keep the contracting process focused and on track.

TECHNIQUE

Defining the contracting objectives, assumptions, and constraints may sound simple and straightforward, but this definition process can be quite complex. The following questions are intended to assist in clarifying and harmonizing potential divergent objectives and interests. Answering the following three questions will aid in defining and refining the contracting objective:

- What does the RRC specifically need?
- What will fulfilling this need do for the RRC?
- How will the RRC know when the need has been met?

Each procurement is different; therefore the description of the objective, assumptions and constraints will vary. A good measure of the quality of the SOW is whether the contracting objectives, assumptions, and constraints make sense. Are the objectives, assumptions and constraints described too broadly or too narrowly? Could the reader answer the three questions listed above?

XIV. CONTRACTS WITH A VALUE EXCEEDING ONE MILLION DOLLARS

Pursuant to Tex. Gov't Code §2261.254, the RRC may enter into a contract for the purchase of goods or services that have a value exceeding one million dollars only if the governing body of the RRC approves the contract and the approved contract is signed by the presiding officer of the governing body. The approval and signature authority for contracts with a value exceeding one million dollars may be delegated by the governing body or governing official of a state agency to the executive director of the agency.

XV. CONTRACTS WITH A VALUE EXCEEDING FIVE MILLION DOLLARS

Pursuant to Tex. Gov't Code §2261.255, if the RRC develops a contract for the purchase of goods or services that have a value exceeding five million dollars, it is required to have its contract management office or procurement director verify in writing that the solicitation and purchasing methods and contractor selection process comply with state law and RRC policy. Furthermore, information on any potential issue that may arise in the solicitation, purchasing, or contractor selection process must be submitted to the governing body of the RRC.

XVI. OTHER SOLICITATION REQUIREMENTS

PROPOSAL SUBMISSION REQUIREMENTS

The solicitation document should include one section listing all of the required information that respondents must submit with their response. This will ensure that a respondent submits the required documentation with its proposal. Additionally, recommended/required proposal formats should be specified in this section (e.g., page number limitations, size of paper, number of copies, etc.). Ensure that the solicitation document requests information on those items to be evaluated.

HISTORICALLY UNDERUTILIZED BUSINESS REQUIREMENTS

A historically underutilized business (“HUB”) is a for-profit entity that has not exceeded the size standards prescribed by 34 Tex. Admin. Code §20.23, has its principal place of business in Texas, and is at least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman and/or Service Disabled Veteran (with at least 20% ownership) who resides in Texas and actively participates in the control, operations and management of the entity's affairs.

To maximize the inclusion of minority, woman-owned, and service-disabled veteran businesses in state contracting and to accomplish the RRC’s mission, PCM administers the (“HUB”) Program. The purpose of the HUB Program is to promote full and equal business opportunities in state contracting through openness, fairness, and the highest ethical standards in accordance with the goals specified in the 2009 State of Texas disparity study. These goals can be achieved through contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with Tex. Gov’t Code, Chap. 2161 and 34 Tex. Admin. Code §20.13.

In accordance with Tex. Gov’t Code §2161.252 and 34 Tex. Admin. Code §20.14, when the RRC considers entering into a contract with an expected value of \$100,000 or more, it shall, before proposals, offers, bids, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract.

If subcontracting opportunities are probable, the RRC’s purchase solicitation documents for construction, professional services or other services, or commodities with an expected value of \$100,000 (or any lower amount as determined) or more shall state that probability and require a HUB Subcontracting Plan (“HSP”). An HSP must be completed and returned with the bid or proposal, at the appropriate time, or the proposal may be considered non-responsive.

If at any time during the term of a contract there is a change in the use of subcontractors by a contractor, a new/updated HSP is required. In addition, if an HSP is required under a contract, a HSP Progress Assessment Report (“PAR”) must be submitted monthly with each invoice providing the RRC with pertinent details of the participation by a HUB in fulfilling the duties and obligations under the contract. It is the responsibility of the contract administrator or project manager to ensure that the applicable forms are submitted and forwarded to the Director of HUB through the appropriate process to be reviewed and approved.

To further the RRC’s HUB goals, the RRC reviews all solicitations that are \$25,000.00 or more for subcontracting opportunities. If it is determined that subcontracting opportunities exist, a HSP will be included in the solicitation and all proposals or bids returned without completing the HSP will be considered non-responsive.

All HSPs and PARs are maintained by the HUB Coordinator and a copy is included in the official contract file.

PAYMENT TYPES

The method of payment has a direct impact on how the SOW is written and how the contract is managed. The RRC must measure or verify when the work is complete, how much the RRC will pay the contractor when the work is completed and/or how often the RRC will pay the contractor. As with specification types, there are also various payment types. The payments should be consistent with the type of product or service delivered. Payments should be structured to fairly compensate the contractor and encourage timely and complete performance of work. As a general rule, payment should be approximately equal to the value of the completed work.

CONTRACTOR QUALIFICATIONS

The SOW shall specify the minimum qualifications required of the contractor. Typically, the contractor qualifications are less stringent in an RFP than in an IFB because the contractor qualifications are part of the evaluation criteria. At a minimum, the SOW should require that the contractor have a specified level of experience in the type of work to be performed.

BONDING REQUIREMENTS

The three most common forms of bonding are bid bonds (deposits), performance bonds, and payment bonds. Respondents should be advised in the solicitation if a bond is required and what forms are acceptable (e.g., an irrevocable letter of credit or a cashier's check). When considering whether or not to use a bond, the cost of the bond is typically passed on to the RRC by the contractor. Some bonds are required by statute for specific types of procurements. OGC must be consulted if a RRC Division has questions about bonding requirements.

EVALUATION CRITERIA

The solicitation documents must advise the respondents how a proposal will be evaluated. The evaluation criteria must reflect the essential qualities or performance requirements necessary to achieve the objectives of the contract. The criteria should allow the evaluation team to fairly evaluate the proposals. The evaluation criteria may take a variety of sources of information into consideration, such as the written response, the oral presentation, the respondent's documented past performance, or references relevant to the contract. Specific portions of the required response should directly relate to the evaluation criteria.

To ensure fairness in evaluation, the evaluation criteria should reflect only those requirements specified in the solicitation document. The language within the solicitation will determine the scope of the evaluation criteria and the flexibility the evaluation team will have when evaluating proposals—so the evaluation criteria should not be unduly restrictive. Respondents must have notice in the solicitation of all requirements. The solicitation should clearly state the consequence of failing to meet these requirements, such as reduction in evaluation score or disqualification. Carefully consider any requirements that may disqualify a proposal. For example, when the HUB Subcontracting Plan is required by state statute, the RRC has no choice but to disqualify the respondent if it does not submit the plan. However, if the respondent fails to submit a copy of a license, that may not be a valid reason for disqualification.

Criteria that was not included in the solicitation shall not be used in the selection or ranking of a proposal. For example, if respondents receive additional points for possessing a national accreditation or meeting the unique needs of the customers, those criteria must be included in the solicitation so that the respondents know there is an opportunity to score higher by providing those options. Likewise, if this information is not requested in the solicitation, respondents who fail to offer these options cannot be penalized.

When determining the evaluation criteria, the proposal submission requirements associated with each criterion must be considered. In the sample criteria listed below, methodology is a criterion on which the respondents will be evaluated. What information needs to be included in the response in order to effectively evaluate a respondent's methodology—did they copy a project management technique straight from a training manual or did they tailor this technique specifically to meet the needs of the solicitation? Another example is the experience, skills, and qualifications of company and staff. What information is required for the evaluation team to score this criterion?

- Years in business;
- Years of staff experience;
- Certified or licensed employees; and
- Performing similar size projects, etc.

The table below indicates sample evaluation criteria:

SAMPLE EVALUATION CRITERIA	SAMPLE WEIGHT
Cost	60%
Proposed services, including work plan and methodology	20%
Experience, skills and qualifications of company & staff	20%

Cost is typically the most significant evaluation factor. However, there are procurements in which the skills and experience of the contractor or other factors may be more important than cost. For example, if a trainer has to have a specific set of skills, the RRC may be willing to pay more for these skills. When establishing the criteria weight, consider the importance of the criteria to the overall project. The criteria deemed most important by the RRC shall be weighted higher than the other criteria.

XVII. ADVERTISING THE SOLICITATION

When marketing a solicitation, consideration must be given to the type of procurement method used. For example, the advertising requirements of goods and services are different from those of building construction or client service contracts.

CENTRALIZED MASTER BIDDERS LIST

The Centralized Master Bidders List (“CMBL”) (<http://www.window.state.tx.us/procurement/pub/manual/2-33.pdf>) is an electronic mail list administered by CPA which is a database of contractors registered by commodity codes that have provided their contact information and the goods/services they offer. Tex. Gov’t Code §2155.263 requires the CPA to maintain the CMBL. The RRC shall solicit bids or proposals exceeding \$25,000 from all eligible contractors on the CMBL.

Pursuant to Tex. Nat. Res. Code, Chap. 89 and §81.067, when making procurements in connection with the remediation of surface locations or well plugging, the RRC is exempt from the requirements of using the CMBL. Unless statutorily exempted, the CMBL must be used for all procurements subject to CPA’s procurement authority.

ELECTRONIC STATE BUSINESS DAILY

The Electronic State Business Daily (“ESBD”) (<http://esbd.cpa.state.tx.us/>) is an internet based website for posting state bid opportunities. It is also administered by CPA. In accordance with Tex. Gov’t Code §2155.083 and the 34 Tex. Admin. Code §20.212, the requirement to advertise solicitations using the ESBD applies to all purchases exceeding \$25,000 regardless of the source of funds used for the procurement (including delegated purchases), or if the solicitation is for an emergency, construction projects, professional or consulting services, proprietary purchases, or purchases exempt from CPA’s purchasing authority.

Verification of the ESBD advertisement is required in the purchase file. The ESBD is available on the internet at <http://esbd.cpa.state.tx.us/>. Failure to properly post a solicitation opportunity to the ESBD unless statutorily exempted will void any resulting contract.

POSTING AN AWARD TO THE ESBD

Upon award of a contract, the RRC shall post the award information to the ESBD, including the name of the awarded Contractor, the contract term, and the amount. If a solicitation posted to the ESBD is canceled without an award, the RRC shall post the cancellation notice to the ESBD.

REQUIRED POSTING OF CERTAIN CONTRACTS

During the 84th Legislative session, legislation was enacted which requires state agencies to post certain contracts for public viewing. The RRC will post on its internet website each contract entered into with a private contractor until the contract expires or is completed, including contracts entered into without inviting, advertising for, or otherwise requiring a competitive solicitation before selection of the contractor. The RRC must post:

- Contracts that are not competitively bid or are entered into without compliance with competitive bidding procedures. The RRC must post the statutory or other authority under which the contract was awarded and executed.
- Contracts that were the subject of competitive procurement. The RRC must post the RFP or bids until the contract expires or is completed.
- The RRC may post monthly contracts described by Tex. Gov't Code §2261.253(a) that are valued at less than \$15,000.

BARRING VENDORS FROM PARTICIPATING IN STATE CONTRACTS

The CPA may bar a contractor from participating in state contracts (including any contracts where the purchasing authority is delegated to a state agency) for substandard performance under a contract with the state or a state agency. If there are material misrepresentations by a contractor in a bid or proposal to the state or a state agency or during the course of performing a contract with the state or a state agency, the CPA may bar the contractor from participation. In addition, a contractor may be barred due to fraud or breach of a contract with the state or a state agency.

Another reason the comptroller may bar a contractor from participating in state contracts is if the contractor has received repeated unfavorable performance reviews under Tex. Gov't Code §2155.089 or repeated unfavorable classifications under Tex. Gov't Code §2262.055 after considering the following factors: the severity of the substandard performance by the contractor; the impact to the state of the substandard performance; any recommendations by the RRC that provides an unfavorable performance review; whether debarment of the contractor is in the best interest of the state; and any other factor the comptroller considers relevant, as specified by rule.

The CPA may also bar a contractor from participating in state contracts if more than two contracts between the contractor and the state have been terminated by the state for unsatisfactory contractor performance during the preceding three years.

If a contractor is barred from participating in state contracts as outlined above, the CPA shall determine the period of debarment. The period for debarment must be commensurate with the seriousness of the contractor's action and the damage to the state's interests. *See* Tex. Gov't Code §2155.077.

COMMUNICATION WITH RESPONDENTS

All communication with potential respondents should be made only through the PCM or other designated staff. The applicable RRC Division staff should not have contact with potential respondents outside of pre-solicitation conferences. Likewise, a respondent that contacts someone other than authorized staff in regards to a solicitation may be disqualified. While the PCM staff or other designated staff may not be able to answer all of the technical questions asked by potential respondents, PCM will ensure the information is provided to all potential respondents.

The solicitation document shall only provide a purchasing point of contact with all applicable forms of communication, such as telephone or email, etc. Should a potential respondent contact program staff, program staff must politely decline to discuss the procurement and forward the inquiry to the appropriate PCM staff.

WRITTEN QUESTIONS

The solicitation document will invite respondents to submit written questions concerning a solicitation. This option may be in addition to or in lieu of a pre-solicitation conference. The deadline date and time for submission of written questions will be specified in the solicitation document, if applicable. Written questions may be submitted to the RRC via email or hand delivery.

If the solicitation is posted on the ESD, the questions and answers will be posted to the ESD on the dates as stated in the solicitation "Schedule of Events."

PRE-PROPOSAL CONFERENCES

The RRC may conduct mandatory or non-mandatory pre-proposal conferences. The RRC should carefully consider the use of a mandatory conference and confer with legal counsel as this may limit competition.

Conferences should be mandatory only if an on-site visit is required to have a full understanding of the procurement or if the solicitation is so complex that RRC staff believes attendance is critical for potential respondents to fully understand the procurement. Pre-solicitation conferences provide a forum for RRC staff to respond to questions regarding a solicitation. The benefits derived from conducting pre-solicitation conferences include:

- Allowing potential respondents to address specific questions or concerns with the solicitation. If any issues are identified at the conference, the RRC will publish an addendum to the solicitation.
- Conferences are important when there is a need for on-site visits by contractors prior to submitting their response. In some cases, it may be sufficient to take digital pictures of the sites and provide this information in a slide presentation at the conference in lieu of the conference attendees traveling to the various sites. A copy of the slide presentation can be provided to the conference attendees and is posted on the ESD, if required.
- Providing a forum for the RRC to provide additional information, schematics, plans, reports, or other data that is not easily transferable or distributed through hard copy.
- Ensuring that all potential respondents receive the same information.
- Subcontracting relationships may develop through the contacts established at the conferences.

The solicitation document must indicate the date, time, and location of the conference. The conference is usually held approximately ten days after the solicitations have been published. All conference attendees must be documented through a sign-in sheet. This is especially important if the conference is mandatory because the sign-in sheet is the document used by the RRC to verify respondent attendance at the conference.

The PCM should conduct the conference in coordination with the applicable RRC Division staff. The PCM should facilitate the meeting and answer procurement related questions and the Division staff should respond to the technical questions. It may not be possible to answer all questions at the conference. In these circumstances, the answers are followed up in writing. It is recommended that the PCM record minutes of the pre-proposal conference.

All changes to solicitations must be made through an addendum issued by the RRC. The addendum is provided to all potential respondents by posting it to the ESD. It may be necessary to extend the bid opening or proposal deadline which can also be done through the addendum process.

Conferences should be audio or video recorded for future reference. Below is a typical agenda for a pre-solicitation conference:

- **Opening** – PCM introduces the RRC representatives and explains their roles in the procurement.
- **Introduction** – Attendees introduce themselves and identify the company they are representing.
- **Solicitation Overview/Review** – This is the main focus of the conference. The document is

reviewed page by page or section by section. It is not necessary or recommended to read the entire document, but the entire document as a whole should be addressed. Questions shall be addressed in writing and a “Question and Answer” addendum should be posted to the ESBD.

- **Closing Summary** – Summarize the changes that were agreed to be made through the issuance of an addendum. Review any unanswered questions to be addressed at a later date. Remind attendees that no oral changes are binding—the changes must be in the form of a written addendum.

SOLICITATION SUBMISSION AND OPENING

Respondent’s solicitation package must be delivered in accordance with submission instructions as stated in the solicitation notice/posting. Each document must indicate the solicitation number and submission deadline date and time. Respondent’s Proposals may be evaluated on a variety of factors in addition to price. At the sole discretion of the RRC and as indicated in the solicitation documentation, the RRC may choose whether or not to conduct a public reading of respondent names. Proposal pricing information will not be made public prior to award of the Contract. Respondents should be made aware that such information cannot and will not be provided prior to award of the Contracts.

XVIII. EVALUATION AND AWARD

The RRC has discretion in conducting evaluations and awards, subject only to certain statutory limits and principles of law. The RRC will conduct evaluations in a fair and impartial manner consistent with Texas law. The solicitation document will include a description of the evaluation process, the evaluation criteria or categories, and the relative weights to be assigned to each evaluation criterion or category.

Prior to receipt of the responses to a solicitation, the RRC shall develop and have an approved evaluation guide which will set forth all the details about the number of evaluation teams, the detailed scoring matrix, and the decision making apparatus for the evaluation of the responses and award of any resulting contracts. With a well-developed evaluation guide, the RRC can merely follow what is in the guide to ensure a smooth process.

RESPONSIVE PROPOSALS

After all proposals are opened and recorded, the PCM determines if the submitted proposals are responsive. This is sometimes referred to as an “administrative review.” At a minimum, this includes reviewing the signed Execution of Offer, Invitation for Bid or similar document, HUB Subcontracting Plan, and any other required documents such as required bonds. In addition, the PCM will review the proposals to ensure that minimum qualifications are met. Consultation with OGC may be required to determine a proposal’s responsiveness. The evaluation team will only be provided with proposals that are deemed responsive.

SINGLE RESPONSES

To determine why the RRC received only one response to a competitive solicitation, the PCM or other appropriate employee shall do the following:

- Re-review the solicitation for any unduly restrictive requirements.
- Contact potential respondents to determine why they did not submit a response.

If it is determined that there were unduly restrictive requirements in the solicitation document, the RRC may decide to re-advertise the solicitation. Otherwise, the RRC should consider the reasons that other responses were not received and determine if it is in the best interest of the state to make an award, to re-advertise with a revised solicitation, or to determine if a proprietary or single source purchasing justification is required.

EVALUATION TEAMS

The evaluation team should be comprised of individuals who are stakeholders in the final product or service and/or individuals who have the necessary technical or program expertise. The PCM representative is

usually the team leader for the evaluation team and serves as a non-voting member. The evaluation team members are typically selected by Division staff, with appropriate review and approval by Executive Management. It is important to select members of the team who understand the needs of the organization and understand the desired outcome of the procurement. The evaluation team should bring together as much knowledge as possible to ensure the best qualified contractor is selected. Evaluation team members may have input into the solicitation document, especially the evaluation criteria and assigned weights, if the RRC so chooses. The team members should fully understand the requirements of the solicitation and must be able to critically read and evaluate responses and to document their judgments concisely and clearly in accordance with the evaluation.

The recommended size of an evaluation team is three to five members. However, some projects may require additional members or additional teams due to the nature of the procurement. Coordination and management of the evaluation process becomes more difficult as the size and number of teams increase. To avoid potential individual bias, the team shall not be less than three members.

EVALUATION TEAM BRIEFING

In advance of receiving responses for evaluation, the evaluation team leader should provide a briefing for the evaluation team to outline the team's duties and responsibilities in accordance with the material contained in the evaluation guide. This meeting is held in conjunction with, and just prior to, the evaluation. Team members should be instructed on their responsibilities, including the critical nature of confidentiality to the integrity of the evaluation process. Each evaluation team member should submit a signed Non-Disclosure Statement and Evaluation Team Brief (please see **Appendix G**) to the PCM prior to engaging in any discussion about or having access to proposal documents.

The team leader will review all evaluation criteria with the team members and explain how the evaluation process will be conducted. Communication between team members during the evaluation shall be limited to asking questions of the team leader and if allowed, obtaining information from technical experts to understand the proposal contents and requirements. Each proposal must be evaluated individually against the requirements of the solicitation document. Each solicitation document response is considered independently of all other solicitations.

Once the evaluations are complete, the team leader will collect all of the evaluation score sheets and responses. The team leader totals the score sheets and verifies the accuracy of calculations for input into the final evaluation formula.

If it is apparent that one or more team members' evaluations differ significantly from the majority, the team leader should conduct a meeting with all team members to discuss the situation to ensure the criteria was clear to all team members and that information was not overlooked or misunderstood. If after this discussion, a team member feels that he/she did not understand the criteria, the requirement, or missed information that was included in the response, the evaluator, at his own discretion, may revise his evaluation score. Under no circumstances shall any team member attempt to pressure other members to change evaluation scores.

It is recommended that the cost or price information be scored by PCM as an objective criteria that should be calculated through predetermined formulas outlined in a spreadsheet.

SCORING MATRIX

The scoring matrix, which should be a part of the evaluation guide, is used by the evaluation team members to score the individual responses based on the evaluation criteria defined in the solicitation document. The evaluation team scoring matrix should be developed prior to publishing the solicitation document because, when developing the scoring matrix, the RRC may see that additions or revisions are needed to the solicitation document.

REFERENCES

The evaluation team may verify any references included in the proposal and conduct any other reference or credit check as deemed appropriate. This activity may also be accomplished through the PCM that would contact all references and attempt to receive answers to questions developed by the evaluation team. The evaluation team may also use the Vendor Performance System in evaluating past vendor performance. See http://www.window.state.tx.us/procurement/prog/vendor_performance/.

All reference checks must be documented in writing. The same script or format of questions must be used when conducting reference checks so that the results are consistent and fair to all respondents.

Sometimes it is difficult to obtain information from the references provided, either because the references have a policy of not providing reference information or because they cannot be reached in a timely manner. Depending on the importance of the procurement, the RRC may include the following statement in the solicitation document in lieu of checking references for all respondents: *The RRC reserves the right to check references prior to award. Any negative responses received may be grounds for disqualification of the proposal.*

By using this clause, the RRC is not required to check references but may choose to do so. Whether to check references as part of the evaluation criteria is at the discretion of the RRC based on the individual procurement.

ORAL PRESENTATIONS/DISCUSSIONS

Oral presentations or discussions are conducted at the option of the RRC. If conducted, the solicitation document must state when oral presentations or discussions will occur. Oral presentations and discussions provide an opportunity for respondents to highlight the strengths and unique aspects of their response and to provide answers to questions the RRC may have regarding the response. Demonstrations of product functionality are recommended when appropriate, such as information technology procurements or solution based procurements.

Oral presentations and demonstrations can be scheduled for all respondents or limited to the top ranked contractors in the competitive range.

Oral presentations and demonstrations shall be fair to all parties. The time allowed and the format shall be the same for all presenters. A prepared script will ensure consistency. Since some presenters believe there is an advantage to the order in which they present, it is best to draw names for the presentation order. This will ensure impartiality of the process.

BEST AND FINAL OFFERS

After any oral presentations or demonstrations are completed, discussions may be held. If discussions are held, respondents must be given equal opportunity to discuss and submit revisions to proposals. Revisions of proposals are normally accomplished by formally requesting Best and Final Offers (“BAFOs”) at the conclusion of the discussions with a deadline set for receipt of BAFOs and including instructions as to exactly what should be submitted in response to the BAFO. After consideration of all BAFO responses, the RRC may choose to select a smaller number of respondents with which to commence negotiations.

NEGOTIATIONS

The RRC may negotiate terms and conditions in some solicitations and not in others. Unless specifically authorized by statute, the RRC may not negotiate the price, specifications, terms or conditions when using a competitive bid process. Competitive proposal and qualification processes generally contemplate and allow a certain amount of negotiation. The best practice is to read the requirements of the applicable procurement procedure to verify that negotiation is permissible.

Note: A request for a respondent to clarify an offer is not the same as negotiation of the specifications or terms and conditions so long as the request to clarify does not afford one respondent an advantage over another.

Negotiations are not authorized to use technical leveling and/or technical transfusion techniques. Technical leveling is helping a respondent to bring their proposal up to the level of other proposals through successive rounds of discussion, usually by pointing out proposal weaknesses. Technical transfusion is the disclosing of technical information or approaches from one response to other competitors in the course of discussion, a practice which is prohibited by statute.

Prohibited disclosures include:

- Disclosing competing respondents' cost/prices (even if the disclosure is made without identifying the contractor by name); and
- Advising a respondent of its price standing relative to other respondents.

Even in competitive proposal or qualification processes, care shall be taken to avoid inadvertently changing the stated contracting objectives. If the contracting objectives are changed through the negotiation process, the members of the pool of contractors who may have been interested in submitting an offer will no longer be on an equal level. Additional pool members may have competed, had the changed objectives been in the original solicitation. Whenever it appears that contracting objectives may have been changed, legal counsel must be consulted before proceeding further.

Similarly, care shall be taken when determining negotiation strategy whether to give the contractors a cost/price that must be met to obtain further consideration. Suggesting a cost or price could deprive the competitive process from generating the cost or price that is the best value to the state. Please be mindful that the above prohibitions still apply (i.e., disclosing competing respondents' costs or prices is not allowed, even if done without tying the cost or price to the specific contractor; and respondent cannot be told its price standing relative to other respondents). Negotiation strategy shall be tailored to suit the particular facts and circumstances of the specific competition. In all events, the RRC may continue with negotiations until the best interest of the state is achieved and an award to one or more respondents is made.

AWARD

The RRC will award a contract for the procurement of goods and services that provide the best value for the state. Upon award of a contract the RRC shall make any notifications required by law as well as any notice to ESBD required to announce the award.

XIX. APPROACH TO CONTRACT FORMATION

Even though a sample contract was placed in the solicitation package, after award, the RRC must develop the actual contract.

Fundamentally, the purpose of any written contract is to serve as a reference document that records the terms of an agreement to prevent misunderstanding and conflict as to those terms at a later date. A contract creates a legal, binding and enforceable obligation. Most often, conflicts over contracts arise well into a contract period—when memories prove to be unreliable. With this in mind, clarity of the terms and completeness of the issues addressed are of primary importance. The person who drafts the contract must know the subject matter and concerns of the parties thoroughly enough to anticipate potential areas of disagreement and specifically address them in the contract.

Thoroughness and precision are necessary in determining the scope of a contract because contract law does not allow parties to add terms not part of the original contract without the consent of both parties. This

rigidity in contract law is mostly seen as an advantage to both parties. However, this advantage may become a liability if all necessary language is not included.

Creating contracts for the state is an exercise in balancing potential conflicting interests. These interests include the state's requirements, fiscal constraints, statutory requirements and the contractor's requirements. The primary concern shall always be the benefit of the contract to the state as a whole, or more specifically, the taxpayers of the state.

The best contract for the state does not necessarily mean taking excessive advantage of the contractor. While onerous and unnecessarily harsh provisions may be legal, they usually have negative future consequences and outweigh the initial gains. Contractors who feel they have been aggrieved by the state are less likely to provide good service and are more apt to engage in legal action. Or, contractors may decide to never contract with the state again and limit future competition on state contracts. In addition, contractors who are informed by other contractors of bad experiences with the state may demand more money on future contracts to do the same work to offset the perceived risk.

The appropriate terms to include in a contract are the terms that fully describe the actual agreement of the parties. Types of provisions that are typically included in contracts, include, but are not limited to:

- Administrative provisions;
- Financial provisions;
- Provisions that allocate risk;
- The SOW;
- Provisions relating to the contract term, termination and dispute resolution; and
- Provisions that relate to rights and ownership of work product and intellectual property.

FORM OF THE CONTRACT

Evidence of an agreement or a contract can be documented in different formats, including but not limited to a "four-corner contract", a PO, or an exchange of correspondence. The term "four-corner" contract is used to describe a single document that includes all of the terms and conditions within the four-corners of a single document. POs can also be considered a contract. The contractor delivers an offer in a form requested by the RRC, and the RRC indicates acceptance of the offer by issuing a PO. The documents that comprise the offer and acceptance are the evidence of the agreement.

A PO uses a layered approach, i.e., the purchase order usually relies on a number of documents that in combination, comprise the contract. The RRC may publish a solicitation document that includes product specifications, contractor qualifications and other terms and conditions. The contractor's response may condition the offer on terms and conditions that are different from or in conflict with the solicitation document. When a PO is used, the contractor's terms and conditions shall not become the basis of the agreement.

Despite the potential for conflicting or additional terms, when used properly, a PO is quick, efficient and rarely has problems. When using a PO as evidence of a contract, the RRC shall insure the inclusion of terms desired rather than blindly accepting terms the contractor proposes. All final terms and conditions that vary from either the offer or the acceptance must be contained in a written document signed by both parties.

CONTRACT TERMS AND CONDITIONS ("T & Cs")

During the development of the formal contract, devote careful attention to the details. There are certain clauses that are essential and some that shall be included in all contract requirements.

CONTRACT TERM

A reasonable contract term compliant with all applicable law must be established prior to solicitation and must be included in the solicitation document. All contracts must have a specific ending date. Indefinite contracts are generally prohibited. As a general policy, the maximum time for contracts without reissuing a competitive solicitation is 4 years. This includes any renewal or extension periods. Individual business needs may dictate a different period. OGC will be consulted for advice on this matter early in the planning process.

FUNDING OUT

Contracts must include a “funding out” clause. The CPA Contract Management Guide currently provides a long version and a short version.

LONG VERSION

All obligations of the RRC and Customers are subject to the availability of legislative appropriations, and for Customers expending federal funds, to the availability of the federal funds applicable to the Contract. The Respondent acknowledges that the ability of the RRC and the Customers to make payments under the Contract is contingent upon the continued availability of funds. The Respondent further acknowledges that funds may not be specifically appropriated for the Contract and the RRC or Customers continual ability to make payments under the Contract is contingent upon the funding levels appropriated to the RRC or Customer. The RRC and the Customers will use all reasonable efforts to ensure that such funds are available. The Respondent agrees that if future levels of funding for the RRC or a Customer are not sufficient to continue operations without any operational reductions, the RRC or the Customer, in its discretion, may terminate the Contract or a pending order under the Contract, either in whole or in part. In the event of such termination, the RRC or the Customer will not be considered to be in default or breach under the Contract, not shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. The RRC and the Customer shall make best efforts to provide reasonable written advance notice to the Respondent of any such Contract or order termination. In the event of such a termination, the Respondent shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on the particular order if an order is being terminated, or the Contract, if the Contract is being terminated. The RRC or the Customer shall be liable for payments limited only to the portion of work the RRC or the Customer authorized in writing and which the Respondent has completed, delivered to the RRC or Customer, and which has been accepted by the RRC or Customer. All such work shall have been completed, per the Contract requirements, prior to the effective date of termination.

SHORT VERSION

This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruptions of current appropriations, provisions of the Termination Article shall apply. In addition, state agencies are prohibited from incurring obligations in excess of amounts lawfully appropriated by the Texas Legislature over the course of a biennium.

XX. CONTRACT MANAGER RESPONSIBILITIES

The primary responsibilities of the contract manager are:

- Participating in developing the solicitation and writing the draft documents. Contract administration must be considered during this process.
- Consulting with legal counsel to address any legal concerns and/or issues.
- During solicitation development, determine if the contractor's compensation structure is appropriate for the work.
- Serving as the point of contact for disseminating the instructions regarding the work to the contractor/vendor.
- Receiving and responding to communications between the RRC and the contractor.
- Managing, approving, and documenting any changes to the contract.
- Managing any state property used in contract performance, e.g., computers, telephones, identification badges, etc.
- Identifying and resolving disputes with contractor in a timely manner.
- Implementing a quality control/assurance process.
- Maintaining appropriate records.
- Documenting significant events.
- Monitoring the contractor's progress and performance to ensure goods and services conform to the contract requirements.
- Exercising state remedies, as appropriate, when a contractor's performance is deficient.
- Inspecting and approving the final product/services by submitting a written document accepting the deliverables.
- Monitoring the budgeting/accounting process to ensure sufficient funds are available.
- Verifying accuracy of invoices and authorizing payments consistent with the contract terms.
- Performing a contract closeout process to ensure that the contract file contains all necessary contract documentation, that formal acceptance is documented, and that lessons learned are documented.

The number of participants in the contract administration process will vary in number from one to many depending on the size, the level of risk, and the complexity of the contract. Early in the procurement process, identify staff to participate in contract management. Identify a single contract manager and others to assist the contract manager. Assign roles and responsibilities, which may include:

- Determining the sequence of activities, dependencies, required or desired outcomes, and acceptable performance levels.
- Developing a timetable and start and end date for each performance component. Include milestones with accompanying timeframes, and monitoring and reporting requirements.
- Monitoring and documenting contractor activity on a specified frequency to identify problem areas.
- Meeting with the contractor on a regular basis to review progress, discuss problems and consider necessary changes.
- Providing access to state facilities, equipment, data, staff, materials and information.
- Contacting other staff as necessary to provide equipment and data.
- Establishing scope of authority, clear lines of communication and reporting and specific individuals who will interact directly with the contractor.
- Establishing control of correspondence, data and reports.
- Identifying potential problems and solutions.
- Defining terms or conditions of default.
- Establishing a procedure, identifying a responsible person, and establishing a timeframe for

handling noncompliance.

- Establishing a procedure, identifying a responsible person, and establishing a timeline for making necessary contract decisions, modifications, and changes.

Contract managers are **not** authorized to:

- Instruct the contractor to start work before the contract is fully executed;
- Change the scope of the contract without doing so through the formal procurement document amendment process.
- Direct the contractor to perform work that is not specifically described in and funded by the Contract;
- Extend the time period of the contract without execution of an approved amendment; or
- Allow the contractor to incur any additional costs over the limit set by the contract.

XXI. CONTRACT ADMINISTRATION

Contract administration and oversight includes seven (7) general processes:

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

The primary tasks of contract administration are to:

- Verify contractor performance for purposes of payment.
- Identify material breach of contract by assessing the difference between contract performance and material nonperformance.
- Determine if corrective action is necessary and take such action if required.
- Develop completion plan for exit requirements for acceptance, final payment, and contract closure.

Contract administration starts with developing a clear, concise, performance-based SOW. The SOW is the roadmap for contract administration. Therefore, planning for contract administration occurs prior to issuance of the solicitation. The goal of contract administration is to ensure the contract is satisfactorily performed and the responsibilities of both parties are properly discharged. Effective contract administration minimizes or eliminates problems and potential claims and disputes.

A key factor in successful contract administration is communication. It is essential for contract administrators to understand the provisions of the procurement document, have the ability to communicate contract obligations to all parties involved, and maintain control over the contract performance.

A good contract manager ensures that the contract requirements are satisfied, that the goods and services are delivered in a timely manner, and that the financial interests of the RRC are protected.

Contract managers must have sufficient knowledge of contracting principles as it relates to their responsibilities in administering the contract. It is the contractor's responsibility to perform and meet the requirements of the contract. To do so, contractors sometimes need technical direction and approval from RRC personnel.

RRC personnel must provide this technical direction and approval in a timely and effective manner. All guidance provided to a contractor must be within the scope of the contract.

The RRC must be careful to not impose additional requirements upon the contractor or manage the contractor's operations to the extent that the contractor is relieved of their responsibility to perform.

The extent of contract administration will not be the same for all contracts. The level of contract administration necessary shall be consistent with the complexity and level of risk of the contract and its term and dollar value.

PLANNING

As stated earlier, planning for the administration of a contract shall begin with the drafting of the SOW. Procedures for contract administration shall be described in the solicitation document. After the contract is executed, the planning stage does not end. Planning activities shall focus on general administrative activities including, but not limited to management of contract amendments through documentation of any changes to the contract scope, schedule and payment. Another central activity to contract administration is the advance coordination and scheduling of resources to assist in the performance of the contract administration processes.

To properly plan for contract administration, the contract manager must ensure that he/she thoroughly understands all of the components of the solicitation and contract. Examples of such contract components include:

- Expected outcome measures – Includes staging of deliverables, if applicable. Significant deliverables shall be tied to the payment schedule.
- Costs – The total cost, including any indirect cost allocation of the goods and services to be performed.
- Risk – Identifying and managing potential risks.
- Contract Performance – When, where, and how the goods and services are to be delivered.
- Acceptance/Rejection Terms – The agency's right to inspect and accept or reject the goods and services and the conditions of acceptance or rejection.
- Contract Dates – The effective date, completion date, renewal terms, and any additional dates necessary to monitor contract performance.
- Complete addresses – Where correspondence is to be sent, where payments are to be made, etc.

POST AWARD CONFERENCE

A post award conference is a meeting with the contractor and includes the principles responsible for administering the contract. The conference is held soon after the contract is awarded. It is an orientation for the contractor to ensure a clear and mutual understanding of all contract terms and conditions and the respective responsibilities of all parties. The conference serves as an excellent tool to clarify and resolve any potential misunderstandings. Although both the contractor and RRC personnel shall be fully aware of the contract requirements, the post award conference ensures that those directly involved in the contract administration process understand all requirements of contract performance.

Not every contract requires a formal post award conference, but there shall be some form of discussion between the contracting parties after award to ensure all parties agree on the performance requirements and the administrative procedures applicable under the terms of the contract. The post award conference shall NOT be used to change the terms of the contract.

After selection of a successful respondent, the RRC shall decide if a post award conference is necessary. For less complex, low risk, low-dollar value contracts, a telephone call to the contractor may be sufficient. During the telephone conversation, the RRC shall review the major points of the contract with the contractor

(e.g., the amount of contract, major performance milestones, deliverables, reports, or meetings) and time and place of delivery. Factors used to determine the need for a post award conference include:

- Type of contract;
- Level of risk associated with the contract;
- Value and complexity;
- Length of contract, period of performance and/or delivery requirements;
- Procurement history of the supplies or services required and expertise of the contractor;
- Urgency of delivery schedule;
- Agency's prior experience with the contractor;
- Any special or unusual contract requirements; and
- Any special or unusual payment requirements.

POST AWARD CONFERENCE AGENDA

It should be clearly communicated at the beginning of the conference that the purpose of the meeting is to explain or clarify contract requirements and not to make changes to the contract or renegotiate the contract terms. The post award conference agenda shall cover the following:

- **Introduction.** Introduce all participants and identify the RRC and contractor key personnel.
- **Scope.** Discuss the scope of the contract (i.e., what is being procured). Although this may seem overly simplistic, a total and complete meeting of the minds on this point will avoid problems during the life of the contract.
- **Terms.** Summarize contract terms and conditions, particularly any special contract provisions. This can avoid any misunderstandings later on, and allows the contractor to gain a better understanding of the terms prior to beginning work.
- **Requirements.** Discuss the technical and reporting requirements of the contract. The technical requirements may be discussed as part of the Scope, above. It is vital that the contractor and the RRC have a meeting of the minds regarding technical requirements. The contractor must understand the importance of any reports required under the contract and the importance of submitting them in accordance with contract requirements.
- **Administration.** Applicable contract administration procedures, including contract monitoring and progress measurement shall be discussed.
- **Rights.** The rights and obligations of both parties and the contractor performance evaluation procedures shall be summarized. The RRC shall explain that the contractor will be evaluated on their performance both during and at the conclusion of the contract and that such information may be considered in the selection of future contracts.
- **Potential Problems.** Potential contract problem areas and possible solutions will be addressed. Any issues or contract areas that the RRC believes may lead to a problem later on, or may be subject to differing interpretations, will be discussed.
- **Payment.** Invoicing requirements and payment procedures will be discussed, especially if the payment will be made according to milestones achieved by the contractor.
- **Authority.** The roles and responsibilities of the parties' contract managers, contract administrators, project managers, key personnel leads, and any other key staff will be identified. RRC personnel will explain the limits of their authority and obtain the same information regarding contractor personnel.

After the conference, the contract manager shall prepare a summary of the meeting for the contract file which details the topics covered. The summary shall include areas requiring resolution, a list of participants, and in particular, those individuals assigned responsibilities for further action and the due dates for those actions. Copies of the meeting summary will be distributed via a solicitation addendum to all conference participants, in addition to being posted to the ESBD.

MONITORING PERFORMANCE

Monitoring the performance of the contractor is a key function of proper contract administration. The purpose is to ensure that the contractor is performing all duties in accordance with the contract and for the RRC to be aware of and address any developing problems or issues.

Small dollar value or less complex contracts normally require little, if any, monitoring. However, that does not preclude the possibility of more detailed monitoring if deemed required by the RRC. Conversely, large dollar contracts may need little monitoring if the items or services procured are not complex and the RRC is comfortable with the contractor's performance and the level of risk associated with the contract.

REPORTING

Reporting includes a contract administrator reporting to executive management, the contractor reporting to the contract administrator, and PCM reporting to the Texas Procurement and Support Services. There are generally 3 categories of reports: (1) status reports; (2) activity reports; and (3) Vendor Performance Reports. All types of reporting serve useful functions.

- **Status Reports** – Describe the progress of the work. The content of the status report shall be consistent with and track the organizational structure of the SOW, e.g., phases, segments, deliverables and products. A status report will describe what work is complete and what work is pending and that status will be contrasted against the contract schedule. Only work that has been verified as completed or accepted shall be categorized as complete. If there are any unresolved issues that the RRC is contractually obligated to resolve, those issues shall be included in the status report and a resolution shall be requested. If the scope of work has changed during the contract (by written contract amendment), insist that status reports track the original contract schedule, not a revised contract schedule, unless the amendment provides for a revised contract schedule. If status is tracked against a revised schedule, there is a risk that the schedule will continually change and the status report will be rendered meaningless.
 - If the contract does not provide for periodic status reports, the RRC will ensure that sufficient progress is being made by the contractor. This may be accomplished by requesting a status update from the contractor or a site visit to view the progress.
- **Activity Reports** – Describe any activity on the project. Project activity is not the same as a status report. A project may have a great deal of activity without making substantive progress. On the other hand, activity reporting can be a core feature of contract management. For example, a contractor payment in an outsourcing contract may be based on the number of completed transactions. In this example, activity reporting is critical to contract administration.

EXPENDITURE DOCUMENT REVIEW

Expenditure Document Reviews are reviews of contractor invoices and expenditure draw requests to determine if the rates and services are the same as allowed by the contract. Determine if the supporting documents (such as cost reports, third party receipts for expenses, detailed client information, etc.) adequately support the request for payment. If the contractor consistently provides incorrect invoices and/or the supporting document is insufficient to support the request, then additional monitoring such as an on-site visit may be necessary.

SITE VISITS

More complex contracts and contracts that the RRC perceives as having a higher degree of risk may require both reviews and visits to the contractor's facilities to ensure progress is in accordance with the contract schedule. Site visits can be used to verify actual performance against scheduled or reported performance.

They can ensure that the contractor is dedicating sufficient resources and appropriate personnel to the contract.

Site visits reinforce the importance of the contract to the contractor and provide the opportunity to enhance communications with the contractor. To perform a site visit, the RRC should:

- Develop a comprehensive and objective site monitoring checklist which:
 - Focuses on outcomes but also includes compliance requirements. Site monitoring criteria should reference the applicable contract requirement.
 - Assess contractor performance the same way. Are any errors considered minor or inconsequential? If so, these must be outlined up front so that the contract is monitored consistently. Clarify areas where monitors may exercise judgment.
 - Specify the sample size to be reviewed but do not disclose specifics to the contractor. For example, the RRC may state that it will review case documents for the month of August, but it should not disclose a case number.
- Documentation Requirements:
 - Allow space on the checklist (or on a separate document) to document the results of the site visit. For example, if the site monitor is to review 10 case files, then the documentation must include the identification of the files monitored, e.g., the case number, the staff members tested for salary allocations, and the expenditures reviewed.
 - Describe the documentation required for the site monitor to bypass an area, i.e., “No problems identified last year with the compliance requirement - not monitored this year.” This allows agencies more time to review higher risk areas.
- Sampling and Population:
 - Ensure that the population is complete by including all files relevant to the contract. The contractor should never be the one to select the samples for review.
 - If the contractor submits the names of the clients as part of the normal expenditure draw, then the sample can be selected from the client list. Ensure that the clients on the list are paid for by the agency.
 - If the contractor cannot locate the sample item selected, it may or may not indicate a problem. Before agreeing to substitute an alternate file, consider the circumstances of the “lost” sample item and determine if the explanation is reasonable or if the site-monitor suspects that the contractor did not want the site monitor to see the file.
- Tailor the site monitoring checklist for each contractor. While there will be standard items the agency will review for all contractors, each contract/contractor should be reviewed for specific site monitoring requirements unique to that contract/contractor. In addition, consider the following:
 - Review specific contract requirements to determine if they merit site monitoring.
 - Look for items that fall just below an amount requiring additional approval.
 - Consider problems the contractor has had in the past or what is likely to cause problems for this contractor. Are parts of the contract new to the contractor? For example, the contractor may be providing the same services but to a different population during this contract.
 - What types of items do not need to be monitored and why? For example, if the contractor uses an information database that the agency has tested under previous contracts, then the risk is low in this area and the database may not need to be reviewed.
 - Has another agency or another part of the same agency conducted a review? For example, if the agency provides home delivered meals to people with disabilities, and another agency provides the same services, both agencies could coordinate the reviews of shared contractors.

- Site Monitoring Reports. The report of the site visit should stand by itself and serve as a record of the site monitoring work. A copy of the report should be sent to the contractor and any others who may benefit from the report. Even if the contractor corrects a problem in front of the site monitor, the site monitor is obligated to include the problem in the report. This will serve as an indicator to follow up on the problem on future visits to ensure it was corrected. Include what has been learned during this site visit in the next risk assessment and in future contract requirements. If the site monitor recommends changes for the next contract, include the recommendations in the site monitoring reports. Also include any contractor recommendations for the next contract.

SITE VISIT (FULL V. LIMITED SCOPE)

Full scope site visits are typically scheduled visits to the contractor’s place of business. They are based on risk assessment and cover a broad range of contract compliance and performance issues. Limited scope site visits typically focus on a particular problem. Examples of some typical reasons for considering a limited scope site visit include but are not limited to:

- Contractor is responsible for administering funds from two sources and one source has noted serious problems with the way the contractor used the funds.
- Other contractors have experienced problems in a specific area and there is an indication this contractor might be experiencing the same problem.
- Inconsistencies in the expenditure draw requests are identified and clarification from source documents is necessary.
- Contractor has provided a corrective action plan for a problem, but the agency is not certain the proposed solution will resolve the problem.

CORRECTIVE ACTION PLAN

By implementing a formal demand letter or in-person meeting, it may become necessary to also include a Corrective Action Plan (“CAP”). The process for developing a CAP may include the following steps:

- The RRC identifies the deficiency/failure that must be addressed.
- The Contractor will create a CAP and send it to the RRC for approval.
- The CAP will include actions required by the Contractor and the deadlines to perform the necessary action.
- The RRC will review the proposed CAP to insure all deficiencies are fully documented and that the CAP addresses all RRC reporting and monitoring necessary for Contractor compliance.
- The RRC will have the opportunity to approve or disapprove those changes.
- Once the RRC has approved the CAP, the contract/project manager will be responsible for monitoring the Contractor on the status and execution of the CAP.
- The RRC retains the right of final approval of a CAP.

Contracts of \$1 million or more must be reported by the PCM Manager to the RRC’s Executive Director. *See* Tex. Gov’t Code §2261.254. Thus, contract managers are encouraged to report all potential disputes to PCM and OGC early in the dispute resolution process. PCM and OGC must be consulted in the development of a CAP. Once a CAP is in place, the contract or project manager is responsible for reporting the status on a monthly basis to PCM. A preliminary reporting tracking form is attached in **Appendix K**.

INSPECTION AND TESTING

The SOW shall provide for inspection and testing. The RRC shall include inspection and testing of goods and services procured under the contract to ensure compliance with the specifications of the solicitation and the contract.

Tests should be performed on samples submitted with the proposal and samples taken from regular shipments. All costs of inspection and testing shall be borne by the contractor. In the event the goods tested fail to meet or exceed all conditions and requirements of the solicitation and contract, the goods shall be rejected in whole or in part at the contractor's expense. Latent defects can result in cancellation of a contract at no expense to the state.

FINAL ACCEPTANCE

The SOW shall clearly define how the RRC will determine that the contract has been satisfactorily completed. The SOW sets a standard for acceptance of the deliverable and establishes a procedure to receive or reject the deliverable based on specific factors.

Tracking the status of several phases, segments and deliverables where each deliverable may have multiple tasks, activities and/or products can be challenging. A formal acceptance process for each step in a contract allows a contract manager and the contractor to know the conditions of contract performances.

XXII. PAYMENT APPROVAL

The costs incurred by the contractor shall be in accordance with the contract rate schedule. Invoices shall be reviewed to ensure that the contractor's billing coincides with the contract's progress. This requires that the contractor's progress be measurable. Cost incurred or invoices submitted, taken alone, are insufficient indicators of the contractor's progress.

If the RRC believes that the requested payment exceeds the contractor's progress, an explanation shall be requested from the contractor prior to approval of the invoice. Payment shall be withheld pending RRC's satisfaction with the contractor's progress.

Invoices must be approved by program staff prior to payment. Payments must be made in accordance with the Texas Prompt Payment law which requires that correct invoices be paid within 30 days from the date the correct invoice was received or the services/goods were received, whichever is later. The invoice shall be reviewed to ensure that:

- The contractor is billing only for goods or services received by RRC;
- The goods or services have been inspected and accepted;
- The invoice is correct and complies with the pricing, terms, and conditions of the contract; and
- The total payments do not exceed the contract limits.

Client services contracts are unique in that acceptance of a good or service is not an indicator that an invoice shall be paid. Problems with client services contracts generally surface after invoices are paid. Contract managers dealing with client services contracts shall ensure mechanisms exist to implement remedies for poor performance and that any future payments may be withheld until performance improves.

WITHHOLDING PAYMENT

The RRC has the responsibility to protect the interests of the agency. Under appropriate circumstances, it may be necessary to withhold payments from contractors. Circumstances where it may be necessary to withhold payment include, but are not limited to:

- A material breach of the contract by the contractor;
- Errors in the invoice;
- Unsupported or undocumented costs;
- To remedy previous overpayments on the same contract; and
- Contractor's performance is non-conforming or unacceptable.

XXIII. CONTRACT CLOSE-OUT

The contract close-out process is usually a simple but detailed administrative procedure. The purpose is to verify that both parties to the contract have fulfilled their contractual obligations and that there are no responsibilities remaining. In addition, contract close-out is the time to assess the success of the contract and to determine if there are any lessons learned for future contracting.

A contract is completed when all goods or services have been received and accepted; all reports have been delivered and accepted; all administrative actions have been accomplished; all RRC furnished equipment and material have been returned; and final payment has been made to the contractor.

To initiate the close-out process, first it must be determined that the contractor has satisfactorily performed all required contractual obligations. A contract is ready for close-out when:

- All deliverables, including reports have been delivered and accepted by the RRC;
 - Actual performance is compared against performance measures, goals and objectives to determine whether all required work has been completed;
- Final payment has been made;
- All monitoring issues have been resolved;
- All property inventory and ownership issues are resolved (including disposition of any equipment or licenses procured under the contract);
- Final acceptance from the Project Manager has been received (if applicable);
- Contractor is aware of and in compliance with records retention requirements and a plan has been developed for contract file maintenance; and
- Any deficiencies found as part of the closeout process are documented and communicated to all appropriate parties.

After the contract has been closed out, PCM may set up a meeting with the contract team, which includes PCM, OGC, and the applicable RRC Division to discuss the contract. During this meeting, the team will discuss and answer the following type questions:

- How did the process go?
- Were there any challenges?
- What could have been done better?
- Do we need to develop a special term and condition to help manage the contract?
- Do we need to re-write the scope of work to address any management issues?

XXIV. CONTRACT CHANGES AND CONTRACT SCOPE

Whether or not a contract may be changed depends upon certain principles. State law requires a competitive process in most situations. If competitive, the resulting contract must be consistent with what was asked for during the competition, usually contained in the solicitation document. Not being consistent can violate the competitive process requirements. The specific method of competition depends upon the type of goods or services needed.

If a change is needed to a contract, the change has to be within the scope or range of what was provided in the solicitation. A material or substantial change in the scope of services would not be allowed because it was not originally subject to fair competition. To permit such a change would go against the ideas of competition and a fair playing field for all of the contractors. Transparency in government procurement is a key government responsibility.

To determine what constitutes scope changes to advertised specifications, the significant question is whether the changes are material or substantial.

Material or substantial changes are not measured by the number of changes made to the original specifications. Rather, they are measured by whether the extent of the changes would so substantially alter the original specifications that not re-advertising the revised specifications would deny a procurement opportunity to someone who would have been able to respond to the revised specifications. If there are a lot of revisions, those changes will be treated as a new proposal. A new solicitation is needed to ensure compliance with the bidding statutes.

As a general rule, whether a change is material or substantial is a fact question. What is fundamental is the principle that materially changing solicitation specifications after receipt of responses denies an opportunity for others to participate in the solicitation. Therefore, any contract amendments are required to be within the scope of the original contract and the competitive process underlying the original contract.

It is important to remember that application of the above principles will depend upon your particular fact situation and may not apply to the specifics of a request for proposal or request for offer. Always consult with OGC before proceeding.

ADMINISTRATIVE CHANGES

These are changes that are within the scope of the contract and do not affect or alter the rights of the parties. They are typically executed with a unilateral amendment. Examples of administrative changes include:

- Changes in billing instructions or address;
- Corrections of typographical errors not affecting the substance of the contract;
- Changes as permitted by the specific contract language; or
- Changes in RRC personnel assigned to the contract.

SUBSTANTIVE CHANGES

These are contractual changes that affect the rights of both parties. Such changes generally require bilateral amendments (i.e., an agreement by both parties). Examples of substantive changes include:

- Change in the price of the contract;
- Change in the delivery schedule;
- Change in the quantity;
- Change or nature of deliverables (i.e. the specifications);
- Change of key personnel; or
- Change of any terms and conditions.

CONSTRUCTIVE CHANGES

If a contractor perceives that work beyond the scope of the contract was ordered by the RRC, the contractor may claim that the contract was “constructively” changed and may be entitled to additional compensation for the changes. Generally, a constructive change will require a bilateral amendment.

Constructive changes may occur when RRC staff:

- Provide suggestions to a contractor;
- Accelerate the delivery schedule;
- Direct the work to be performed differently;
- Change the sequencing of the work;
- Delay accepting or rejecting deliverables;
- Delay reviewing invoices and approving payment; or
- Interfere with or hinders performance.

XXV. DISPUTE RESOLUTION

Dispute resolution is covered by Tex. Gov't Code, Chap. 2260. The goal of any dispute resolution process is to resolve problems at the lowest level as promptly as possible to keep the contract on a successful path. Many concerns can be resolved with good communication and informal tools. To avoid escalation and to ensure that the RRC has not exacerbated potential problems, it is imperative that RRC staff respond promptly to all contractor inquiries. Initial steps to be taken are:

- Identify the problem. Many times what may appear to be a problem can be resolved by providing the contractor with information or clarification.
- Research facts. The RRC should obtain all the information regarding the potential problem from all relevant sources, including the project manager and the contractor.
- Notify the Contractor of the issues in accordance with the established communication plan.
- Request a response from the Contractor. Be specific about the type of response that may be needed (either action or correspondence) and set a reasonable deadline.
- Evaluation. The RRC shall review all of the facts in conjunction with the requirements and terms and conditions of the contract. The RRC shall then determine the appropriate course of action.

Proper dispute resolution is a core skill of successful contract management. Identification of problems early in the performance period, effectively communicating and formalizing the process in writing via a cure notice procedure or less formal written procedure is essential. A contract termination is a failure by BOTH parties to a contract. Termination is a last resort.

DISPUTE RESOLUTION PROCESS

- Identify the concern. Gather information to clarify the issues.
- Specify the contract requirement or term that supports the concern.

You may need to communicate several times or using different methods to fully identify the issue and fully inform the Contractor. You may progress through phone calls, emails, formal demand letters and in-person meetings to escalate both attention and importance to the issue. It is important to note that as you escalate an issue with the contractor that you also escalate the issue through the management chain of both the RRC and the Contractor's company. In addition, it is important to notify OGC and PCM of the unresolved issues.

XXVI. TERMINATION

When a contract is terminated, the parties are relieved from further performance with the agreed terms and conditions. A contract may be terminated under two distinct processes: (1) Termination for Convenience; and (2) Termination for Default.

TERMINATION FOR CONVENIENCE

A termination for convenience, also known as a "no-fault" termination, allows the RRC to terminate any contract in its sole discretion, in whole or in part and at any time, if it is determined that such termination is in the best interest of the RRC.

- The RRC will provide the contractor with written notice specifying whether the RRC is terminating all or part of the contract. The notice of termination shall give the date of termination. If the contract is being selectively terminated, the RRC shall specify which part(s) of the contract are being terminated.
- A termination notice shall be issued which includes wording similar to:
 - *Pursuant to Section____, Termination, this contract is hereby terminated effective [date]. [Contractor name] is directed to immediately stop all work, terminate*

subcontracts, and place no further orders.

In accordance with this Notice of Termination, you shall:

- Keep adequate records of your compliance with this notice, including the extent of completion on the date of termination.
- Immediately notify all subcontractors and suppliers, if any, of this Notice of Termination.
- Notify the RRC's Contract Specialist of any and all matters that may be adversely affected by this Termination; and
- Take any other action required by the RRC to expedite this Termination.

The contractor will generally be paid for allowable costs incurred up to the termination. The RRC will not be liable for payment to the contractor related to the terminated portion of the work or any work performed or costs incurred after the effective date of termination.

Upon receipt of any invoice from the contractor for work performed prior to the Notice of Termination, the RRC shall thoroughly review the invoice to ensure that no excessive costs are included.

TERMINATION FOR DEFAULT

A contract may be terminated for default when the RRC concludes that the contractor failed to perform, make progress, or in any way breached the contract. The RRC is not required to terminate a contract even though the circumstances permit such action. The RRC may determine that it is in its best interest to pursue other alternatives. Examples of such alternatives include extending the delivery or completion date, allowing the contractor to continue working or working with the contractor's surety to complete the outstanding work.

Termination for default will be used as last resort and not as punishment. The purpose of a termination for default is essentially to protect the interests of the RRC while obtaining the necessary goods or services from another source.

Factors to consider prior to making a termination for default decision include:

- Whether the RRC has done everything within reason to assist the contractor in curing any default.
- The provisions of the contract and applicable regulations.
- The specific contractual failure(s) and the explanation provided for the failures.
- The urgency of the need for the contracted supplies or services. The RRC may need to weigh the respective benefits and/or disadvantages of allowing a delinquent contractor to continue performance or resoliciting a new contractor.
- The availability of the supplies or services from other sources and the time required to obtain them (compared to the additional time the current contractor needs to complete the work).
- Availability of funds and/or resources to re-procurement in the event such costs cannot be recovered from the delinquent contractor. Under a termination for default, the RRC is within its rights to demand re-procurement costs from the defaulting contractor. Nevertheless, the contractor may not be financially capable to finance the re-procurement or such demand may result in protracted legal action.

If a contractor is terminated for default, the contractor is liable for actual damages and costs incurred by the state unless the contract states otherwise.

EXCUSABLE CAUSES

A contract may not be terminated for default when the failure to perform is due to excusable causes. To qualify as an excusable cause, the cause must be beyond the control and without the fault or negligence of the contractor. Such excusable causes include but are not limited to:

- Acts of God or of the public enemy
- Acts of the RRC
- Fires
- Floods
- Epidemics
- Strikes
- Freight embargos
- Unusually severe weather*

*Severe weather, although beyond the contractor's control, will not generally constitute an excusable delay if it is not considered "unusually severe weather". For example, a snow storm in Amarillo in February would not be considered unusual, while it would be considered unusual in Austin. On the other hand, a snow storm in Amarillo in June would indeed be unusual.

To qualify as an excusable cause when the contractor's failure to perform is due to the default of a subcontractor, the default must arise out of causes beyond the control and without the fault or negligence of both the contractor and the subcontractor. Even if this requirement is met, the cause will not be excusable if the supplies or services to be provided by the subcontractor could have been obtained from other sources in time to meet the contract delivery schedule.

TERMINATION FOR DEFAULT NOTIFICATIONS

Prior to terminating a contractor for default, a cure notice shall be sent to the contractor. A cure notice is a letter provided to the contractor that provides them a period of time, usually 10 days, to correct or "cure" the deficiency or violation.

CURE NOTICE

The format for a cure notice may be as follows:

[contractor name] is notified that the RRC considers [specify failures] a condition that is endangering performance of the contract. Therefore, unless this condition is cured within ten (10) days from the date of this letter, the RRC may terminate for default under the terms and conditions of the Termination clause of this contract.

Another format for a cure notice is:

Since [contractor name] has failed to perform the above referenced contract within the time required by its terms, the RRC is considering terminating the contract under the provisions for default. Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on the questions to [RRC's point of contact] within ten (10) days from the date of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist.

Any assistance given to you on this contract or any acceptance by the RRC of delinquent goods or services will be solely for the purpose of mitigating damages, and it is not the intention of the RRC to condone any delinquency or to waive any rights the RRC has under the contract.

NOTICE OF TERMINATION

If the contractor fails to cure the situation or provide a satisfactory explanation as requested, the contract may be terminated. The Notice of Termination shall contain the following:

- The contract number, if any, and date of contract;
- The effective date of termination;
- Reference to the clause under which the contract is being terminated;
- A concise, accurate statement of the facts justifying the termination; and
- A statement that the supplies or services being terminated may be re-procured and that the contractor will be held liable for any additional costs incurred due to the re-procurement. Before including this statement, the contract shall be reviewed to determine whether the right is available under the contract.

XXVII. THE CONTRACT ADMINISTRATION FILE

CONTRACT RETENTION

Transparency is government's obligation to share information with citizens. The right and the means to examine the process of decision-making allows citizens to see what their government is doing. In 2015, the Legislature lengthened the time that state agencies are required to maintain contract documentation from four years to seven years or until any litigation issues are resolved. *See* Tex. Gov't Code §441.1855 (relating to Retention of Contract and Related Documents of State Agencies). Notwithstanding §§441.185 or 441.187, a state agency:

- Shall retain in its records each contract entered into by the state agency and all contract solicitation documents related to the contract; and
- May destroy the contract and documents only after the seventh anniversary of the date:
 - The contract is completed or expires; or
 - All the issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents are resolved.

MASTER FILE

Keeping one complete master contract administration file is critical. The file will provide a basis for settling claims and disputes should they arise in administrative or court actions. Throughout the life of the contract, the contract administration file should contain such things as:

- Copy of the current contract and all modifications;
- Copy of all specifications, drawings or manuals incorporated into the contract by reference;
- Reference list or a list of prior contracts with this specific contractor (if they offer valuable historical data);
- Solicitation document, the contractor's response, evaluation determination, and the notice of award document;
- List of contractor submittal requirements;
- List of government furnished property or services;
- List of all information furnished to the contractor;
- Copy of the pre-award conference summary, if conducted;
- Schedule of compliance review, internal correspondence, if applicable;
- Copy of all general correspondence related to the contract;
- Originals of all contractor data or report submittals;
- Copy of all routine reports required by the contract such as sales reports, pricing schedules,

- approval requests, and inspection reports;
- Copy of all notices to proceed, to stop work, to correct deficiencies, or change orders;
 - Copy of all letters of approval pertaining to such matters as materials, the contractor's quality control program, prospective employees, and work schedules;
 - Records/minutes of all meetings, both internal and external. Include sign-in sheets and/or agendas;
 - Copy of all contractor invoices, information relative to discount provisions for prompt payment, letters pertaining to contract deductions or fee adjustments; and
 - Copy of all backup documentation for contractor payment or progress payment; and copies of any audits.

The RRC maintains an original of all contracts on file in PCM's File Room. This allows contract managers to reference past or current contracts for useful information relating to a current project.

XXVIII. STATE AGENCY REPORTING OF CONTRACTING INFORMATION

As a steward of public funds, the RRC is required to manage finances and human resources in a way that supports sound business principles. Since 1989, state law has required agencies to report their expenditures using a computerized and uniform statewide accounting system created and implemented by the CPA. In 2007, to further financial and reporting uniformity, the legislature required the CPA's office to develop, maintain and support Enterprise Resource Planning ("ERP") to ensure that the uniform statewide accounting system included the administration of general ledger, accounts payable, accounts receivable, budgeting, inventory, asset management, billing, payroll, projects, purchasing, grants and human resources. Since then, the CPA has been integrating ERP in the uniform statewide accounting system through CAPPS.

In 2015, the legislature included "solicitations and contracting" as part of the "purchasing" element in ERP. *See* Tex. Gov't Code §2101.001(1)(I). The RRC is a CAPPS agency and is required to provide information related to solicitations and contracting according to the requirements that will be adopted in rule by the CPA.

XXIX. REPORTING VENDOR PERFORMANCE

The RRC is required to report vendor performance through the Vendor Performance Tracking System ("VPTS") on every purchase over \$25,000, including delegated purchases, TPASS contracts, and exempt purchases. Additionally, VPTS entries provide state agencies with important contractor information prior to making a contract award. *See* 34 Tex. Admin. Code §20.108.

Upon completion or termination of a contract, and as part of the close-out process, each state agency must review the vendor's performance and report the results of the review to the CPA using the VPTS.

APPENDIX A

CONFLICT OF INTEREST FORM

CONFLICT OF INTEREST

No employee of the Railroad Commission of Texas ("RRC") or appointee of RRC shall be interested in, or in any manner connected with, any contract or bid for furnishing supplies, materials, services, and equipment of any kind to any agency of the State of Texas. Neither shall any member or employee or appointee, under penalty of dismissal, accept or receive from any person, firm, or corporation to whom any contract may be awarded, directly or indirectly, by rebate, gift, or otherwise, any money or other thing of value whatever, nor shall any employee receive any promise, obligation, or contract for future reward or compensation from any such party.¹

I certify that I have read and understand the above statement.

Employee Signature

Date

Printed Name

cc: Personnel File Manager's File

Legal Authority:

¹Texas Government Code Title 10, Subtitle D, Section 2155.003.

APPENDIX B

PROCUREMENT PLAN DEVELOPMENT GUIDELINES

PLAN REQUIRED DOCUMENTS

The Planning documentation consists of the planning process prior to the solicitation being released; it includes identifying the contracting objectives and contracting strategy. The Procurement Planning process includes several areas which shall be included in the Project Plan for each project exceeding \$25,000.00 or any dollar amount requiring the competitive solicitation process:

- Define the Need; Objectives; and, Strategies
- Establish Cost Estimate and Budgetary Restrictions
- Develop the Communication Plan
- Develop Statement of Work (SOW), Specifications, Deliverables, Timeline, and Project Specific Terms/Conditions
- Complete Risk Assessment
- Inspection/Testing, Acceptance, and Payment Approval Process
- Develop Contract Monitoring, Performance Measures, and Vendor Performance Rating Plans

NEEDS ASSESSMENT

Before the RRC purchases goods or services, a determination must be made that a true need exists. Determining the need for a contracted service is a systematic approach to gathering and documenting information about the specific nature of the need. Clearly and properly defining the need to make the procurement achieves the following results:

- Promotes a common understanding of the necessity to make the purchase.
- Identifies the type and level of service required to meet the need efficiently and effectively.
- Helps to determine how performance and quality of service delivery will be measured, documented and tracked.
- Facilitates prioritization of the funding required to make the procurement.

By clearly defining the need at the beginning of the lifecycle, the following outcomes should be achieved:

- Facilitate effective prioritization of the required funding to make the purchase;
- Promote common agency-wide understanding of the need;
- Identify type and level of service required to meet the need;
- Identify contract objective;
- Provide framework to develop the statement of work, solicitation, evaluation, and contract documents;
- Provide required information to determine how performance and quality of goods or service delivery will be measured, documented and tracked;
- Availability of funding, staff, expertise, and other resources to meet the need;
- Cost-effectiveness of the goods and services;
- Availability of funds; and
- Any legal concerns or potential issues.

CONTRACTING OBJECTIVES AND PURPOSE

A well-formed statement of the contracting objectives should provide a general understanding of what will be accomplished by a contractor. Well-formed objectives will help guide and keep the contracting process focused and on track.

The following questions are intended to assist the team in clarifying and harmonizing potential divergent objectives and interests. Answering the following three questions will aid agencies in defining and refining the contracting objective:

1. What does your agency specifically need?
2. What will fulfilling this need do for your agency?
3. How will your agency know when the need has been met?

COST ESTIMATES

During the planning stage of the procurement, it is necessary to develop an estimated cost of the procurement. Even if limited by budget restraints, an estimated cost will provide an idea of the range of services that can be included in the SOW.

Attempt to find someone within the agency who has knowledge in the subject area to assist with the cost estimate. However, if unable to find anyone with knowledge in the subject area, agencies may choose to contact several contractors to obtain pricing information. If contractors are contacted, be sure to advise them that you are obtaining price estimates for information purposes only and that the estimate is not a formal solicitation. In obtaining price estimates from potential bidders, care should be taken to avoid giving a potential bidder a competitive advantage.

COMMUNICATIONS PLAN

The Communications Plan is developed to manage and control internal and external communication. After identifying internal and external stakeholders (executive management, oversight entities, etc.), determine the type, content and frequency for reporting status. Develop and report against a timetable with key decision points and milestones to communicate status.

STATEMENT OF WORK

The Statement of Work (SOW) is a detailed description of what the RRC is purchasing and what a contractor is required to provide in order to satisfactorily perform the work. The success or failure of a contract can usually be linked to the adequacy of the planning, analysis, and thoroughness of the statement of work. The SOW must be included or referenced and incorporated in the procurement documents.

It is important that the SOW:

- secure the best value for the state;
- be clearly defined;
- be contractually sound;
- be unbiased and non-prejudiced toward respondents;
- encourage innovative solutions to the requirements described, if appropriate; and,
- allow for free and open competition to the maximum extent reasonably possible.

RISK ASSESSMENT

Per Senate Bill 20 and the Comptroller of Public Accounts (CPA) Contracts Management Guide, each state agency must develop and comply with a purchasing accountability and risk analysis procedure. Risk categories common to contract management include product risk, process risk, financial risk and schedule risk.

The risk analysis includes:

- Assessing the risk of fraud, abuse, or waste in the contractor selection process, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts;
- Identifying contracts that require enhanced contract monitoring or the immediate attention of contract management staff.

Several factors that may be useful in identifying the level of risk may include:

- The complexity and subject matter of the procurement;
- The dollar amount of the procurement, and whether the procurement will result in a major contract;
- The anticipated payment methodology;
- The experience the agency staff have with the type of procurement;
- Whether the results of the procurement will impact the public or only impact the agency;
- Time constraints or the expected duration of the procurement; and
- The type, availability or experience of staff resources required to implement the objectives of the procurement.

Risk assessment is an ongoing process. Risk should be reviewed and re-evaluated by the contract manager on a continual basis until the contract is fully performed and final payment is made.

CONTRACT AND PERFORMANCE MONITORING

The methods used to monitor contractor performance must be clearly stated in the solicitation. Forcing a contractor, without prior knowledge, to produce time-consuming reports or maintain stringent testing requirements outside normal industry parameters is grounds for legal challenge. It is important to develop and include a monitoring strategy in the solicitation.

The amount of monitoring should be balanced and adequate to meet the need, but limited in type, scope and frequency sufficient to achieve the desired result without unnecessarily increasing costs. Overly restrictive oversight can interfere with the contractor's ability to accomplish the work and may unnecessarily and inadvertently increase the cost of the work.

The SOW should set specific deadlines for completion of tasks and a schedule for submittal of deliverables, required meetings, presentations or other activities.

The level and frequency of performance monitoring is dependent on the value and criticality of the contract to the state and is essential for effective contract management.

On-site monitoring can be used to verify actual performance against scheduled or reported performance. This can ensure the contractor is dedicating sufficient resources and appropriate personnel to the contract.

When using on-site performance monitoring, the requesting division/department shall:

- Develop a comprehensive and objective site monitoring checklist which:

- Focuses on the outcomes, but also includes compliance requirements. Site monitoring criteria should reference the applicable contract requirement.
- Are any errors considered minor or inconsequential?
 - If so, these must be outlined up front so that the contract is monitored consistently. Clarify areas where monitors may exercise judgment.
- Tailor site monitoring checklist for each contractor.
 - While there will be standard items reviewed for all contractors, each contract and contractor should be reviewed for specific site monitoring requirements unique to that contract or contractor.

VENDOR PERFORMANCE REPORTING

After any contract is completed or otherwise terminated, the department/division is required to review the vendor's performance by completing a report and submitting to the Procurement and Contract Management Department (PCM). PCM will submit the data through the Vendor Performance Tracking System maintained by the CPA per Texas Government Code Section 2155.089. For each purchase of goods or services for which the best value standard was used, the vendor performance report will include information on whether the vendor satisfied the best value standard.

INSPECTION/TESTING and FINAL ACCEPTANCE

The SOW shall provide for inspection and testing of goods and services procured under the contract to ensure compliance with the specifications of the solicitation and the contract. All costs of inspection and testing should be borne by the contractor. In the event the goods or services tested fail to meet or exceed all conditions and requirements of the solicitation and contract, they may be rejected in whole or in part at the contractor's expense. Latent defects can result in cancellation of a contract at no expense to the state. Legal counsel will advise regarding latent defects.

The SOW should clearly define how the contract has been satisfactorily completed. The SOW sets a standard for acceptance of the deliverable and establishes a procedure to receive or reject the deliverable based on specific factors. Tracking the status of several phases, segments and deliverables, where each deliverable may have multiple tasks, activities, and products, can be challenging. A formal acceptance process for each step in a contract allows a contract monitor and the contractor to know the conditions of contract performances.

PAYMENT APPROVAL

A state agency's payment under a contract executed on or after September 1, 1987 is overdue by the 31st day after the later of the following:

- The date the agency receives the goods and/or services in accordance with the contract;
- The date the agency receives a correct invoice for the goods and/or service.

If an invoice from a contractor is considered to be incorrect the RRC must notify the contractor not later than the 21st day after the date the agency receives the invoice.

To receive payment, contractors must submit an invoice which should include, but is not limited to:

- contractor's mailing and email (if applicable) address;

- contractor's telephone number;
- name and telephone number of a person designated by the contractor to answer questions regarding the invoice;
- state agency requisition, purchase order or contract number;
- state agency's name, agency number, and delivery address;
- valid Texas identification number (TIN) issued by the Comptroller of Public Accounts;
- description of the goods or services, in sufficient detail to identify the order relating to the invoice;
- quantities and unit of measures corresponding with the referenced order.

Verify accuracy of invoices and authorize payments consistent with the contract terms. Significant deliverables should be tied to the payment schedule. Invoicing requirements and payment procedures shall be defined, especially if the payment will be made according to milestones achieved by the contractor. Consider the effect that the contract payment methodology has on what needs to be monitored. If grant money is used to pay for a contract, the nature of the relationship with the contractor must be considered. Is the relationship a vendor relationship or a sub-recipient relationship? If the relationship is that of a sub-recipient, then federal guidelines and cost principles must be followed.

SUMMARY

(Excerpt from the CPA's Contract Management Guide). Planning is crucial to the successful outcome of any procurement. With proper planning, agencies are more likely to successfully achieve their contracting objectives. Planning assists agencies in determining need, preparing the statement of work, choosing the appropriate procurement type, solicitation, negotiation, drafting the contract and contractor monitoring and oversight. These steps are complex and there are many instances where errors can be introduced into the process. Proper planning will reduce or eliminate the risk of error.

APPENDIX C

FEDERAL AND STATE TRANSPARENCY STATUTES

	Legal Cite	Description
Contracts	Tex. Gov't Code §2054.126(d)(4)	List and description of all contracts with contractors that have a value exceeding \$100,000 that the agency has entered into and that are currently being performed or for which performance has not yet begun.
Grants	Tex. Gov't Code §403.0245	List all state grants exceeding \$25,000 (HB 1487).
No-Bid	Governor's Directive	Directive requiring public disclosure of all no-bid contracts.
	https://www.fsrs.gov/	Federal Funding Accountability and Transparency Act. Federal grants above \$25,000.

APPENDIX D

PROVISIONS REQUIRED IN ALL COMMISSION SUBCONTRACTS

If you enter into a contract with the Railroad Commission of Texas (Commission), please be advised that you are required to submit any and all subcontracts to the Commission for review and inspection. This review is conducted to ensure that the subcontract is consistent with the terms and requirements included in the Commission funding contract (prime agreement).

Items that should be included in each subcontract of a Commission contract include:

- Contract Dates – there should be a starting date and ending date for your agreement.
- Contract Amount – your agreement should list the total value of the subcontract.
- Terms of Reimbursement – Subcontracts must be cost reimbursable. Lump sum agreements are not permitted for services. Please also note that the Commission does not reimburse “handling costs” (mark-ups) on any expenses. Any eligible travel expenses related to a subcontract may be reimbursed at the current rate for State of Texas employees which can be found at: <https://fmx.cpa.state.tx.us/fmx/travel/texttravel/trans/personal.php>
- Scope of Work – the terms of the scope of work must be consistent with the scope of the prime agreement.
- Task Budget – as appropriate. The task budget must be consistent with the task budget specified in the Commission prime agreement.
- Expense Budget – as appropriate. The expense budget must be consistent with the expense budget specified in the Commission prime agreement.
- Signatures – each subcontract must be executed appropriately by signature, by each party to the agreement.

SPECIFIC CLAUSE REQUIREMENTS

The requirements listed in the next section of this guideline document must be included in your subcontract agreement in order for the agreement to be acceptable to the Commission. Please note that these requirements are provided to facilitate the contracting process and as such are not intended to be legal advice that would establish or create an attorney-client relationship. It is recommended that an attorney be consulted for any legal advice that you may require.

STATE AUDITOR CLAUSE

The following clause should be included in Commission subcontracting agreements:

“By executing this Contract, the SUBCONTRACTOR accepts the authority of the State Auditor's Office, under direction of the legislative audit committee, to conduct audits and investigations in connection with any and all state funds received pursuant to this contract. The SUBCONTRACTOR shall comply with and cooperate in any such investigation or audit. The SUBCONTRACTOR agrees to provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The SUBCONTRACTOR also agrees to include a provision in any subcontract related to this contract that requires the SUBCONTRACTOR to submit to audits and investigation by the State Auditor's Office in connection with any and all state funds received pursuant to the subcontract.”

FINANCIAL RECORDS CLAUSE

The following clause should be included in Commission subcontracting agreements:

“The SUBCONTRACTOR(S) and its contracted parties shall maintain satisfactory financial accounting documents and records, including copies of invoices and receipts, and shall make them available for examination and audit by the EXECUTIVE ADMINISTRATOR of the Commission. Accounting by the SUBCONTRACTOR(S) and its contracted parties shall be in a manner consistent with generally accepted accounting principles.”

OWNERSHIP CLAUSE

The following clause should be included in Commission subcontracting agreements:

“The Commission shall have unlimited rights to technical or other data resulting directly from the performance of services under this CONTRACT. It is agreed that all reports, drafts of reports, or other material, data, drawings, computer programs and codes associated with this CONTRACT and developed by the SUBCONTRACTOR(S) or its contracted parties pursuant to this CONTRACT shall become the joint property of the SUBCONTRACTOR(S) and the Commission. These materials shall not be copyrighted or patented by the SUBCONTRACTOR(S) or by any consultants involved in this CONTRACT unless the EXECUTIVE ADMINISTRATOR of the Commission approves in writing the right to establish copyright or patent; provided, however, that copyrighting or patenting by the SUBCONTRACTOR(S) or its SUB-SUBCONTRACTOR(S) will in no way limit the Commission 's access to or right to request and receive or distribute data and information obtained or developed pursuant to this CONTRACT. Any material subject to a Commission copyright and produced by the SUBCONTRACTOR(S) or Commission pursuant to this CONTRACT may be printed by the SUBCONTRACTOR(S) or the Commission at their own cost and distributed by either at their discretion. The SUBCONTRACTOR(S) may otherwise utilize such material provided under this CONTRACT as it deems necessary and appropriate, including the right to publish and distribute the materials or any parts thereof under its own name, provided that any Commission copyright is appropriately noted on the printed materials.

The SUBCONTRACTOR(S) and its contracted parties agree to acknowledge the Commission in any news releases or other publications relating to the work performed under this CONTRACT.”

NO DEBT AGAINST THE STATE CLAUSE

The following clause should be included in Commission subcontracting agreements:

“This SUBCONTRACT and Agreement shall not be construed as creating any debt by or on behalf of the State of Texas and the Commission, and all obligations of the State of Texas are subject to the availability of funds. To the extent the performance of this SUBCONTRACT transcends the biennium in which this SUBCONTRACT is entered into, this SUBCONTRACT is specifically contingent upon the continued authority of the Commission and appropriations therefore.”

LICENSES, PERMIT AND INSURANCE CLAUSE

The following clause should be included in Commission subcontracting agreements:

“For the purpose of this CONTRACT, the SUBCONTRACTOR(S) will be considered an independent SUBCONTRACTOR and therefore solely responsible for liability resulting from negligent acts or omissions. The SUBCONTRACTOR(S) shall obtain all necessary insurance, in the judgment of the SUBCONTRACTOR(S), to protect themselves, the CONTRACTOR, the Commission, and employees and officials of the Commission from liability arising out of this CONTRACT. The SUBCONTRACTOR(S) shall indemnify and hold the Commission and the State of Texas harmless, to the extent the SUBCONTRACTOR(S) may do so in accordance with state law, from any and all losses, damages, liability, or claims therefore, on account of personal injury, death, or property damage of any nature whatsoever caused by the SUBCONTRACTOR(S), arising out of the activities under this CONTRACT.

The SUBCONTRACTOR(S) shall be solely and entirely responsible for procuring all appropriate licenses and permits, which may be required by any competent authority for the SUBCONTRACTOR (S) to perform the subject work.”

OWNERSHIP CLAUSE (substitute for Ownership clause listed above):

"It is agreed that all reports, drafts of reports, or other material, data, drawings, computer programs and codes associated with this contract and developed by the (Name of SUBCONTRACTOR) pursuant to this contract shall become the joint property of the REGIONAL WATER PLANNING GROUP, (Name of SUBCONTRACTOR), (Name of SUB-SUBCONTRACTOR), and the Railroad Commission of Texas. These materials shall not be copyrighted or patented by the (Name of SUBCONTRACTOR). (Name of SUBCONTRACTOR) agrees that the Railroad Commission of Texas are parties to this contract and agrees that that these entities have no liability under the terms of this contract. The Railroad Commission of Texas is solely a third-party beneficiary under this contract."

COMPLIANCE WITH COMMISSION RULES AND STATE LAW CLAUSE:

The following clause should be included in Commission subcontracting agreements:

“The SUB-CONTRACTOR(S) shall comply with Commission rules and adhere to all requirements in state law pertaining to the procurement of professional services.”

To Learn More

Additional information about accessibility programs in Texas is available from the Governor's Committee on People with Disabilities.

Related Information

- Federal Law: ADA Section 508
- State Rules: 1 TAC Section 206.50
- EIR Accessibility Policy

APPENDIX E

EMERGENCY REQUISITION JUSTIFICATION

This justification has been designed to assist staff in providing information required in the processing of emergency requisitions for the purchase of products or services. Please complete and forward to Procurement and Contract Management. If more space is needed, please attach additional page(s).

REQUISITION NO.: _____

1. State the reason for the emergency purchase by explaining what the emergency is and what caused the emergency situation.

2. State the facts that lead to the conclusion that financial or operational damage or risk of damage will occur if needs are not satisfied immediately (do not simply state there will be damage or risk of damage).

3. State why the needs were not or could not be anticipated so that goods or services could not have been purchased following standard procedures.

4. State the reason and process used for selecting the vendor (Attach all quotes/proposals received from other sources, if applicable).

I certify that the above statements are true and correct, and that no other material fact or consideration offered or given has influenced this recommendation for an emergency procurement.

Submitted By: _____
Printed Name & Title **Department/Division**

Approved By: _____
Division Director **Date**

Executive Director **Date**

APPENDIX F

PROPRIETARY JUSTIFICATION FORM

REQUISITION NO.: _____

This justification has been designed to assist faculty and staff in providing information and the approvals necessary for the processing of requisitions for a sole brand and/or sole-source purchase of products or services.

Your approval affirms that:

- No substitute or equivalent product and/or service exists in the marketplace that can meet your operational needs.
- No employee/employer relationship exists.
- Supplier has not been paid by RRC to develop/recommend specifications or requirements (*Government Code; Section 2155.004*).
- The above statements are true and correct, and that no other material fact or consideration offered or given has influenced this recommendation for a proprietary purchase.

1. Identify the features or characteristics which are unique to the requested product/service, and/or unique qualifications of the individual/company as it relates to the requested product/service.

2. Explain the need for the unique features or characteristics. (You must address the critical importance of the unique characteristics as it applies to its intended use and/or purpose in your operation):

3. Identify other sources whose products and/or service(s) have been reviewed and why they are not satisfactory:

Submitted By: _____
Printed Name & Title **Department/Division**

Approved By: _____
Division Director **Date**

Executive Director **Date**

Best Value Determination Method Used: _____

Procurement Director's Certification: _____
Signature **Date**

APPENDIX G

NON-DISCLOSURE STATEMENT & EVALUATION TEAM BRIEF

RFP# 455-X-XXXXX

TITLE HERE

DATE

NON-DISCLOSURE STATEMENT

I, _____, the undersigned, hereby certify that the following statements are true and correct and that I understand and agree to be bound by the commitments contained herein.

I am acting at the request of the Railroad Commission of Texas as a participant in the solicitation referenced above.

I am acting of my own accord and am not acting under duress. I am not currently employed by, nor am I receiving any compensation from, nor have I been the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in connection with any submittal or involved respondent in return for favorable consideration. I have not established a personal preference or position on the worth or standing of any respondent participating in this action that will prevent my fair evaluation of the submittals against the criteria.

I agree not to disclose or otherwise divulge any information pertaining to the solicitation process, contents, status, or ranking of any submittals to anyone other than the evaluation team leader or other evaluation team members. I understand the terms "disclose or otherwise divulge" to include, but are not limited to, reproduction of any part or portion of any submittal, or removal of same from designated areas without prior authorization from the evaluation team leader. I agree to perform any and all evaluations of said submittals in an unbiased manner, to the best of my ability, and with the best interest of the State of Texas paramount in all decisions.

I further disclose that I have no knowledge of any of the competitive offers submitted for consideration in response to this solicitation.

EVALUATION TEAM BRIEF

Voting Members

Evaluator Names Here

Non-voting Member

Procurement & Contract Management Staff

Members Responsibilities:

Sign Non-Disclosure Form. This form states that you do not have a personal interest in any of the respondents. You will not divulge any information concerning the proposal/evaluation to anyone who is not a part of the team.

Evaluate/score each proposal independently and impartially.

Questions between team members are allowed. A member with technical expertise in the project may help the team members better understand whether the respondent met the requirements of the RFP. However, team members should not influence other team members' scoring by giving individual opinions or sharing their scoring.

If a team member has questions on a submittal, request the PCM staff to contact the respondent, get an explanation and share the response with all team members.

PCM will be responsible for tabulating scores for the team.

If a respondent/contractor contacts you concerning their submittal or scoring, refer the contact to the *PCM name here*.

Evaluation Criteria Worksheet

Team members will evaluate Company Information, Relevant Experience and Qualifications, Methodology, Demonstrated Ability to Comply with Budget /Schedule Requirements, Quality Assurance, Quality Control, and Safety.

Team members will score based on the scales provided. Provide comments if the submittal you scored failed to meet requirements or minimally addressed requirements.

Be sure to put your name and firm name on each sheet.

Please fill in the score for the criteria and the total score for each proposal.

Signature

Printed Name

Date

APPENDIX H

NON-DISCLOSURE STATEMENT

RFO/RFP/RFQ NO. 455-X-XXXXX NON-DISCLOSURE STATEMENT

I, _____, the undersigned, hereby certify that the following statements are true and correct and that I understand and agree to be bound by the commitments contained herein.

I am acting at the request of the Railroad Commission of Texas as a participant in the solicitation/contract referenced above.

I am acting of my own accord and am not acting under duress. I am not currently employed by, nor am I receiving any compensation from, nor have I been the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in connection with any submittal or involved respondent in return for favorable consideration. I have not established a personal preference or position on the worth or standing of any respondent participating in this action that will prevent my fair evaluation of the submittals against the criteria.

I agree not to disclose or otherwise divulge any information pertaining to the solicitation process, contents, status, or ranking of any submittals to anyone other than the evaluation team leader or other evaluation team members. I understand the terms "disclose or otherwise divulge" to include, but are not limited to, reproduction of any part or portion of any submittal, or removal of same from designated areas without prior authorization from the evaluation team leader. I agree to perform any and all evaluations of said submittals in an unbiased manner, to the best of my ability, and with the best interest of the State of Texas paramount in all decisions.

I further disclose that I have no knowledge of any of the competitive offers submitted for consideration in response to this solicitation.

Signature

Print Title

Date

APPENDIX I

EIR ACCESSIBILITY POLICY

PURPOSE

The purpose of the Electronic and Information Resources (“EIR”) Accessibility Policy is to guide the Texas Department of Information Resources (“DIR”) in its compliance with accessibility rules in accordance with the 1 Tex. Admin. Code, Chapters 206 and 213.

This policy sets forth guidance for DIR with regard to the accessibility of all electronic and information resources developed, procured, or changed by Users including but not limited to

- telecommunication products, such as telephones
- transaction machines
- applications
- Internet and intranet websites
- multi-media (including videotapes)
- office equipment, such as copiers and fax machines

SCOPE

This policy applies to all Users and EIR owners while employed or contracted with DIR. All Users and EIR owners are responsible for understanding and complying with the terms and conditions of this policy.

This policy applies to, but is not limited to, electronic and information resources developed, procured, maintained, or used by DIR directly, or by DIR contractors and/or service providers whose contract terms require the use of electronic and information resources.

POLICY

1. General

DIR's electronic and information resources must be accessible to Users with all levels of ability.

DIR must comply with all provisions of Tex. Gov't Code, Chap. 2054 and 1 Tex. Admin. Code, Chapters 206 and 213.

2. Responsibilities

DIR must ensure provisions of this policy for state websites and electronic and information resources are fulfilled.

3. Request for accommodation

Reasonable efforts shall be made to accommodate Users of EIR with enabling software, assistive devices, or other means. When a User is unable to access DIR's EIR, he or she may contact DIR to request that an alternate format or method to access the information be provided. DIR shall provide instructions on its websites for requesting an accommodation.

4. Exception from compliance

Only the DIR Executive Director may grant an exception from complying with an accessibility rule, in accordance with the DIR Compliance Exception Procedure.

EIR owners of inaccessible EIR shall submit an exception request to the executive director for each developed or procured EIR including outsourced development, which does not comply with appropriate standards and specifications.

Any approved exception shall include a plan for alternate methods of access for persons with disabilities.

5. DIR EIR Accessibility Implementation and Remediation Plan

The DIR EIR Accessibility Implementation and Remediation Plan describes methods and procedures the agency shall follow to ensure that EIR developed, procured, or changed by Users is accessible. The plan also outlines exception provisions. The DIR EIR Accessibility Coordinator is the owner of this plan and will oversee the activities associated with the plan's implementation.

COMPLIANCE

The executive director and each member of management are responsible for ensuring adherence to this policy.

DISCIPLINARY ACTION

Instances of failure to adhere to this policy will be brought to the attention of the appropriate manager. The manager may seek consultation/advice from the Human Resources Office and the Office of the General Counsel.

CHANGE MANAGEMENT

This policy is subject to change.

CONTACT INFORMATION

Contact the Statewide Accessibility Coordinator.

DEFINITIONS AND ACRONYMS

508 compliance: The technical standards issued by the US Access Board implementing Section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. § 794 (d). In particular, the standards related to web accessibility contained in 36 CFR Part 1194.

Accessibility: Strategies, guidelines, and resources to help make the EIR accessible to people with disabilities. EIR accessibility means that people with disabilities can perceive, understand, navigate, and interact with EIR. Accessible EIR that can be used in a variety of ways and that does not depend on a single sense or ability.

Alternate format: Alternate format usable by people with disabilities may include, but are not limited to, Braille, ASCII text, large print, recorded audio, and electronic formats that comply with this policy.

Alternate method: Different means of providing information, including product documentation, to people with disabilities. Alternate methods may include, but are not limited to, voice, fax, relay service, TTY, Internet posting, captioning, text-to-speech synthesis, and audio description.

Assistive technology: Any item, piece of equipment, or system, whether acquired commercially, modified, or customized, that is commonly used to increase, maintain, or improve functional capabilities of individuals with disabilities.

Electronic and information resources: Includes information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, duplication, storage, or delivery of data or information. The term includes, but is not limited to, telecommunications products (such as telephones), information kiosks and transaction machines, websites, multimedia, and office equipment such as copiers and fax machines. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices and medical equipment where information technology is integral to its operation are not electronic and information resources.

EIR accessibility standards: Texas accessibility standards for electronic and information resources that comply with the applicable specifications contained in 1 TAC 206/213.

EIR owner: An individual or group with primary responsibility for an EIR. This might include the author of a document, manager or project manager of an EIR application/project.

Exception: A justified, documented non-conformance with one or more standards or specifications of 1 TAC 206/213, which has been approved by the agency head.

PDF: Portable Document Format file types (refer to Adobe's website for further information on tools enabling access to PDF files for the visually impaired).

State website: A website that is connected to the Internet and is owned, funded, or operated by or for a state agency or institution of higher education, including the home page, all subordinate pages, and other key public entry points.

User: Any individual (including, but not limited to, DIR personnel, temporary employees, employees of independent contractors, contractors, or volunteers) who is authorized to access DIR electronic and information resources.

W3C: World Wide Web Consortium is an international consortium where member organizations, a full-time staff, and the public work together to develop web standards.

REFERENCES

- Statewide EIR Accessibility Website (DIR)
- Texas Administrative Code Title 1, Section 206 and Section 213
- Texas Government Code 2054, Subchapter M

- Section 508 of the Rehabilitation Act of 1973
- World Wide Web Consortium (W3C)

VERSION HISTORY

- Version 1.3 – February 1, 2015 – Revised policy to update web links.
- Version 1.2 – March 2, 2012 – Revised policy to broaden scope to cover all EIR, not just web-based EIR.
- Version 1.1 – May 25, 2010 – Revised policy to add listing to References Block and to add Version History block.
- Version 1.0 – June 30, 2009 – Adopted policy.

APPENDIX J

“AFTER THE FACT” PROCUREMENT REQUEST FOR APPROVAL FORM

A Division Director’s and/or Executive Director’s signature is required for **all unauthorized Purchases** made by any RRC Division. Unauthorized purchases of goods and services are defined as:

- Goods and/or services were obtained without the appropriate procurement documents or authorization.
- No requisitions or paperwork were submitted prior to goods or services being provided or committed to.
- Appropriate approvals to order or obtain goods or services were not followed.

Unauthorized financial commitments require that **any requisition or invoice** submitted “**after the fact**” must be accompanied by this Request for Approval of “After the Fact” Procurement justifying the reason for the deviation from policy.

Person Purchasing Goods or Services: _____
PRINTED NAME and TITLE

Description of Good or Services Procured: _____

Date of Invoice or Delivery of Goods and Services: _____

Justification for deviation from policy and mitigation plan to make sure this does not happen again.
(Attach sheet if necessary). Contains Attachment

Requesting Department Signature: _____ **Date:** _____

Division Director’s Signature: _____ **Date:** _____

Executive Director’s Signature: _____ **Date:** _____

APPENDIX K

CORRECTIVE ACTION PLAN MONTHLY STATUS REPORT

Date: _____

Contractor	Contract Number	Term of Contract	Amount of Contract	Date entered into a Corrective Action Plan	Reason for Corrective Action Plan	Status of Corrective Action Plan

APPENDIX L

COMMON TERMS DEFINED

Addendum: An addition, change, or supplement to a solicitation document issued prior to the opening date.

Advertise: To make a public announcement of the intention to purchase goods or services.

Amendment: Written addition or change to a contract.

Appropriation: Legislative authorization to expend public funds for a specific purpose.

Assignment: Transfer of contractual rights from one party to another party. This will require an amendment to the agreement.

Best Value: Factors to be considered in determining lowest overall cost and value in making certain purchases. Ref. Texas Government Code, Section 2155.074 (Non- Information Technology Related) and Texas Government Code, Section 2157.003 (Information Technology Related).

Bid: An offer to contract with the state, submitted in response to a bid invitation. Bids are usually non-negotiable.

Bid Deposit: A deposit required of bidders to protect the state in the event a low bidder attempts to withdraw its bid or otherwise fails to enter into a contract with the state. Acceptable forms of bid deposits are limited to: cashier's check, certified check, or irrevocable letter of credit issued by a financial institution subject to the laws of Texas and entered on the United States Department of the Treasury's listing of approved sureties; a surety or blanket bond from a company chartered or authorized to do business in Texas.

Bid Opening: The public opening of bids, in which the names of the bidders responding to a bid solicitation and prices of the bidders are publicly read and recorded. See Proposal Opening.

Bid Tabulation: The recording of bids and bid data submitted in response to a solicitation. The bid tabulation is used for comparison, analysis and record keeping.

Bidder: An individual or entity that submits a bid. The term includes anyone acting on behalf of the individual or other entity that submits a bid, such as agents, employees and representatives.

Bidders List: A list of potential Contractors who have expressed an interest in doing business with the State of Texas. See Centralized Master Bidders List.

Biennium: The two (2) year period in which the Texas Legislature appropriates funds. The biennium begins on September 1st of odd numbered years.

Bond: Note or other form of evidence of obligation issued in temporary or definitive form, including a note issued in anticipation of the issuance of a bond and renewal note.

Change Order: A document which is used when it becomes necessary that amends, clarifies, changes, or cancels contract issues and/or provisions.

Centralized Master Bidders List (CMBL): The CMBL is a list maintained by the Texas Comptroller of Public Accounts (CPA) containing the names and addresses of prospective bidders and catalog information systems contractors.

Competitive Sealed Bidding: Process of advertising an invitation for bids (IFB), conducting a public bid opening and awarding of a purchase order/contract to the lowest responsive, responsible bidder in accordance with state law.

Competitive Sealed Proposals: Process of advertising a request for proposal (RFP), the evaluation of submitted proposals and awarding of the contract.

Consultant: A person that provides or proposes to provide a consulting service.

Consulting Services: Practice of studying and advising a state agency in a manner not involving the traditional employer/employee relationship per Texas Government Code, Section 2254.021 (See Major Consulting Services Contract).

Contract: A written agreement where a Contractor provides goods or services and the agency pays for such goods and services in accordance with the established price, terms and conditions.

Contract Advisory Team (CAT): The team created to assist agencies in improving contract management practices. The team consists of four (4) members, one from each of the following offices: 1) Office of the Attorney General, 2) Comptroller of Public Accounts, 3) Department of Information Resources, and 4) Office of the Governor per Texas Government Code, Section 2262.101.

Contract Management: This refers to the entire contracting process from planning through contract administration.

Contract Manager: A person who is: 1) employed by a state agency, 2) has significant contract management duties for the state agency as determined by the agency in consultation with the Texas Comptroller of Public Accounts referenced in Texas Government Code, Section 2155.078, and the RRC's rule 113.

Contractor: A business entity or individual that has a contract to provide goods or services to the State of Texas. Used interchangeably with the term "vendor".

Deliverable: A unit or increment of work required by the contract, including such items as goods, services, reports, or documents.

Electronic State Business Daily: The electronic marketplace where State of Texas bid opportunities over \$25,000 are posted.

Emergency: A purchase made when unforeseen and/or a sudden unexpected occurrence creates a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

Executive Sponsor: A high level individual with primary responsibility for implementation and operation of the project. In some instances, the executive sponsor may be the executive head of the agency. In other instances, the executive sponsor may be the division or program director with overall project responsibility.

Goods: A transportable article of trade or commerce that can be bartered or sold. Goods do not include services or real property.

Grant: The term "grant" is found in two distinct situations involving a state agency: where an agency provides grants to other entities and where an agency uses grant funds for procurements. In the first situation, a state agency is responsible for awarding grant funds to other entities such as other state agencies, local

governments, non-profit organizations or private entities, with the state agency as the grantor agency; those other entities are the grant applicants. In the second situation, a state has received grant funds and is using those funds to make a procurement for that agency.

Historically Underutilized Business: A minority or women-owned business as defined by Texas Government Code, Title 10, Subtitle D, Chapter 2161. See [Historically Underutilized Business](#) on the State CPA's website.

Independent Contractor: A person working for an entity under contract and not an employee of the contracting entity. The contracting entity does not pay unemployment, disability, or worker's compensation insurance or withholding taxes from payments to the person. An independent Contractor normally follows the contracting agency's direction on the results of the work but not on the means of accomplishing the work.

Invitation for Bids (IFB): Procurement process used when the requirements are clearly defined, negotiations are not necessary and price is the major determining factor for selection. The IFB uses the competitive sealed bid method.

Liquidated Damages: A specified contract provision which entitles the state to demand a set monetary amount determined to be a fair and equitable repayment to the state for loss of service due to contractor's failure to meet contract requirements.

Major Consulting Services Contract: A consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000.

Major Contract: A contract that has a value of at least one (1) million dollars during the original term of the contract, not including any renewal periods.

Negotiations: A consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. In a contractual sense, negotiation means the "dealings conducted between two or more parties for the purpose of reaching an understanding."

Opening Date: The day and time, after submission of proposals, when sealed bid responses are opened.

Payment Bond: A bond executed in connection with a contract which secures the payment requirements of the Contractor.

Performance Bond: A surety bond which provides assurance of a bidder's performance of a certain contract. The amount for the performance bond shall be based on the bidder's annual level of potential monetary volume in the state purchasing program. Acceptable forms of bonds are those described in the definition for "bid deposit."

Posted Date: The date a procurement document is made available to the public.

Professional Services: Services directly related to professional practices as defined by the Professional Services Procurement Act (Government Code, Section 2254.002) or services authorized by rule by the Department of State Health Services pursuant to Health and Safety Code, Section 12.0121. These include services within the scope of the practice of: accounting; architecture; optometry; medicine; land surveying; and professional engineering. Services provided by professionals outside the scope of their profession, e.g., management consulting services provided by accounting firms, are not considered professional services.

Proposal: An executed offer submitted by a respondent in response to a Request for Proposals (RFP) and intended to be used as a basis to negotiate a contract award.

Proposal Opening: The public opening of proposals, in which the names of the respondents to a solicitation are publicly read and recorded. No prices are divulged at a proposal opening as these types of solicitations are subject to negotiation. See Bid Opening and the Procurement Manual.

Proprietary Purchase: A purchase request of a product that is proprietary to one contractor and does not permit an equivalent product to be supplied as defined in Texas Government Code, Section 2255.067.

Procurement Department: The office designated to purchase goods and services for a state agency.

Renewal: When an existing contract is renewed for an additional time period in accordance with the terms and conditions of the original contract.

Request for Information (RFI): A general invitation to Contractors requesting information for a potential future solicitation. The RFI is typically used as a research and information gathering tool for preparation of a solicitation.

Request for Offer (RFO): A solicitation for automated information systems (which may include a request for hardware, software and other information technology goods and services) requesting the submittal of an offer in response to the required scope of services, including a cost proposal. Negotiations are allowed between a proposer and the issuing agency.

Request for Proposal (RFP): A solicitation requesting submittal of a proposal in response to the required scope of services and usually includes some form of a price proposal. The RFP process allows for negotiations between a proposer and the issuing agency.

Request for Qualifications (RFQ): A solicitation document requesting submittal of qualifications or specialized expertise in response to the scope of services required. No pricing is solicited with an RFQ.

Request for Quote (RFQ): An informal solicitation document requesting pricing on small dollar purchases.

Responsive: The respondent has complied with all material aspects of the solicitation document, including submission of all required documents.

Respondent: An entity submitting a proposal in response to a solicitation. (See Bidder)

Responsible: The respondent has the capability to fully perform and deliver in accordance with the contract requirements. The agency may include past performance, financial capabilities and business management as criteria for determining if a bidder or proposer is capable of satisfying the contract requirements.

Service: The furnishing of labor by a Contractor which may not include the delivery of a tangible end product. In some cases, services and goods may be combined such as film processing. In these instances, agencies determine whether labor or goods is the primary factor. In the case of film processing, the labor to process the film is the primary factor, therefore film processing is considered a service.

Solicitation: A document requesting submittal of bids or proposals for goods or services in accordance with the advertised specifications.

Solicitation Conference: A meeting chaired by state agency personnel which is designed to help potential bidders/respondents understand the requirements of a solicitation. Also known as a pre-bid or proposal conference

Specification: Any description of the physical or functional characteristics or of the nature of supplies or service to be purchased. It may include a description of any requirements for inspecting, testing, or preparing supplies or services for delivery.

State: The State of Texas.

State Agency: An agency of the State of Texas as defined in Texas Government Code, Section 2056.001.

Statewide Contract: A legal and binding instrument between the state and a contractor(s) which is made available to multiple state agencies to purchase frequently used commodities and services. State agencies are required to use these contracts, which are competitively bid, awarded, and maintained by the appropriate procurement agency.

Statute: A law enacted by a legislature.

Strategic Sourcing: A concept of purchasing with the objective to purchase goods or services that will minimize costs, increase managerial effectiveness and improve operational efficiency.

Sub-recipient: A non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a recipient of other federal awards directly from a federal awarding agency.

Surety: A person or entity providing a bond to a Contractor to indemnify the State against all direct and consequential damages suffered by failure of the Contractor to perform the contract and to pay all lawful claims of subcontractors, materials suppliers and laborers as applicable.

Term Contract: A Contract that addresses the estimated requirements for a number of agencies for supplies or services that are used repeatedly or in significant quantities over a period of time. Agencies place orders directly with term contract contractors for the quantity needed.

Vendor: A business entity or individual that has a contract to provide goods or services to the State of Texas. Used interchangeably with the term “Contractor.”

APPROPRIATIONS AND ENCUMBRANCES TERMS

<p>34 Tex. Admin. Code §5.56 and the General Appropriations Act</p> <p>Appropriation Year = September 1 – August 31</p> <p>An encumbrance = fully executed contract, agreement, or other action that legally obligates state funds where the goods or services have neither been received nor the invoice paid</p> <p>Federal Fiscal Year: October 1 – September 30</p>	
<p>Appropriations:</p>	<p>At any given time, there are exactly three appropriation years open. No more, no less. For example:</p> <ul style="list-style-type: none"> • On 9/1/16, the following AYs are open: <ul style="list-style-type: none"> • AY17 – 9/1/16 – 8/31/17 • AY16 – 9/1/15 – 8/31/16 • AY14 – 9/1/14 – 8/31/15
	<ul style="list-style-type: none"> • <u>Consumables</u> - divisions must charge a purchase of consumable goods to the appropriation year (AY) in which the delivery of the consumables is expected to occur and are reasonably expected to be consumed. In most cases, the AY will be the year goods are ordered. At year end, the business office will evaluate what has been/has not been received and change the AY based on the delivery status. If a good has been ordered in the current AY but not received by 8/31/CY, then the AY will change to the next AY. • <u>Service contracts</u> - must be charged to the AY in which the services are rendered. • <u>Grants are different</u> - Grant payments must be charged to the AY in which they are obligated. So, a grant may be carried out in AY14 and AY15, but paid from AY13 funds (as long as it was encumbered prior to 8/31/13). <p><i>It is important to determine if an obligation is a service or grant.</i></p>
<p>Encumbrances:</p>	<ul style="list-style-type: none"> • Amounts obligated through contractual means should be encumbered. An encumbrance is for actual contracts awarded, not anticipated contracts or contracts under negotiation. • RRC must obligate (encumber) an appropriation during the appropriation year (AY) for which the appropriation is made

APPENDIX M

COMMON ACRONYMS

CAP: Corrective Action Plan

CAPPS: Centralized Accounting and Payroll/Personnel System

CAT: Contract Advisory Team

CMG: Contract Management Guide

CO-OP: Cooperative Purchasing Program

CSB: Competitive Sealed Bid

CSP: Competitive Sealed Proposal

GSA: General Services Administration (Federal)

HSP: HUB Subcontracting Plan

HUB: Historically Underutilized Business

IFB: Invitation for Bid

NIGP: National Institute of Governmental Purchasing

NTP: Notice to Proceed

PACE: Purchasing and Contracts Enterprise

PCM: RRC Procurements and Contracts Section

PO: Purchase Order

REQ: Requisition

RFI: Request for Information

RFO: Request for Offer

RFP: Request for Proposal

RFQ: Request for Qualifications

SOP: Standard Operating Procedure

SOW: Statement of Work

WO: Work Order

WP: Work Plan