

# TEXAS OFFICE OF CONSUMER **CREDIT COMMISSIONER**



**Contract Management Manual**

Revised November 2017

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## INTRODUCTION

The Administration Department (Admin Dept.) of the Office of Consumer Credit Commissioner (OCCC) has developed this Contract Management Handbook (Handbook) for all purchases of goods and services by the OCCC. This Handbook will be updated periodically to reflect changes in procurement rules and policies. Admin stays current on all purchasing rules, policies, and regulations and is the primary source of guidance on procurement processes. The Handbook is also designed to set forth the processes that must be followed in order to adequately manage contracts.

The information contained in this Handbook complies with Texas Government Code § 2261.256, which requires state agencies to develop and comply with purchasing accountability and risk analysis procedures. This Handbook identifies contracts that require enhanced contract monitoring or the immediate attention of contract management staff and establishes clear levels of purchasing accountability and staff responsibilities related to purchasing.

## CONTRACT DEFINITION

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. For the purposes of this Handbook, an original Contract, Amendment, Modification, Extension, Purchase Order (PO), Interagency Agreement, Inter-local Agreement, Inter-cooperative Contract, and a Memorandum of Understanding are all considered contracts.

## PROCUREMENT AND CONTRACT SERVICES

Admin Department is responsible for coordinating and managing all procurement and contracting activities for the Agency. Within Admin Department, the Agency's Purchaser facilitates the procurement and contracting needs for all agency Divisions and all types of purchases to obtain the best value for the Agency. Contracts are approved, recorded, and monitored consistent with Texas law, regulations, and Agency purchasing procedures.

## STATE OF TEXAS PURCHASING RULES

The Comptroller of Public Accounts (CPA) maintains on its website a list of governing statutes and rules as well as procedure manuals and guides for state purchasing programs to follow

<http://window.state.tx.us/procurement/procedures.html>.

All agency contracts involving procurements must adhere to the following:

- Texas Government and Administrative Codes;
- Other relevant state laws;

- Federal law;
- State of Texas Procurement Manual;
- State of Texas Contract Management Guide;
- Texas Department of Information Resources Rules;
- General Appropriations Act (even though Agency is Self-Directed, Semi-Independent (SDSI)); and
- OCCC's Contract Management Handbook.

## STATE AGENCY ETHICAL STANDARDS FOR GOVERNING BOARD MEMBERS & EMPLOYEES

All employees who participate in procurement and contracting activities shall adhere to agency policy regarding conflicts of interest. Board members shall abide by the Declaration of Policies Governing Standards of Conduct Applicable to Members of the State Securities Board.

Texas Government Code § 2261.252(a) requires each state agency official or employee who is involved in procurement or in contract management for a state agency to disclose to the agency any potential conflict of interest with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency.

According to Section 1.2 of the State of Texas Procurement Manual, Code of Ethics and Conflict of Interest:

State officials and state employees are entrusted with the safety and welfare of the citizenry. In return for their confidence in state government, citizens expect that state employees' private interests will not conflict with public business. The nature of purchasing functions makes it critical that all participants in the process remain independent, free of obligation or suspicion, and completely fair and impartial. Maintaining the integrity and credibility of a purchasing program requires a clear set of guidelines, rules and responsibilities to govern the behavior of purchasing employees. Credibility and public confidence are vital throughout the purchasing and contracting system.

According to Section 1.2 of the State of Texas Procurement Manual, Code of Ethics and Conflict of Interest:

Texas Government Code § 2261.252(b) prohibits the Agency from entering into a contract for the purchase of goods or services with a private vendor if any of the following has a financial interest<sup>1</sup> in that vendor:

- A member of the Finance Commission;
- The OCCC Commissioner, General Counsel, Director of Strategic Communications, Administration & Planning, or Purchaser for the Agency; or
- A family member related to an official or employee described above within the second degree of consanguinity.

Finance Commission Board members and employees who participate on behalf of the Agency in a procurement or contract negotiation with a vendor are prevented from accepting employment with that vendor for two years after the member's or employee's service or employment with the agency have ceased.<sup>2</sup> Texas Government Code § 572.069.

## CONFLICT OF INTEREST STATEMENT EXECUTED ANNUALLY

Pursuant to Section 1.2 of the State of Texas Procurement Manual, a Conflict of Interest Statement (*Appendix A*) must be signed annually by any employee who participates in the development of contract specifications, solicitation documents, evaluations, negotiation, or contract monitoring activities. Any employee that is authorized to sign a purchase order (PO) on behalf of the Agency will sign the Conflict of Interest Statement.

## SIGNATURE AUTHORITY & APPROVALS

Prior to any contract execution, the Purchaser will document best value standards used for the contract and acknowledge in writing that the Agency complied with this Handbook and the CPA's Contract Management Guide. Proposed contracts exceeding \$1,000 shall be reviewed by the appropriate Department Director, General Counsel, and signed by the OCCC Commissioner or OCCC Commissioner Designee. A contract cannot be awarded to a vendor unless it has been properly submitted, reviewed, and approved in accordance with all Agency policies and procedures, and it has been determined that the contract is in the best interest of the Agency.

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<sup>1</sup> Having a "financial interest" is defined as a state agency employee or official that: owns or controls, directly or indirectly, at least a 1% interest in the vendor, including the right to share in profits, proceeds, or capital gains or; could reasonably foresee that a contract with the vendor could result in a financial benefit to the employee or official. However, a financial interest does not include a retirement plan, a blind trust, insurance coverage, or an ownership interest of less than one percent in a corporation.

<sup>2</sup> This applies only to a Board member or employee whose service or employment with the Agency ceased on or after September 1, 2015.

## VERIFICATION OF USE OF BEST VALUE STANDARD

The best value selection of a vendor is based on a determination of which proposal offers the best trade-off between price and performance, where quality is considered an integral performance factor. The award decision is made based on multiple factors, including:

- total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime;
- the evaluated technical merit of the vendor's proposal;
- the vendor'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 compliance standards.

Pursuant to Texas Government Code § 2155.0755, for each contract for which the Agency is required to purchase goods or services using the best value standard, the OCCC Commissioner or OCCC Commissioner's Designee must:

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

## STATEMENT OF WORK

A statement of work (SOW) defines how the Agency will determine that a 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. The SOW answers the who, what, when, where, why, and how of a procurement. If these questions are answered, it is a reasonable assumption that the SOW is complete. The SOW includes:

- List of services to be performed, actions to be taken by the parties, and/or products to be delivered;
- How performance will be measured. Performance measures set the level of quality required and expected;
- Deliverables that must be met in order to receive payment;
- Specific deadlines;
- Status report requirements when applicable;
- Consequences for not performing or meeting deliverables;
- Testing and inspection when applicable; and
- Rules for receiving payment.

# CONTRACT MANAGEMENT HANDBOOK

Department of Information Resources SOW Requirements Texas Government Code § 2157.0685 requires state agencies to submit SOWs for certain services procurements<sup>3</sup> to the Texas Department of Information Resources (DIR) for review prior to submission of the SOW to a vendor and for DIR approval and signature prior to final execution.

## COMMODITY PURCHASES

A state agency is eligible to purchase information technology commodities<sup>4</sup> from vendors on a list maintained by DIR. However, Texas Government Code § 2157.068 set requirements by contract value:

| CONTRACT VALUE             | NUMBER OF VENDORS                                |
|----------------------------|--|
| \$50,000 or less           | May award directly to vendor of choice           |
| \$50,001 to \$1 million    | At least 3 vendors must be solicited for pricing |
| \$1 million to \$5 million | At least 6 vendors must be solicited for pricing |
| More than \$5 million      | Contract to purchase a commodity is prohibited   |

## ENHANCED GUIDANCE FOR CONTRACTS OVER \$1 MILLION<sup>5</sup>

Under Texas Government Code § 2261.254, for all contracts over \$1 million, the agency shall develop and implement contract-reporting requirements that provide information on:

- Compliance with financial provisions and delivery schedules under the contract;
- Corrective action plans required under the contract and the status of any active correction plans;
- Any liquidated damages assessed or collected under the contract; and
- In addition, the Agency shall verify the accuracy of any information reported by a contractor and the delivery time of goods and services.

All contracts over \$1 million must be approved by the Agency's governing body. As appropriate, the approval and signature authority must be made by the Commissioner.

## ENHANCED GUIDANCE FOR CONTRACTS OVER \$5 MILLION

Under Texas Government Code § 2261.255, for all contracts over \$5 million, the contract management office or procurement director must:

- Verify in writing that the solicitation and purchasing methods and contractor selection process comply with state law and agency policy; and

<sup>3</sup> Refer to DIR's Senate Bill 20 Quick Reference Guide for more information on submission of SOWs to DIR for review.

<sup>4</sup> As defined in Texas Government Code § 2157.068, "commodity items" means commercial software, hardware, or technology services, other than telecommunications services.

<sup>5</sup> The OCCC has never had a contract with a value exceeding \$1 million.

- Submit information to the Agency's governing body on any potential issue that may arise in the solicitation, purchasing, or contractor selection process.

## ENHANCED GUIDANCE FOR CONTRACTS OVER \$10 MILLION

Under Texas Government Code § 2262.101, all solicitations expected to result in contracts valued at \$10 million and greater must be submitted to the Contract Advisory Team for review before the solicitation can be posted. The contract value is determined without regard to source of funds or payment mechanism.

## VENDOR PERFORMANCE TRACKING SYSTEM

After a contract<sup>6</sup> is completed or otherwise terminated, the Agency shall review the vendor's performance by filing a report through the CPA's Vendor Performance Tracking System (VPTS) as required by Texas Government Code § 2155.089. The CPA uses the information provided through the VPTS to evaluate the vendor's performance. The CPA will rate the vendor on an A through F scale with A being the highest grade. Texas Government Code § 2262.055(d) requires a state agency to use the VPTS to determine whether to award a contract to a vendor reviewed in the tracking system.<sup>7</sup>

## CONTRACT MANAGEMENT

Contract management refers to the entire contracting process, which involves planning, forming, and administering contracts through closeout. Contract management activities include administering and monitoring the contract after the award and during contract implementation by measuring completed work, computing and approving payments, monitoring contract performance, incorporating necessary changes and modifications to the contract, and actively interacting with the vendor. Purchasing staff will utilize this Handbook along with the CPA's Contract Management Guide to achieve contract objectives.

## ACCOUNTABILITY & RISK ANALYSIS PROCEDURE

Pursuant to Texas Government Code § 2261.256, each state agency must develop and comply with a purchasing accountability and risk analysis procedure that provides for:

- assessing the risk of fraud, abuse, or waste in the vendor selection process, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts;

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<sup>6</sup> The requirement applies to every purchase over \$25,000, including delegated purchases, TPASS contracts, and exempt purchases. 34 Texas Administrative Code § 20.108. The CPA encourages agencies to report vendor performance on purchases under \$25,000.

<sup>7</sup> Section 2262.055(d) applies only in relation to a contract for which the request for bids or proposals or other applicable expression of interest is made public on or after October 1, 2015.



- identifying contracts that require enhanced contract monitoring or the immediate attention of contract management staff; and
- establishing clear levels of purchasing accountability and staff responsibilities related to purchasing.

The Agency uses a Risk Assessment Matrix (RAM) tool to analyze contracts to identify areas of risk, i.e., the potential for loss, harm, or damage that may occur due to errors or problems associated with a vendor's performance.<sup>8</sup> Based upon the classification of risk (as low, moderate, high, or extremely high), the contract may require enhanced levels of monitoring. This assessment is completed to anticipate risks, mitigate or manage risks, and avoid or transfer risk in order to protect the Agency.

Performing a risk assessment is an ongoing process throughout the life of a contract. The RAM should be used prior to: 1) awarding contracts from RFP/RFO proposals; 2) entering into new contracts with vendors; and 3) renewing existing contracts. For ongoing contracts, the RAM should be completed at least annually and when risk conditions undergo a substantial change, e.g., vendor's management or ownership changes.

The risk factors in the Agency's RAM include:

- Dollar amount of the contract;
- Type of contract purchase;
- Impact to the Agency or public;
- Impact on the Agency's mission;
- Vendor's experience with the Agency;
- Vendor's compliance history;
- Stability and experience of vendor's key management;
- Vendor's number of years in business;
- Subcontractors percentage of business;
- Time constraints;
- Deliverables;
- Audit results; and
- Experience of agency purchaser.

Additional risk factors can be considered as appropriate. No objective or mathematical formula can be used to completely assess the risk imposed by a particular contract; risk is determined subjectively.

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<sup>8</sup> Risk Assessment Matrix (RAM) - Appendix B

## CONTRACT MODIFICATION

The Commissioner or Commissioner's Designee may request modification of a contract. All modifications must be: 1) allowed under the contract; 2) within the scope of the contract; and 3) requested in writing. Modifications are not considered authorized until approved by the Commissioner or Commissioner's Designee. All contract modifications shall be memorialized in the form of a written modification, amendment, or change order.

## CONTRACT ISSUE MANAGEMENT

The Director of Strategic Communications, Administration & Planning, or designee will resolve issues related to contract performance. A log of all issues that arise during the life of a contract should be kept as well as a timeline of the issue and its resolution. To prevent disputes, the Agency will:

- Maintain regular communication with the vendor;
- Respond promptly to all vendor inquiries regarding contract concerns;
- Work with appropriate staff to develop a strategy to resolve issues and communicate with vendors; and
- Thoroughly document all issues and communications pertaining to contract issues.

## CONTRACT DISPUTES

Despite best efforts, there is always the potential for a contract dispute. The following steps should be taken by the Director of Strategic Communications, Administration & Planning or designee to address contract disputes:

- *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* –obtain all the information regarding the potential problem from all relevant sources.
- *Evaluation* –review all of the facts in conjunction with the requirements and terms and conditions of the contract. The Agency should then recommend the appropriate course of action.
- *Corrective action* – identification of problems early in the performance period, effectively communicating and formalizing the process in writing via a corrective action plan (contract performance is impacted) or less formal written procedure (contract performance could be impacted if not resolved), is essential.
- Document all information related to the informal dispute until the informal dispute is resolved. Resolution must also be documented.

- Email the Director of Strategic Communications, Administration & Planning and copy the Commissioner. The email should contain an overview of problem and actions taken towards resolution to date.
- The Director of Strategic Communications, Administration & Planning or designee will provide guidance and assistance and escalate issues to the Legal Department, if needed.
- The Director of Strategic Communications, Administration & Planning or designee will facilitate resolution with all parties, with the assistance of the Legal Department.
- The Director of Strategic Communications, Administration & Planning or designee will facilitate completion of an internal Corrective Action Plan and/or require the contractor to provide a formal Corrective Action Plan (CAP).
- As requested, the Legal Department will provide guidance and direction on appropriate legal action if the vendor remains non-compliant. .

## CONTRACT FILES & RETENTION

The Purchaser will be responsible for maintaining an official contract file for all contracts that include the request, solicitation, responses, scoring, best and final offers, award documents, corrective actions, contract monitor reports, and change documents. From time to time, the OCCC may cooperate with other agencies (e.g. Texas Department of Banking and Texas Department of Savings & Mortgage Lending) in the procurement of goods and services. If one of the other agencies coordinates the procurement process, the other agency may serve as custodian of the additional documentation pertaining to the contract file. For contracts executed, renewed, or amended after September 1, 2015, Texas Government Code § 441.1855 requires the Agency to retain each contract<sup>9</sup> for a period of seven years after the contract expires, is terminated, or is completed, after all issues have been resolved. Along with the contract, all related solicitation documents, including rejected or unsuccessful bids, shall also be retained. For contracts entered into prior to September 1, 2015, the retention period is four years.

## POSTING CONTRACTS & CONTRACT DOCUMENTS

The Agency will also comply with all procurement and contract posting requirements, including those described by Sections 2157.0685, 2261.253, and 2261.256 of the Texas Government Code and applicable sections of the General Appropriations Act. The Information Department will be responsible for this compliance.

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<sup>9</sup> Purchase orders are considered contracts.

## APPENDIX A: Conflict of Interest

### PROCUREMENT INVOLVEMENT:

No employee of the Office of Consumer Credit Commissioner shall have an interest in, or in any manner be connected with, any contract or bid for a purchase of goods or services. Neither shall any employee, under penalty of dismissal, accept or receive from any person to whom any contract may be awarded, directly or indirectly, by rebate, gift, or otherwise, any money or other thing of value whatsoever, nor shall any employee receive any promise, obligation, or contract for future reward or compensation from any such party.

### MANDATORY DISCLOSURES IN CONNECTION WITH PROCUREMENTS FROM PRIVATE VENDORS:

Each employee who signs a purchase order or is otherwise involved in procurement or contract management shall disclose to the Agency any potential conflict of interest specified by state law or agency policy that is known by the employee with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the Agency. Employees should disclose if they or a family member related within the second degree by affinity or consanguinity has a financial interest in a vendor. An employee or family member has a financial interest in a vendor if: he/she owns or controls, directly or indirectly, an ownership interest of at least one percent in the vendor, including the right to share in profits, proceeds, or capital gains; or he/she could reasonably foresee that a contract with the vendor could result in a financial benefit to him/her. A financial interest does not include a retirement plan, a blind trust, insurance coverage, or an ownership interest of less than one percent in a corporation.

### EMPLOYMENT RESTRICTION:

I also acknowledge that, as an employee of a state agency who during state service or employment participates on behalf of the Agency in a procurement or contract negotiation involving a vendor, I may not accept employment from that vendor before the second anniversary of the date my employment with the Agency ceases.

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

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EMPLOYEE SIGNATURE

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DATE

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PRINTED NAME

CC: Personnel File

## APPENDIX B: Risk Assessment Matrix

Table 1. Evaluation Criteria

| FACTOR  | LOW  | MEDIUM  | HIGH   | EXTREMELY HIGH  |
|---|--|---|--|---|
|   | 1  | 2   | 3  | 4   |
| Total Cost  | <\$25K   | >= \$25k but <\$100K  | >= \$100k but <\$1million  | >\$1million   |
| Type of Contract Purchase                         | Interagency, MOU or Inter-local  | Contract less than 25k  | Consulting, Emergency, Sole Source, Proprietary, or Construction > \$25k | Major information technology purchases and leases                 |
| Impact to the Public or Agency                    | No impact to the public or agency                                      | Minimal impact to the public or agency  | Some impact to the public or agency                                      | High impact to the public or agency                               |
| Agency Mission                                    | Contract services are insignificant to OCCC's mission                  | Contract services are minor to OCCC's mission   | Contract services are major to OCCC's mission                            | Contract services are critical to OCCC's mission                  |
| Compliance History                                | No issues of noncompliance   | Moderate instances of non-compliance  | Substantial finding of noncompliance                                     | Substantial finding of noncompliance – never contracted with OCCC |
| Stability & Experience of Vendor's Key Management | No recent change and significant experience                            | No recent change, but not significant experience; or recent change but significant experience | Recent change and not significant experience                             | Recent change and less than 1 year of experience                  |
| Number of Years in Business                       | More than 5 years  | 3 to 5 years  | 1 to 3 years   | Less than 1 year  |
| Performance Measures                              | Contract contains multiple defined and measurable performance measures | Contract contains at least one clearly defined or measurable performance measure              | No performance measures included in contract                             | No performance measures included in contract                      |
| Time Constraints                                  | Will be completed in less than 3 mos.                                  | Will be completed within 3 - 6 mos.   | Will be completed within 6 mos. - 1 yr.                                  | Will be completed in 1 yr. or longer                              |
| Deliverables                                      | Contract contains multiple deliverables that are clearly defined       | Contract contains at least one clearly defined deliverable                                    | No deliverables included in contract                                     | No deliverables included in contract                              |
| Audit Results                                     | No audit required or no issues or findings in audit(s)                 | Moderate issues or findings in audit(s)   | Substantial issues or findings in audit(s)                               | Substantial issues or findings in audit(s)                        |

# CONTRACT MANAGEMENT HANDBOOK

Table 1A. Evaluation Table (Use the criteria in Table 1 to determine the score for each factor and total up the scores.)

| Project Name:                                     |       |
|---|-------|
| FACTOR  | SCORE |
| Total Cost  |       |
| Type of Contract Purchase                         |       |
| Impact to the Public or Agency                    |       |
| Agency Mission                                    |       |
| Compliance History                                |       |
| Stability & Experience of Vendor's Key Management |       |
| Number of Years in Business                       |       |
| Performance Measures                              |       |
| Time Constraints                                  |       |
| Deliverables                                      |       |
| Audit Results                                     |       |
| <b>TOTAL</b>                                      |       |

Table 2. Risk Assessment Matrix (Use the scores provided in Table 1A to determine the level of risk.)

| RISK LEVEL          |          | POINT RANGE | DESCRIPTION   |
|---------------------|----------|-------------|---|
| Extremely High Risk | <b>E</b> | 35 - 44     | Projects include unexpected levels of risk, including critical issues that are likely to occur if the contract is not properly managed. Agency must consider possible contract risks, document and include them in the contract management plan and determine how risk will be monitored.   |
| High Risk           | <b>H</b> | 24 - 34     | Projects contain potentially serious risks that may occur. The contract management plan must include language that ensures proactive strategies to reduce risk and the method of monitoring the risk.   |
| Moderate Risk       | <b>M</b> | 12 - 23     | Projects contain some level of risk that may occur. Agency should consider if a contract management plan is required. If contract management plan is not required, the Agency will identify and document with an explanation of how risks will be managed. This information will be maintained with other contract documentation. |
| Low Risk            | <b>L</b> | 0 - 11      | Projects contain minimal risks and are unlikely to occur. Agency can proceed with contracting as planned.   |