



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

# **Procurement and Contract Management Handbook**

**Procurement and Contract Operations Division  
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**Version 1.0**

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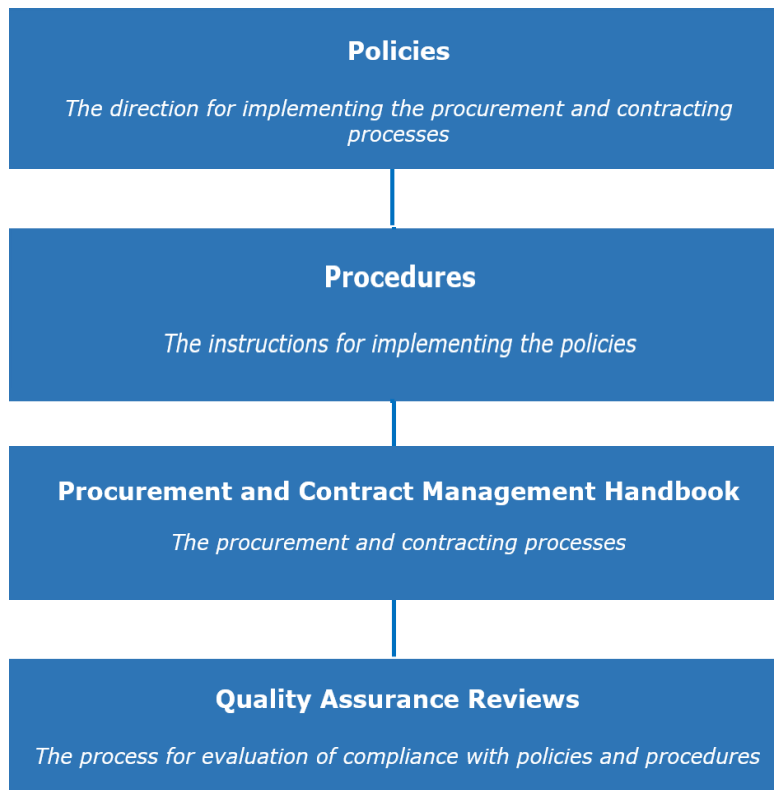
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# Handbook Purpose and Organization

The Office of the Attorney General (OAG) Procurement and Contract Operations Division (PCO) is responsible for managing the procurement and contract management function for the agency. The purpose of the *Procurement and Contract Management Handbook* ("Handbook") is to identify the procurement and contracting processes for OAG staff. These processes describe how the OAG complies with statute and rule in accordance with the Texas Comptroller of Public Accounts (CPA) *Texas Procurement and Contract Management Guide Version 1.3* ("CPA Guide"). This *Handbook* also complies with the Contract Management Handbook requirement pursuant to Texas Government Code, § 2261.256.

Procurement and contracting processes from acquisition planning through contract close-out are provided, in accordance with the procurement cycle identified in the *CPA Guide*. Agency policies and procedures provide the direction and instruction for creating the handbook and implementing the processes. Quality assurance reviews are conducted to ensure compliance with processes, policies, and procedures. This structure is illustrated in Figure 1: Procurement and Contracting Administrative Structure.

**Figure 1: Procurement and Contracting Administrative Structure**



The complete appendices to this *Handbook* include the following:

- Appendix A: Procurement and Contracting Best Practices;
- Appendix B: Vendor Compliance Verifications;
- Appendix C: Purchasing Accountability and Risk Analysis Procedure;
- Appendix D: Acronym Key; and
- Appendix E: Glossary of Key Terms.

Some of the purchasing and contract management functions and responsibilities described in this *Handbook* may be delegated to the Child Support Contract Operations Division.

# Chapter 1 - Purchasing Authority

The CPA and the Texas Department of Information Resources (DIR) are granted purchasing authority for the state. Under this authority, the CPA and DIR establishes statewide contracts to support state purchasing needs and improve efficiency in procuring certain goods and services. The CPA also delegates some purchasing authority directly to state agencies.

The PCO is responsible for implementing the OAG delegated purchasing authority.<sup>1</sup> The delegated and non-delegated purchasing authority is based on the type and value of the purchase. Table 1: Purchasing Authority, identifies the types of delegated and non-delegated purchases and their monetary limits.

Table 1: Purchasing Authority<sup>2</sup>

Non-Delegated Purchases
<ul style="list-style-type: none"><li>• Goods exceeding \$50,000</li><li>• Services exceeding \$100,000</li></ul>
Delegated Purchases
<ul style="list-style-type: none"><li>• One-time purchases for goods that do not exceed \$50,000</li><li>• Purchases of services that do not exceed \$100,000</li><li>• Purchases of perishable goods</li><li>• Purchases of publications directly from publisher</li><li>• Fuel, oil and grease purchases</li><li>• Distributor purchases</li><li>• Emergency purchases</li><li>• Proprietary purchases</li></ul>

## Contract Oversight Team

The OAG procurement and contracting function is guided by the collaboration and input of key stakeholders. This strategic collaboration is formalized through the Contract Oversight Team (COT). COT members are staff who advise on procurement and contracting processes to ensure they

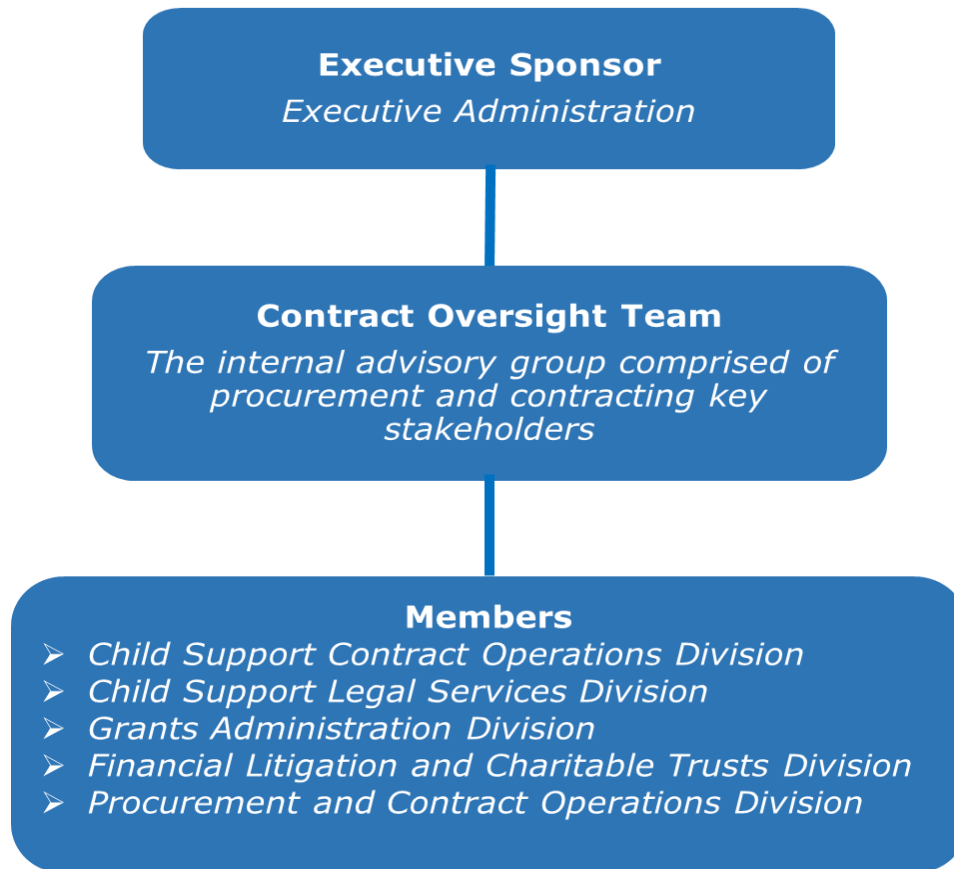
<sup>1</sup> TEX. GOV'T. CODE § 2155.131 retrieved from: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2155.htm>.

<sup>2</sup> Pursuant to 34 TEX. ADMIN, CODE § 20.82, the CPA delegates one-time purchases of goods, including goods for resale that do not exceed \$50,000, and services for resale that do not exceed \$100,000.

support the PCO function. The COT Charter defines the responsibilities, goals and scope of this team.<sup>3</sup>

Figure 2: Contract Oversight Team, illustrates the relationships between the COT and the divisions responsible for the procurement and contracting functions.

**Figure 2: Contract Oversight Team**



## Staff Development and Certification

Staff development is managed in the divisions. Staff are responsible for maintaining certifications and completing required training commensurate with their job responsibilities.<sup>4</sup> The divisions are responsible for enrolling

<sup>3</sup> COT Charter:

<https://txoag.sharepoint.com/sites/divisions/Procurement/ContractOversightTeamCharter.pdf?csf=1&e=YKtqyk&cid=a501ba5b-c81c-4d6f-ba3d-328ae053531e>

<sup>4</sup> The purchaser may hold the Certified Texas Contract Developer (CTCD), Certified Texas Procurement Manger (CTPM) or Certified Texas Purchaser (CTP) certifications. The contract manager may hold the Certified Texas Contract Manager (CTCM) certification.



staff in CPA-required training and ensuring staff obtains necessary certification(s). See the section on *CPA Training and Certification* below for additional information.

A Staff Development Plan (SDP) is developed for each new purchaser or contract manager, in accordance with the *Staff Development Policy*. It is the practice of the PCO that new staff are also matched with senior staff, for on-the-job training. The SDP at minimum, addresses the following:

- certification and continuing education needs;
- conflict of interest statement;
- file documentation and records retention;
- introduction to the E-PRO System;
- overview of procurement and contracting functions;
- procurement and contracting policies and procedures; and
- staff responsibilities.

Additional staff development opportunities are driven by business need, such as the implementation of new policies and procedures. Informal staff development activities are offered for CPA continuing education credit. National procurement and contracting best practices are shared with staff for self-directed learning. These practices are included in **Appendix A: Procurement and Contracting Best Practices**.

## **CPA Training and Certification**

The CPA is responsible for developing and managing the statewide training and certification program for public procurement professionals. The training and certifications required for procurement and contracting staff are provided in Table 2: CPA Training Requirements.

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**Table 2: CPA Training Requirements**

<b>Purchasing Threshold</b>	<b>Type of Certification</b>	<b>Training Requirements</b>	<b>Testing Requirements</b>
<b>Over \$5,000 &amp; purchasing is 15% or more of job duties</b>	None required	Basic Texas Purchaser Course  No continuing education required	No, receives a Certification of Completion
<b>Over \$15,000</b>	Certified Texas Contract Developer (CTCD)	CPA CTCD Training, 24 hours of continuing education required <sup>5</sup>	Yes, score of 80 or better
<b>Contract value over \$5,000,000 &amp; contract management activities are 50% or more of job activities</b>	Certified Texas Contract Manager (CTCM)	CPA CTCM Training, 24 hours of continuing education required <sup>6</sup>	Yes, score of 80 or better

The complete training and certification requirements are provided in the *CPA Guide* and at <https://comptroller.texas.gov/purchasing/training/>.

**Conflict of Interest and Ethics**

Staff with procurement and contracting responsibilities are required to abide by a strict code of conduct in accordance with the delegated purchasing authority. These staff are required to adhere to the same ethical standards as the CPA staff. Conflict of interest and ethics standards are mandated in statute and rule, as referenced in agency and PCO policies.

These standards are designed to ensure that staff maintain the highest level of integrity and ethics in procurement and contracting. Staff are also required to abide by agency and PCO policies and procedures in performing their responsibilities.

In compliance with the *Conflict of Interest and Ethics Policy*, to ensure understanding and compliance with requirements, procurement staff complete a *Conflict of Interest Statement* annually. In addition, the *Nondisclosure and Procurement Integrity Statement* is completed by all PCO

<sup>5</sup> If renewing under a dual certification, 36 hours of continuing education are required

<sup>6</sup> v. sup

staff working on a procurement. These statements ensure understanding and compliance with requirements to:

- abide by the same ethical standards as the CPA staff;
- disclose any personal or financial conflict of interest, and recuse themselves from involvement in procurement and contracting decisions;
- protect sensitive procurement information from disclosure; and
- report any actual, potential, or apparent conflict of interest or violation of ethical standards.

There may be additional conflict of interest or ethics forms required by other divisions.

### Vendor and Employee Communication

Communication between a vendor and OAG staff is appropriate under certain circumstances. For example, specific OAG staff may need to communicate with vendors to gather information on goods or services prior to a purchase. For less complex purchases, this communication may be conducted informally through email or phone calls.

For more complex competitive purchases that require a formal solicitation process, staff are encouraged to use the Request for Information (RFI) planning method, described in Chapter 2 – Procurement Planning.

To ensure consistency in vendor communication, staff are required to follow the guidelines provided in the *Vendor and Employee Interaction and Communication Policy*. These guidelines establish communication expectations for purchasing and contracting staff to ensure transparency and prevent any perception of impropriety in the life cycle of a contract.

## Chapter 2 - Procurement Planning

### Needs Assessment

Divisions begin the procurement planning process with the identification of the procurement need. The PCO uses informal or formal procurement planning processes based on the type and value of the procurement. For example, the need for a one-time goods purchase up to \$5,000 does not require a competitive process or a formal planning process. Divisions can generally determine the need for this type of purchase by market research or purchase history.

While the need for an informal procurement may be easily determined, procurements at certain thresholds generally require formal planning. Procurements expected to exceed \$25,000 in value are required to be posted to the Electronic State Business Daily (ESBD)<sup>7</sup>, and in accordance with the *CPA Guide*, require a formal procurement process. Division staff begin the procurement planning process with identification of the procurement need, by soliciting input from key stakeholders to include: contract managers, Subject Matter Experts (SMEs), or other relevant staff.

Regardless of the planning process, the procurement need is generally identified by division staff through a Purchase Requisition (PR) submission in the E-PRO electronic purchasing system.<sup>8</sup> E-PRO requires that the requestor provide information that further defines the procurement need. In some cases, the purchaser may provide technical assistance to the division, prior to submission of the PR.

#### Request for Information Procurement Planning Method

The Request for Information (RFI) is a formal procurement planning method that may be used as part of the needs assessment process. The purpose of the RFI is to solicit information from the vendor community that may inform a competitive procurement. For example, an RFI may be issued to solicit feedback on the market costs for professional or consulting services not previously procured.

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<sup>7</sup> TEX. GOV'T CODE § 2155.083 retrieved from:  
<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2155.htm>.

<sup>8</sup> In some cases, obtaining legal services is exempt from procurement requirements pursuant to TEX. GOV'T. CODE § 2155.005.

The RFI is posted to the ESBD to ensure transparency and to solicit input from the broadest pool of potential vendors. This method is preferable over contacting a limited number of vendors, as the formal RFI process can prevent the perception of vendor bias.

## **Acquisition Planning**

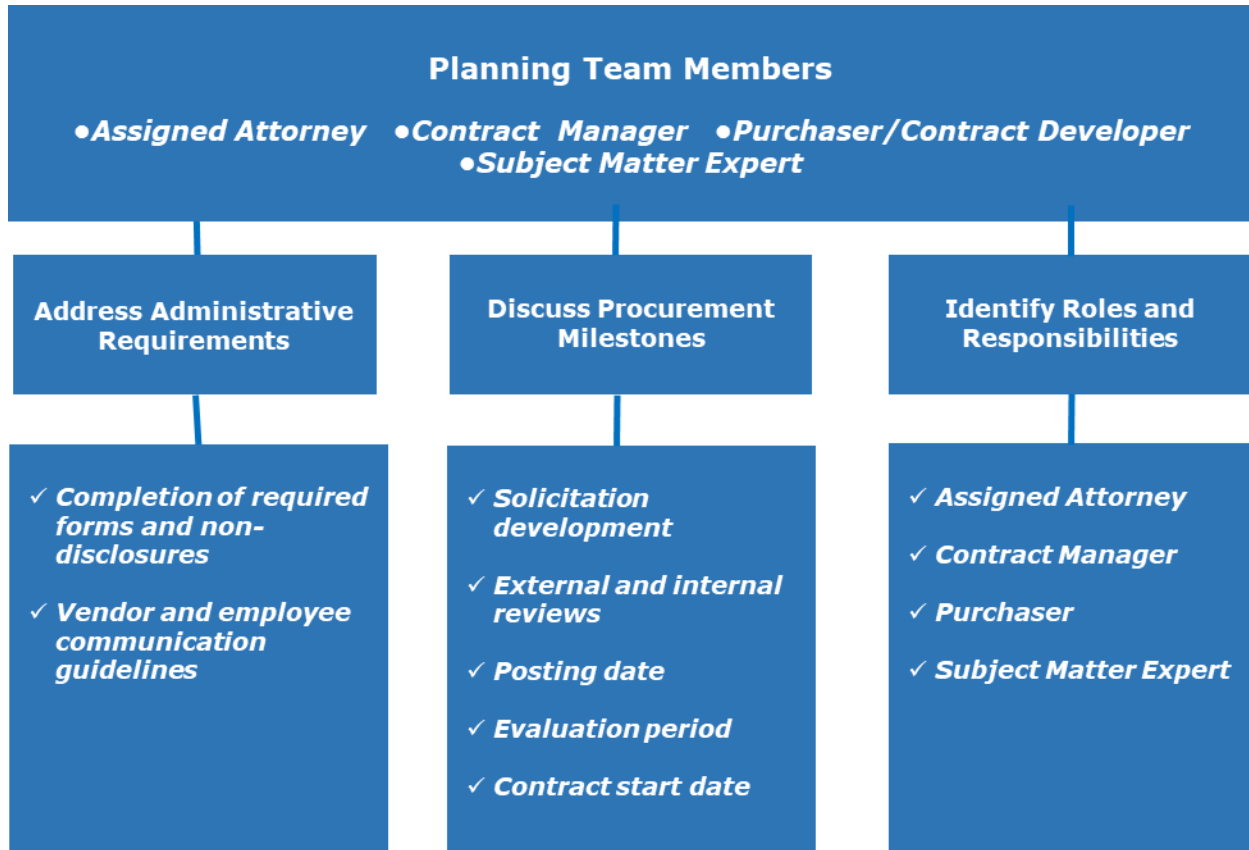
The anticipated contract start date generally determines the timeline for completing the procurement. The purchaser or contract developer, in collaboration with key stakeholders, establishes the planning approach for procurements with a value under \$100,000. For example, the purchaser/contract developer may choose to hold a formal planning meeting or informally discuss the procurement process with stakeholders.

### **Complex Procurement Planning**

PCO considers procurements of \$100,000 or more complex procurements, requiring a formal acquisition planning process. Complex procurements generally require a planning team and an acquisition plan, in accordance with the *Acquisition Planning Policy*.

While each solicitation is unique, membership for a planning team is illustrated in Figure 3: Acquisition Planning Meeting.

**Figure 3: Acquisition Planning Meeting**



The team meets to discuss the procurement process and develop the Acquisition Plan which addresses the following:

- the business need for the procurement;
- the procurement roles for the team members;
- the timeline for procurement milestones;
- the procurement risk and management approach; and
- the solicitation posting and reporting requirements.

The development of the acquisition plan ensures that more complex procurements are sufficiently planned, and roles and responsibilities are clearly defined.

### Complex Procurement Risk Assessment

The National Institute of Governmental Purchasing (NIGP) defines Risk Management as:

*"A process including the identification and analysis of risk, and the decision to either accept, or mitigate the exposure to such risk when compared to the potential impact on the achievement of the organization's objectives."*<sup>9</sup>

The OAG has a comprehensive approach to risk assessment and management in compliance with the required purchasing accountability and risk analysis procedure.<sup>10</sup> In accordance with the *Procurement Risk Assessment Policy*, procurement risk is assessed as part of the acquisition planning process.

The procurement risk assessment identifies the following:

- the potential risks based on risk factors;
- the level of risk;
- the risk management approach; and
- the staff tasked with managing the risk.

This process then informs the contract risk assessment process. Identifying and managing risks in the early stages of the procurement can avert negative impacts and ensure timely contract execution. This comprehensive approach to risk assessment and management provides the OAG with the best defense against unintended consequences.

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<sup>9</sup> The National Institute of Governmental Purchasing retrieved from: <http://www.nigp.org/>.

<sup>10</sup> TEX. GOV'T. CODE § 2261.256 retrieved from: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2261.htm#2261.256>.

# Chapter 3 - Procurement Method Determination

## Procurement Method Requirements

The purchaser is required to make the procurement method determination. The following factors are used in in making the determination:

- best value;<sup>11</sup>
- state law and rules;
- type of good or service; and
- value of the procurement.

In some cases, the type and value of the procurement determines the purchasing authority delegated to state agencies. In other cases, purchasing authority above certain thresholds must be approved through a delegation request. The delegated and non-delegated purchasing thresholds are identified in Table 1: Purchasing Authority. The purchaser is responsible for determining the need for a request for delegation.

The *CPA Guide* provides a detailed procurement method identification process to assist the purchaser.

### Non-delegated Procurement Methods

The CPA State Procurement Division (SPD) manages an online procurement system for the purchase of goods and services known as Texas SmartBuy.<sup>12</sup> This web-based system allows agencies to procure non-IT goods and services through existing contracts that have been competitively procured.

The state also creates contracts, referred to as cooperative, set-aside and term contracts, as non-delegated procurement methods to ensure best value and improve procurement efficiency. These established contracts are managed by the CPA, DIR and the Texas Workforce Commission (TWC) and are required to be used by state agencies, with limited exceptions. The state contracts most commonly used at the OAG include:

- DIR contracts;
- set-aside contracts;

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<sup>11</sup> Pursuant to TEX. GOV'T. CODE § 2156.007, the commission or other state agency making a purchase shall award a contract to the bidder offering the best value for the state while conforming to the specifications required.

<sup>12</sup> Texas SmartBuy retrieved from: <http://www.txsmartbuy.com/>.



- term contracts; and
- travel service contracts.

The *CPA Guide* provides detailed descriptions of the state contracts, to include the circumstances for which exceptions or waivers are granted.

### Delegated Procurement Methods

State agencies are delegated purchasing authority by the CPA for goods or services unavailable through established statewide contracts or are exempt from CPA or DIR purchasing authority. Potential purchases that exceed established delegation thresholds (as identified in Table 1: Purchasing Authority) are required to be reviewed and approved for CPA delegation.

The CPA delegation and review process for solicitations is described in Chapter 4 - Solicitation Development.

For informal purchases, there are various purchase methods available. The purchaser, in collaboration with the requestor, leads the process of determining the procurement method. In addition to state requirements and the availability of established contracts, other factors that can impact the procurement method include:

- frequency and duration of need;
- purchase amount;
- requirements or specifications; and
- type of goods or services.

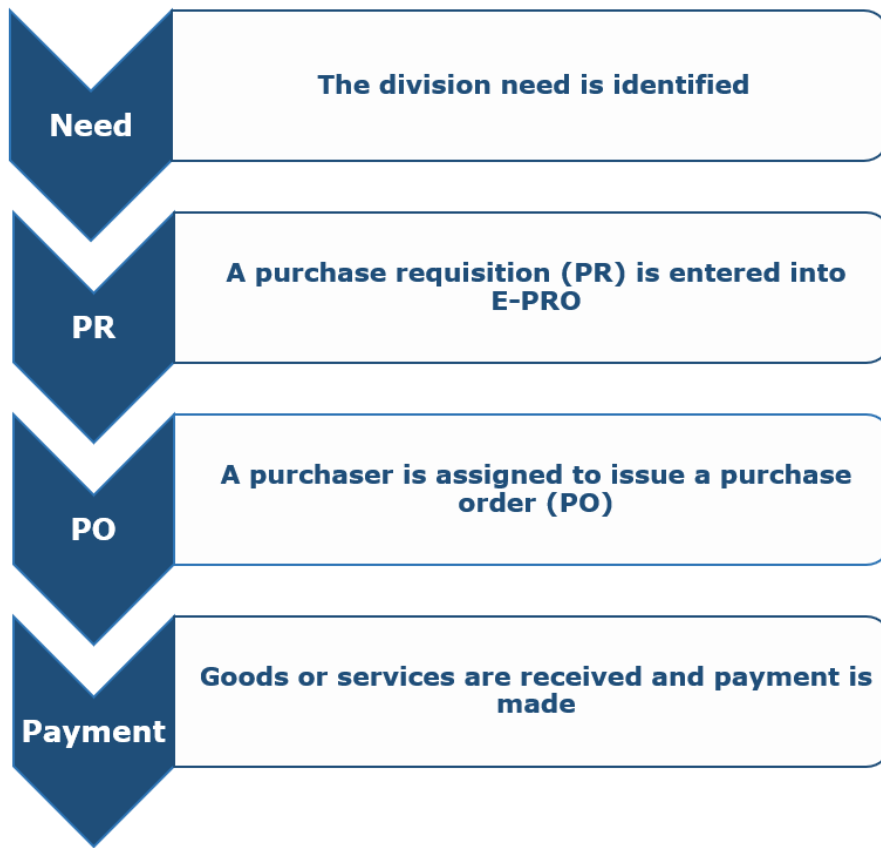
The most common solicitation methods for informal procurements are described below.

### Spot Purchases

The “spot purchase” is a delegated non-competitive method used to purchase goods or services that do not exceed \$5,000. This method is frequently used to procure items to support general business functions. The purchaser checks the established statewide contracts to determine availability of the goods or services. In addition, while not required for spot purchases, the purchaser is encouraged to identify Historically Underutilized Businesses (HUBs) that can provide the goods or services.

The general requisition process for spot purchases is illustrated in Figure 4: E-PRO Purchase Process.

**Figure 4: E-PRO Purchase Process**



### Competitive Purchasing Methods

Competitive purchasing methods are generally required when the purchase exceeds \$5,000.<sup>13</sup> The methods used for these purchases may require a formal or informal procurement process depending on the purchase amount. For example, if the purchase is over \$25,000 the CPA requires the use of a formal competitive purchasing process. In addition, an open market solicitation method, is required for competitive solicitations. This method ensures maximum competition by soliciting responses from all available vendors.

Table 3: Open Market Solicitations, describes the type and purpose of the open market solicitation methods commonly used at the OAG.

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<sup>13</sup> The *CPA Guide* requires that emergency procurements be as competitive as possible under the circumstances.

**Table 3: Open Market Solicitations**

Type	Purpose	Example
<b>Blanket Purchase Order</b>	Used when there is an on-going need, but need is determined on an "as needed" basis.	Court reporting services
<b>Invitation for Bids (IFB)</b>	Used for the purchase of goods and services when the focus is on pricing. Negotiations are NOT permitted unless one qualified response is received.	Conference planning services
<b>Request for Offers (RFO)</b>	Used for automated information systems/ telecommunications goods and services.	Electronic filing services to support the legal function
<b>Request for Proposals (RFP)</b>	Used for the purchase of goods or services. Negotiations and best and final offer are permitted.	Professional services
<b>Standing Purchase Order</b>	Used when there is an on-going need, and quantities and delivery times are known or pre-determined.	Paper for general business needs

**Special Purchases**

There are special types of purchases that may not require the competitive process. These purchases can also require certain approvals, inter-agency collaboration, notification requirements, and reporting. These additional requirements are designed to ensure best value, efficiency, and transparency. Examples of special purchases commonly used at the OAG include:

- automated information systems/telecommunications;
- emergency purchase;
- interagency purchase;
- internal repair;
- professional services; and
- proprietary purchase.

To avoid any delays in contract formation and award, the additional requirements for these special purchases should be identified during the planning phase of the procurement. The *CPA Guide* provides detailed instructions for ensuring compliance with special purchases.

## Chapter 4 - Solicitation Development

### Formal Solicitation Development Process

Formal solicitation development is a more complex process that includes key stakeholders and is led by the purchaser/contract developer. For purposes of this *Handbook*, solicitation development and contract management are addressed for the most common formal competitive procurement methods used at the OAG which include the IFB, RFO, and RFP methods. The procedures for completing informal purchases will be detailed in the PCO *Purchasing Procedures* document to be located on the OAG intranet.

The formal solicitation development process is required for solicitations for delegated goods or services with a value over \$25,000. Upon receipt of the purchase requisition (PR), the purchaser/contract developer generally begins the solicitation development process by consulting with the key stakeholders. This process generally includes the following staff:

- assigned attorney;
- contract manager;
- HUB Coordinator<sup>14</sup>;
- purchaser/contract developer; and
- SMEs.

The complexity and or value of the procurement may necessitate the involvement of other stakeholders to include OAG leadership. The purchaser/contract developer consults with the requestor and appropriate management (e.g., PCO leadership) to determine the need for additional stakeholder involvement.

### Solicitation Development

#### Affirmations, Certifications, and Clauses

The OAG requires that solicitation documents contain certain mandatory affirmations, certifications, and clauses, to comply with law, as well as mitigate risk to the agency, as referenced in the *Essential Contract Provisions Policy*. During solicitation development, the purchaser/contract developer and the assigned attorney collaborate to ensure the solicitation document includes all the necessary provisions. In some cases, the division

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<sup>14</sup> The HUB Coordinator should be included if the potential contract will have an expected value of \$100,000 or more.

may have additional provisions that are incorporated into the solicitation document.

### Scope of Work

The development of the solicitation scope of work (“*scope*”), with the goods specifications or services requirements, defines the OAG purchasing intent. The staff submitting the requisition in collaboration with the division-level SMEs, provide the initial scope.

Scope development requires collaboration with the planning team, to ensure the procurement business need is clearly defined. The purchaser/contract developer also ensures it is clearly written so respondents have the information necessary to prepare a competitive and responsive proposal.

There are various elements that are typically included in the scope, depending on the purpose of the procurement. **Table 4: Scope of Work Elements** provides examples for goods or services solicitation development.

**Table 4: Scope of Work Elements**

Goods	Services
<b>Agency Specifications</b> - The detailed specifications required for the purchase.	<b>Budget or Price List</b> - The price of the services to be procured.
<b>Delivery Date and Instructions</b> - The detailed instructions for how the goods are to be delivered.	<b>Performance Measures</b> - The quantified requirements of services, often with performance remedies attached.
<b>Maintenance Requirements</b> - The requirements for the maintenance of the goods to be procured.	<b>Respondent Eligibility</b> - The criteria that identifies which vendors are eligible to respond to the solicitation.
<b>Number of Units</b> - The number of units to be procured.	<b>Service Area</b> - The geographic area for services, which may include zip code, city, county, region, or state.
<b>Price List</b> - The price of the goods to be procured.	<b>Services Description</b> - The description of the services required, to include target population.
<b>Warranty Information</b> - The description of any warranties that apply to the purchase.	<b>Project Plan</b> - The proposed plan for implementing the solicitation scope.

The purchaser/contract developer collaborates with the planning team in determining the appropriate scope elements. In some cases, under existing state contracts, certain product specifications are already defined, and are referred to as Texas Specifications. These specifications identify minimum quality requirements and are maintained by the CPA in a Specifications Library, available at <https://comptroller.texas.gov/>. Ensuring adequate time for scope development is critical to ensure the procurement is not delayed.

### Best Value

The development of the solicitation scope must include best value criteria, as the primary goal of state procurement is obtaining best value. Competitive procurements require that the solicitation document identify the factors other than cost that will be used to determine best value. These factors may include the following:

- cost of employee training;
- life-cycle costs;
- past vendor performance;
- vendor experience or demonstrated capability; and
- any other evaluation factors in the solicitation.<sup>15</sup>

The purchaser/contract developer works with division staff and the assigned attorney to ensure the best value criteria comply with state requirements and support the OAG business need.

### Evaluation Criteria

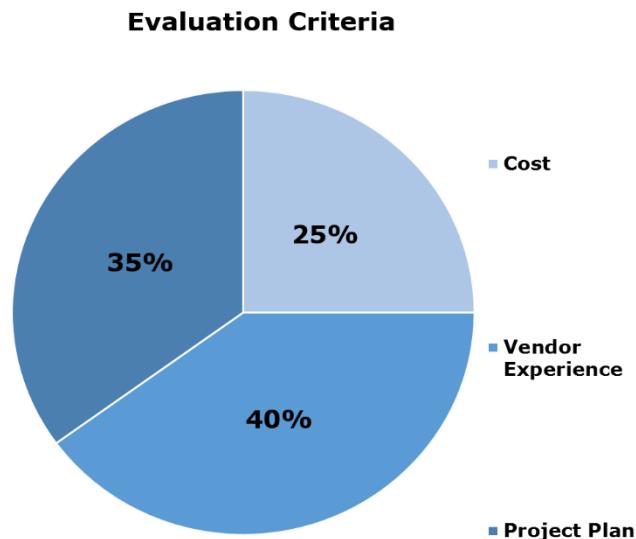
Related to best value, evaluation criteria identify the factors that will be used to evaluate responses and must be included in the solicitation document.<sup>16</sup> In addition, the *CPA Guide* requires that the criteria must include weights, or a quantitative value. Figure 5: Evaluation Criteria, provides an example of weighted evaluation criteria.

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<sup>15</sup> TEX. GOV'T. CODE § 2155.074 retrieved from: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2155.htm#2155.074>.

<sup>16</sup> TEX. GOV'T. CODE § 2155.075 retrieved from: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2155.htm#2155.075>.

**Figure 5: Evaluation Criteria**



Vendors should know how their responses are going to be evaluated, so they can appropriately plan and determine the level of effort needed to prepare a competitive response. For example, if a potential respondent knows that cost is weighted higher than other criteria, they may want to ensure that more time is devoted to preparing this portion of their response. Clearly stated evaluation criteria improves the likelihood that responsive proposals are received.

### **External and Internal Solicitation Reviews**

In addition to OAG management and legal reviews, in some cases, additional reviews are required. The Contract Advisory Team (CAT) external review and HUB internal review requirements are described below.

#### **Contract Advisory Team Review**

The CAT assists state agencies in improving contract management practices by reviewing and making recommendations on certain solicitation and contract documents. As previously noted, the CPA reviews purchases at certain thresholds for delegation approval. As part of this process, the solicitation document is reviewed by CAT when the solicitation exceeds the delegated monetary limits as follows:

- delegation review for a services solicitation with an estimated value over \$100,000; and
- delegation review of major contract solicitations with a value of \$5 million or more (including any renewals).

The CAT is required to review the initial solicitation document prior to posting on the ESBD. The review will determine if the CPA delegates the purchasing authority to the OAG, or whether the SPD will conduct the procurement. The CAT review also includes recommendations to the agency to improve the solicitation document.

The purchaser is responsible for submitting the solicitation document to CAT. The CAT also has responsibility for certain contract reviews, which are addressed in Chapter 6 – Contract Formation and Award. The CAT review submission instructions are available at <https://comptroller.texas.gov/>.

### HUB Review

The HUB program<sup>17</sup> was developed to ensure state agencies make a good faith effort to assist HUBs in receiving contract awards from the state. The CPA is the state agency designated to oversee the HUB program. State agencies with a biennial budget over \$10 million are required to appoint a HUB Coordinator.

In accordance with this requirement, the OAG HUB Coordinator is in the PCO. The HUB program requires the HUB Coordinator review solicitations, with potential contracts with an expected value of \$100,000<sup>18</sup> or more for probable subcontracting opportunities. These reviews are generally done when the solicitation scope of work is completed and may be discussed during the acquisition planning meeting. The *HUB Subcontracting Opportunities Determination Policy* identifies the purchaser and HUB Coordinator responsibilities in initiating and completing the review process.

## Solicitation Posting and Advertisement

The purchaser is responsible for posting the solicitation to the ESBD and must be registered as an authorized user by the CPA, to post solicitations.

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<sup>17</sup> TEX. GOV'T. CODE § 2161 retrieved from:

<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2161.htm#2161.061>

<sup>18</sup> The estimated contract value of \$100,000 includes all renewals and amendments, in accordance with the *Texas Procurement and Contract Management Guide*.



Responses are submitted directly to the OAG and submission instructions are found in the ESBD posting description or the solicitation document. The posting time for solicitations varies based on the purpose and complexity of the solicitation, and the solicitation timeline. Certain purchasing circumstances require posting periods as follows:

- fourteen calendar days is the minimum for all postings with the entire solicitation package, except for emergency purchases, as no minimum applies; and
- twenty-one calendar days is the minimum if the complete solicitation package cannot be posted at the same time.<sup>19</sup>

It is common practice for solicitations to be posted for thirty calendar days. The purchaser/contract developer, in collaboration with the planning team, determines the posting duration. As a best practice, more complex solicitations such as information technology (IT) projects may have a posting period of sixty days or longer. The ESBD portal is available at <http://www.txsmartbuy.com/sp>.

### Advertisement and Notification Methods

The Centralized Master Bidders List (CMBL) is used to notify vendors of solicitation opportunities. The CMBL is a master database used by Texas purchasing entities to develop a notification list for vendors to receive procurement notifications. Vendor notifications are targeted based on the products or services they can provide.<sup>20</sup>

The CPA manages the CMBL database which is organized based on the NIGP commodity book. Vendors are assigned NIGP codes that identify the products or services they can provide. Additional information on the required use of the CMBL is available at <https://www.comptroller.texas.gov/>.

In addition to the vendors found on the CMBL, the solicitation may be advertised to a supplemental list of vendors. This list is provided by OAG staff and is used to advertise to the broadest possible vendor pool, to increase the number of qualified responses. These notification and advertisement methods are executed from the E-PRO system or through email.

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<sup>19</sup> *Texas Procurement and Contract Management Guide* retrieved from: <https://comptroller.texas.gov/>.

<sup>20</sup> Texas Comptroller of Public Accounts retrieved from: <https://comptroller.texas.gov/purchasing/vendor/cmb/>.

## Solicitation Cancellation or Changes

During the posting period, there may be a need to amend or cancel the solicitation. This need can occur for several reasons to include:

- federal or state law change;
- funding source change;
- response deadline change;
- scope of work change; and
- solicitation document errors.

The addendum process is used to amend or cancel ESBD posted solicitations and some SOWs. The purchaser/contract developer is responsible for drafting addenda, obtaining any internal approvals, and posting to the ESBD or providing to vendors if solicitation was otherwise distributed.

## Vendor Conference

A vendor conference (e.g., pre-proposal conference) may be held for potential respondents to ask questions about the procurement. The solicitation document specifies the format (face-to-face meeting or by teleconference), whether it is mandatory or voluntary, and if notification of attendance is required.

The purchaser/contract developer facilitates the vendor conference and presentations by relevant staff which may include PCO staff, SMEs, and the HUB Coordinator. After the vendor conference, the purchaser/contract developer works with relevant staff to develop the final answers to any vendor questions and a purchaser posts the questions and OAG answers to the ESBD. The answers posted to the ESBD represent the official response to vendor questions.

# Chapter 5 – Vendor Selection

## Receipt and Screening Process

The PCO receives responses. The solicitation document provides submission instructions such as submission method(s), due date and time.

In some cases, a vendor may submit a bid by email or facsimile directly to the purchaser.<sup>21</sup> In addition, a telephone submission is allowed for an informal bid, but it is an uncommon submission method at the OAG. Regardless of the receipt method, responses are logged and kept secure in the same manner.

### Purchaser Review of Responses

At the designated opening time, the responses are distributed to the purchaser for screening. The purchaser screens the responses to determine if they have met the solicitation requirements and are qualified (e.g., responsive) to be evaluated. The time needed to screen can vary based on the number of responses received and the complexity of the solicitation.

Responses that are received late or that do not include a required HUB subcontracting plan<sup>22</sup> are automatically disqualified or deemed non-responsive. During the screening process, the purchaser may determine there are other omissions that disqualify or result in a non-responsive determination or require clarification from the vendor. Qualified responses move to the evaluation phase of the procurement.

### Stakeholder Notification

Upon completion of the screening process, the purchaser/contract developer notifies OAG stakeholders of the number of qualified responses. In the event there is only one qualified respondent, the purchaser/contract developer consults with PCO, project leadership, and the assigned attorney to determine if a non-competitive contract negotiation can be held. PCO staff may determine that it is in the best interest to re-procure. The decision to move forward with contract negotiations or a re-procurement is at the OAG's discretion.

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<sup>21</sup> Pursuant to 34 TEX. ADMIN. CODE § 20.207, bids by facsimile are not allowed except under exceptional circumstances and with the written approval of the purchasing agency prior to the bid due date and time.

<sup>22</sup> TEX. GOV'T. CODE § 2161.252 retrieved from:  
<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2161.htm>

## Evaluation Process

The purchaser/contract developer facilitates the evaluation process done by internal staff with the subject matter expertise to serve as evaluators. Based on the solicitation evaluation criteria, this process determines to what degree the responses met the solicitation requirements and offer the best value.

The number of evaluators is determined by the number of responses anticipated, and the evaluation expertise needed. Typically, the evaluation team is comprised of three to five staff and one or more alternate staff. In the event an evaluator cannot conduct or complete the evaluation, the alternate staff replaces the evaluator. To ensure conformity in the evaluation process, the purchaser/contract developer, develops the evaluation scoring tool.

### Evaluator Briefing

Evaluator briefings are provided for formal solicitations and is provided by the purchaser/contract developer, in collaboration with the planning team. The goal of the briefing is to ensure that evaluators understand the evaluation process, the importance of maintaining confidentiality and the need for conducting an impartial and fair evaluation.

Evaluator briefing generally takes place prior to the receipt of responses, or shortly thereafter. The evaluator briefing generally covers the following:

- completion of the evaluation tool;
- completion of required forms or non-disclosure agreements;
- confidentiality and conflict of interest;
- evaluation timeline; and
- safeguarding responses.

At completion of the evaluation briefing, and after the responsive proposals are identified, the purchaser/contract developer provides the evaluators access to the responses. In addition, the purchaser/contract developer provides the following documents to the evaluators:

- the solicitation document (e.g., RFP).
- any addenda to the solicitation; and
- the evaluation tool.

The time needed for the evaluation process varies based on the number of responses, and the complexity of the solicitation. During the evaluation process the purchaser/contract developer is the sole point of contact for questions or clarifications.

### Evaluation Results and Internal Approval

Upon receipt of the completed evaluation tools, the purchaser/contract developer compiles the evaluation results and determines if there are any outlier scores. If there are outlier scores, the purchaser/contract developer holds an outlier meeting with the evaluators to discuss the rationale for their individual scores. The purchaser/contract developer is responsible for ensuring that any score revisions are properly documented on the evaluator score sheets.

The purchaser/contract developer compiles the results and obtains management approval, as applicable. Upon approval, the evaluation score results are forwarded to relevant staff. Appropriate staff advises the purchaser on which respondents to invite to participate in discussions. After the respondents are identified, the purchaser/contract developer obtains approval to proceed with contract negotiations.

### Vendor Compliance Verifications

Upon approval of the EAM, the purchaser proceeds with required vendor compliance verifications. The CPA requires, prior to development of the contract, that certain reviews are completed to verify vendor good standing or eligibility for a state contract.

Any vendor who is not in good standing, as determined by the required compliance verifications, is ineligible to receive a contract award from the state. The purchaser ensures all the vendor verification information is filed in the procurement file, and that only eligible vendors move to the contract negotiation process.

**Appendix B: Vendor Compliance Verifications** provides a description of the required checks for determination of good standing.

## Chapter 6 – Contract Formation and Award

### Contract Negotiations

Upon completion of the vendor verifications, the purchaser/contract developer in collaboration with the planning team, leads the contract negotiation process. Contract negotiations are held in-person or by conference call. The staff that participate in contract negotiations are generally, the contract manager, purchaser/contract developer, and SMEs. The assigned attorney and the HUB coordinator may also be included. The content for contract negotiations is usually based on the vendor's response, and evaluation results.

The contract negotiation process helps staff assess whether the respondent can provide the goods or services as proposed. Clarifications initiated by the contract negotiations team or the vendor, are documented and responded to in writing by the purchaser/contract developer.

#### Best and Final Offer

Some procurement methods like the RFP, allow for the submission of a Best and Final Offer (BAFO) by the respondent. The BAFO is requested by the agency after negotiations are completed. The respondent submits their BAFO as the final proposal to provide the procurement scope of work. This process allows the agency to negotiate cost, which is not permitted under the IFB procurement method.<sup>23</sup> In the event negotiations are unsuccessful with the selected vendor(s), staff may proceed to negotiations with the next highest scoring vendor(s).

### Contract Development

The format for most contracts is generally the PO with attachments, since the E-PRO electronic procurement system is most often used for initiating a purchase. In some cases, the "four-corners" traditional contract format, is used as determined by division need. In most cases, the use of the PO creates efficiencies in development and execution that make it the frequently used format.

At the completion of the contract negotiation and vendor compliance verifications processes, the purchaser/contract developer leads the contract

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<sup>23</sup> In the event there is only one qualified respondent under the IFB method, negotiation of cost is permitted.

development process if a four-corners contract is developed. The purchaser/contract developer collaborates with the assigned attorney and contract manager to ensure the contract contains the statement of work, general terms and conditions or “boilerplate” terms and conditions, and any special conditions. OAG essential provisions are identified in the *Essential Contract Provisions Policy*. In addition, the *CPA Guide* includes a comprehensive list of essential and recommended clauses for contract formation.

### External and Internal Contract Approvals

Contract approvals are determined by the type and value of the contract, and the approving staff are identified in the *OAG Authorized Signature Matrix*. For example, a contract exceeding \$1 million requires the approval of executive leadership and an Executive Approval Memorandum (EAM). The PO contract approval process is built into the E-PRO system.

The contract cannot move forward, until required approvals are obtained. The four-corner contract requires a manual review and approval process, that occurs outside the E-PRO system.

In certain circumstances, not unlike the internal solicitation review requirements, inter-agency review is required for certain types of contracts. These review requirements help to ensure adequate project planning time to reduce the likelihood of unanticipated costs and delays. The primary external review requirements are described below.

#### *DIR Review*

The DIR is the state agency responsible for providing technology leadership, solutions, and best value to local and state governments for the procurement of IT commodities. State agencies must submit a contract statement of work (SOW), for the purchase of IT commodity items, with a value that exceeds \$50,000, for DIR review and approval.<sup>24</sup> IT purchases below the \$50,000 threshold may be directly awarded through DIR master contracts. DIR is required to review the draft SOW prior to the vendor receiving the contract.

DIR will review the SOW and approve or reject the submission. If rejected DIR will request modifications be made for re-submission. Upon approval of the SOW by DIR, the contract may be sent to the vendor for execution. Upon contract execution, the final SOW is sent to DIR for their signature.

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<sup>24</sup>Texas Procurement and Contract Management Guide retrieved from: <https://comptroller.texas.gov/>.

The DIR signature process is required prior to payment to the vendor. Following DIR signature, the contract is posted on the OAG website.

The SOW submission instructions are provided on the [DIR website](#) available at: <https://dir.texas.gov/>.

### *Quality Assurance Team Review*

The Quality Assurance Team (QAT) is an inter-agency team comprised of members from the CPA, DIR, and the Legislative Budget Board (LBB). The QAT is charged with reviewing Major Information Resources Projects (MIRPs) to ensure best value, recommend policies and procedures, and provide training to state procurement and contract management staff.<sup>25</sup> Agencies proposing expenditures for a MIRP submit for QAT review. The MIRP policy is located on the [OAG sharedrive](#).

The duties of the Quality Assurance Team include:

- recommendation of policies and procedures to improve return on investment (ROI);
- review of the business case for the MIRP;
- review of certain contract amendment cost-benefit analyses;
- recommendations on contract terms for a MIRP with a value of at least \$10 million; and
- a report to the Governor.<sup>26</sup>

## **Contract Risk Assessment**

The contract risk assessment is the second part of the Purchasing Accountability Risk Analysis procedure the OAG uses to assess risk. The contract manager is required to complete a contract risk assessment for contracts with a value of \$100,000 or more. The risk assessment is completed before contract formation, so that any special terms and conditions can be incorporated into the contract.

The contract risk assessment procedure is provided in **Appendix C: Purchasing Accountability and Risk Analysis Procedure**. The risk assessment includes standard criteria to determine risk and can be customized to include unique and complex contract criteria.

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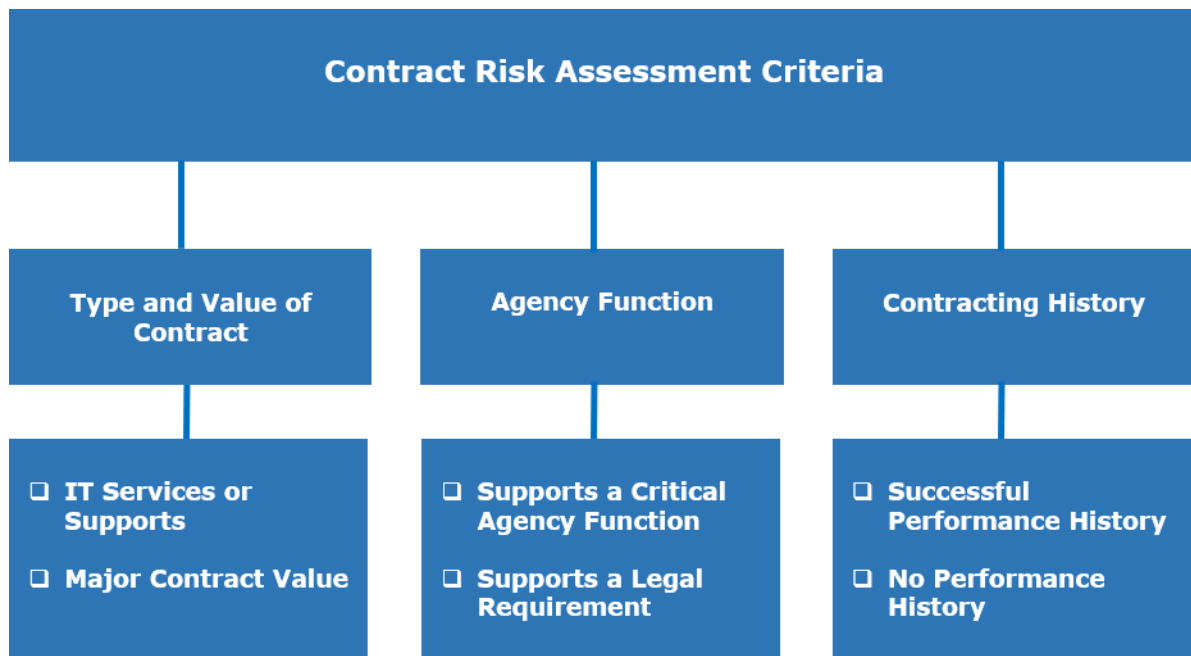
<sup>25</sup> TEX. GOV'T. CODE § 2054.158 retrieved from: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2054.htm#2054.158>.

<sup>26</sup> TEX. GOV'T. CODE, § 2054.158(b) retrieved from: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2054.htm>.



Diagram 6: Contract Risk Assessment Criteria, identifies key criteria used to assess contract risk.

**Diagram 6: Contract Risk Assessment Criteria**



Based on the contract risk assessment results, contracts may require risk management and enhanced contract monitoring plans. The process for developing these plans is addressed in Chapter 7 - Contract Management.

### **Special Contract Requirements**

Major contracts are defined as contracts with a value of at least \$1 million, and require additional approval, oversight, and reporting.<sup>27</sup> Similarly, there are special requirements for IT contracts which frequently meet the major contract definition and include the following:

<sup>27</sup> TEX. GOV'T. CODE, § 2262.001 retrieved from: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2262.htm>.

- automated information system/telecommunications;
- information resources technologies; and
- major information systems.

**Appendix E: Glossary of Key Terms**, defines these types of contracts. Table 5: Special Contract Requirements summarizes the key requirements, for special contracts commonly used at the OAG.

**Table 5: Special Contract Requirements**

<b>Contract Type</b>	<b>Requirements</b>
<b>Automated Information System/Telecommunications</b>	<ul style="list-style-type: none"> <li>• Use DIR contracts, unless an exemption is obtained</li> </ul>
<b>Contract Over \$5 Million</b>	<ul style="list-style-type: none"> <li>• CPA POD-CAT review</li> </ul>
<b>Major Contract</b>	<ul style="list-style-type: none"> <li>• OAG Contract Manager must be assigned</li> <li>• SAO Nepotism Disclosure form completed by purchasing personnel</li> <li>• Texas Ethics Commission form 1295, Certificate of Interested Parties completed by the contractor</li> </ul>
<b>Major Information Resources Project</b>	<ul style="list-style-type: none"> <li>• DIR architecture assessment</li> <li>• QAT notification and review</li> <li>• QAT receipt of project plans</li> </ul>
<b>Major Information Systems</b>	<ul style="list-style-type: none"> <li>• LBB notification</li> </ul>

## **Contract Execution**

The majority of OAG contracts are executed through E-PRO which allows for the quick development and execution of contracts. The features of E-PRO allow staff, to view the execution timeline and status. At the agency-level, E-PRO reporting gives a snapshot of progress to measure productivity and identify any approval or execution delays.

In some cases, it is necessary to execute contracts outside of E-PRO at the division level. In these cases, division-level procedures define the contract approval and execution processes.

Contracts executed outside of E-PRO may include:

- expert witness contracts;
- grants<sup>28</sup>; and
- interagency contracts.

The internal approval process for E-PRO contracts is determined by the value of the contract, what is being procured, and other factors. In some cases, an EAM is required, that is routed for signature outside of E-PRO. Regardless of the amount or type of purchase, the approval process is built into E-PRO for most contracts.

Upon approval of the contract in E-PRO, the purchaser completes the contract execution process and sends the PO to the vendor. In the event, the contractor needs clarifications or requests a change to the contract, the purchaser/contract developer collaborates with the relevant staff for clarifications or change approval.

## **Award Notifications and Posting**

The purchaser is responsible for completing award notification and posting requirements. In some cases, E-PRO automates some internal notifications. For example, the purchaser assigned to the PR to process the PO is automatically notified when the contract is executed.

The *PCO Purchasing Procedures* identify the circumstances requiring additional internal notifications, which may include the following staff:

- division SMEs;
- the contract manager;
- the HUB Coordinator; and
- the project manager.

There are various external contract award notification requirements depending on the type and value of the contract. The *Acquisition Planning Policy*, and related planning template identifies the posting and notification requirements, to include staff responsibilities.

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<sup>28</sup> Grants are managed in the Grants Administration Division (GAD), with exception of Child support grants. Child Support manages their grants (during solicitation, Strategic Sourcing works with GAD and then after award some are passed to CS Contract Management and others are co-managed).

## Post Award Processes

### Procurement Debriefing Process

Vendors that did not receive a contract award may request a procurement debriefing with PCO. Procurement debriefings are only done at the request of the unsuccessful vendor, and after awards are posted to the ESBD. The purpose of the vendor debriefing is to provide feedback on the strengths and weaknesses of their response. The briefing provides the vendor with information to inform future proposal submissions. The *Vendor Debriefing Policy* identifies the guidelines and staff roles for conducting the briefing.

### Vendor Protest Process

The vendor protest process applies to actual or prospective bidder, offeror, proposer, or contractor aggrieved in connection with a solicitation, evaluation or award of a contract by the OAG.<sup>29</sup> The TAC procedures for responding to vendor protests includes the following:

- filing of protest;
- OAG staff roles;
- review of protest determination;
- appeal;
- failure to file timely;
- status of procurement during protest and appeal; and
- standards for maintaining documentation.

The *Vendor Protest Procedures* define staff roles for the receipt and response to vendor protests.

### Procurement File Documentation

The purchaser is responsible for ensuring the required documentation is in the procurement file. The procurement file serves as the official record of the procurement process. In the event of an audit, or an open records request, this file is used to respond to requests for information. Upon completion of the procurement process, the purchaser ensures the file is complete, in compliance with policy and procedure.

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<sup>29</sup> 69 TAC ADMIN CODE § 69.2 retrieved from:  
[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=2&ti=1](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=2&ti=1)

## Re-Procurement Planning

The process for planning for a new procurement is initiated by the division staff in collaboration PCO staff. The planning time for a new procurement can vary, but generally the development of a new formal solicitation document takes three to nine months. As such, procurement planning is initiated prior to the last contract renewal.

## Chapter 7 – Contract Management

### Contract Management Function

The PCO contract management function is centralized in the Contract Operations Section (COS).<sup>30</sup> This section is responsible for managing certain administrative and legal contracts that support OAG infrastructure, IT, and legal and law enforcement functions. In addition, contract management functions in Child Support are centralized within the CS-Contract Operations Division.

Contract management staff work closely with the purchaser/contract developer from procurement planning through contract award. Upon contract award, contract managers are responsible for contract management through contract close-out.

The contract manager is responsible for the following core contract development and management functions:

- contract planning;
- contract management; and
- contract close-out.

### Contract Planning

Contract planning activities include the contract manager to ensure contracting requirements are addressed in the beginning of the acquisition planning process. The primary planning responsibilities of the contract manager include:

- participation in identification of need;
- development of the solicitation scope;

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<sup>30</sup> The Child Support Division has a separate contract operations function to support the division.

- identification of contract risk;
- participation in contract negotiation; and
- contract development.

The *Acquisition Planning Policy* and related template identifies the responsibilities of both the contract manager and purchaser/contract developer for contract planning.

### *Contract Management*

The goal of contract management is to ensure that OAG receives the goods or services procured, in compliance with the terms and conditions of the contract. Contract management is formalized through the development of a Contract Management Plan (CMP) at the beginning of the contract term. The plan is monitored regularly to ensure compliance with contract terms and conditions, manage risk, and assess vendor performance. The CMP includes core monitoring activities to ensure compliance with contract terms and conditions.

The contract manager works closely with division staff and management in addressing contract management issues. For example, a contractor who submits incorrect invoices to division staff, may need technical assistance or additional monitoring on invoicing.

### *Change Management*

Contract change management, or the contract amendment process, is executed in the E-PRO system for most contracts. For contracts external to E-PRO, the amendment process is completed by the contract manager, in compliance with division procedures. The E-PRO amendment process is executed through a PO change notice (POCN) or PR change notice (PRCN). The contract manager works closely with the purchaser and stakeholders in preparing and completing the amendment.

The contract manager also ensures any external review or submissions are completed. For example, the submission of an amendment cost-benefit analysis to the QAT is required for certain major contracts.

### *Risk Management*

The contract risk assessment results identify risk and the activities that will be implemented to mitigate and manage risk. Based on the risk assessment

rating, the contract manager identifies the approach and activities for risk management, to include enhanced contract monitoring activities.

Those contracts assessed as high-risk are prioritized for targeted technical assistance and are required to have a risk management plan. The risk management plan identifies enhanced contract monitoring activities and staff responsibilities in implementing the plan. Contractors requiring enhanced contract monitoring are reported to OAG leadership, as required by the *Purchasing Accountability and Risk Analysis Procedure*.

The risk management process is managed by the contract manager in collaboration with SMEs, and appropriate division leadership.

### *Invoice Review and Payment*

The process for invoice review and approval can vary among divisions and is identified at the beginning of the contract term. The contract management plan requires a monthly review of invoices. Invoice review may be completed prior to payment and after payment depending on the type and complexity of the contract. In addition, more frequent invoice review may be required based on previous performance or invoicing errors.

For some contracts, invoice review and approval may involve SMEs, and other division staff. For example, division legal staff review invoices for court reporting services for payment approval.

Upon invoice approval, payment is made in accordance with OAG accounting procedures.

### *Expenditure Review*

Expenditures reviews are completed regularly. E-PRO provides real-time expenditure reports that can show invoice submission and completion dates, invoice amounts, and any invoicing gaps. The contract manager is responsible for gathering expenditure data for contracts outside of E-PRO. The reviews identify any under-spending or over-spending trends, that may indicate compliance or funding issues.

In addition to monitoring contractor compliance, these reviews help to inform future funding allocations, and re-procurement planning. Significant spending variances are communicated to internal stakeholders and management.

## Vendor Performance Review

The contract manager is responsible for reviewing vendor performance monthly. Contract performance measures define the requirements for vendor performance. The diversity of OAG contracts requires the use of a variety of performance measures. For example, IT projects typically include a schedule of deliverables, while legal support services contracts include efficiency measures.

The goods or services purchased and the complexity of the contract statement of work determines the type of contract performance measures used. Table 6: Contract Performance Measures provides examples of measures used for OAG contracts.

**Table 6: Contract Performance Measures**

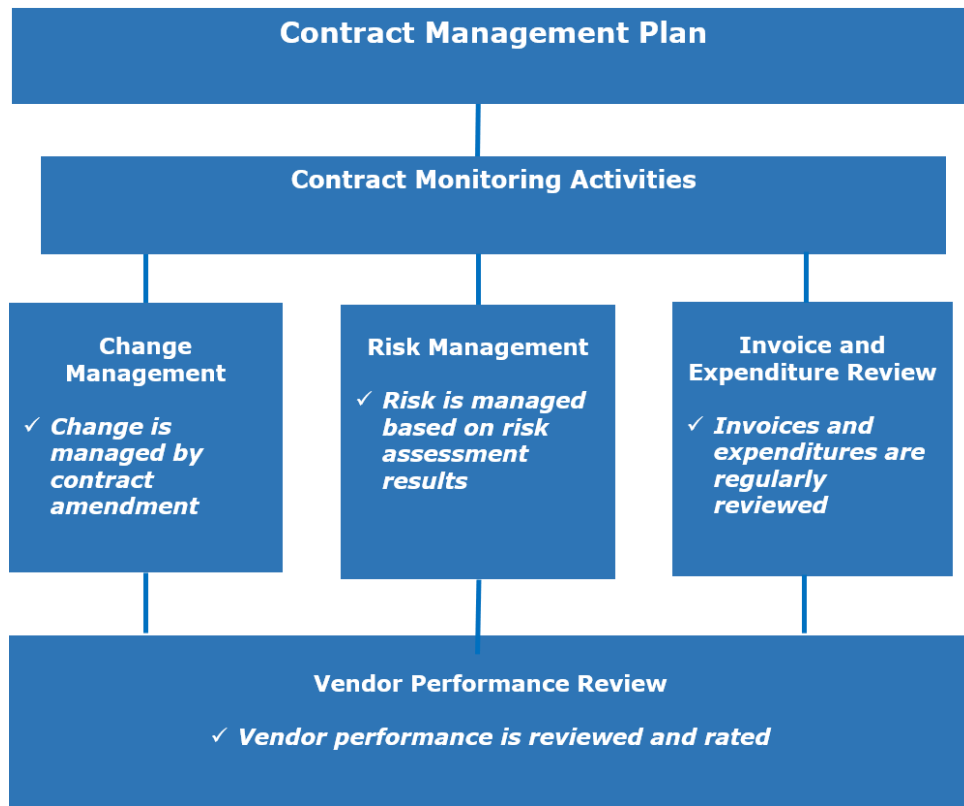
Type of Performance Measures	Example
<b>Deliverable</b> - The product for a project which may include a report, service, or software.	Contractor will deliver a <b>cybersecurity assessment report</b> within 90 days of contract execution.
<b>Efficiency</b> - The period for the delivery of a good or service, which may include minutes, hours, days, or months.	Contractor will deliver ordered documents <b>within 10 business days.</b>
<b>Output</b> - The quantity of goods or services.	Contractor will ensure <b>5 documents</b> can be attached to emergency notification communications.
<b>Outcome</b> - The impact of goods or services.	Contractor will provide training and show an <b>80% increase in knowledge</b> based on a training evaluation.

Performance measures may be monitored using a variety of methods to include required reporting, project plans, and stakeholder input. Based on performance monitoring, the contract manager provides a monthly rating of vendor performance. This rating informs the CPA required vendor performance reporting completed at the end of the contract term.

Diagram 7: Contract Monitoring Activities illustrates the core monitoring activities.



## Diagram 7: Contract Monitoring Activities



## Special Contract Management Requirements

### HUB HSP Requirements

As part of monitoring of the HSP, contractors are required to submit Progress Assessment Reports (PARs) and revised HSPs to the HUB Coordinator. The contract manager coordinates the receipt of these documents at the beginning of the contract term.

The HUB Coordinator is responsible for reviewing the reports and revised HSPs and providing technical assistance to contractors.

### Major Information Resources Projects

As noted in Chapter 6 – Contract Formation and Award, the QAT is charged with certain duties for MIRP contracts.

The QAT is also charged with monitoring and reporting on MIRP performance indicators to include:

- schedule;
- cost;
- scope; and
- quality.<sup>31</sup>

The contract manager collaborates with division SMEs to ensure compliance with QAT requirements. More information on the QAT review process is available at <http://qat.state.tx.us/>.

## **Vendor Performance Reporting**

The CPA provides a tracking system for state agencies to report vendor performance for certain purchases.<sup>32</sup> The Vendor Performance Tracking System (VPTS) is the CPA portal used for reporting vendor performance.

The PCO is responsible for submitting agency reports to the CPA. PCO staff work closely with OAG divisions to provide technical assistance on report preparation and submission.

The *Vendor Performance Reporting Policy* identifies the reporting requirements to include the following:

- applicable purchases;
- OAG legal review;
- rule and statutory references;
- reporting format; and
- staff responsibilities.

More information on the vendor performance reporting requirement is available at <https://www.comptroller.texas.gov/>.

## **Contract Close-out**

### **Contract Termination**

Contract termination occurs when the contract ends prior to the scheduled end of term. The reasons for early termination may include:

- Termination for cause (e.g., breach of contract);

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<sup>31</sup> TEX. GOV'T. CODE § 2054.159 retrieved from: <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2054.htm#2054.158>.

<sup>32</sup> TEX. GOV'T. CODE § 2262.055 retrieved from: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2262.htm>.

- loss of funding;
- project completion;
- services are no longer needed;
- termination for convenience; and
- vendor performance.

The contract terms and conditions describe the reasons and notification requires for early terminations. Staff are required to consult with PCO leadership and legal for contract terminations. The *CPA Guide* provides a detailed description of the types of contract termination.

The contract close-out process is completed at contract termination or the end of the contract term. The close-out process ensures the contract file, includes all required documentation. The contract manager is responsible for the following close-out activities:

- expenditures and invoice reconciliation;
- records retention determination;
- risk management documentation and resolution;
- vendor performance rating and reporting; and
- verification of receipt of good or services.

The contract manager completes the contract closeout process, in compliance with PCO procedure.

### [Contract Management File Documentation](#)

The contract manager is responsible for ensuring the required documentation is in the contract file. The contract management file serves as the official record of the contracting process. In the event of an audit, or an open records request, this file is used to respond to requests for information. At the end of the contract term, the contract manager ensures the file is complete, in compliance with policy and procedure.

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## Appendix A: Procurement and Contracting Best Practices

Content	Source
<i>Best Practices in Service Contracting for State and Local Government Agencies</i>	National Contract Management Association, Journal of Contract Management, 2009, available at:  <a href="https://www.ncmahq.org/">https://www.ncmahq.org/</a> .
<i>State of Texas, Procurement and Contract Management Guide</i>	Comptroller of Public Accounts, Procurement and Contract Management Guide, 2019, available at:  <a href="https://comptroller.texas.gov/purchasing/docs/96-1809.pdf">https://comptroller.texas.gov/purchasing/docs/96-1809.pdf</a>
<i>The Contract Management Standard</i>	National Contract Management Association, available at:  <a href="https://www.ncmahq.org/standards-certification/contract-management-standard">https://www.ncmahq.org/standards-certification/contract-management-standard</a> .
<i>Global Best Practices</i>	National Institute of Governmental Procurement, available at:  <a href="https://www.nigp.org/home/find-procurement-resources/guidance/global-best-practices">https://www.nigp.org/home/find-procurement-resources/guidance/global-best-practices</a> .
<i>NASPO Contract Administration Best Practices Guide</i>	National Association of State Procurement Officers, available at:  <a href="https://www.naspo.org/ContractAdministrationBestPractices">https://www.naspo.org/ContractAdministrationBestPractices</a> .
<i>NASPO Tech Next Series: The Internet of Things</i>	National Association of State Procurement Officers, available at:  <a href="https://www.naspo.org/Publications/ArtMID/8806/ArticleID/4525">https://www.naspo.org/Publications/ArtMID/8806/ArticleID/4525</a> .
<i>Public Procurement Benchmark, 2019 Survey Report</i>	National Institute of Governmental Procurement, available at:  <a href="https://www.nigp.org/home/find-procurement-resources/guidance/research-reports">https://www.nigp.org/home/find-procurement-resources/guidance/research-reports</a> .

## Appendix B: Vendor Compliance Verifications

Verification Purpose	Verification Process
<p><b>Boycott Israel Check</b> - Confirms that the vendor does not and will not boycott Israel.</p>	<p>Check the divestment lists (maintained by the Texas Safekeeping and Trust Company) and posted at the CPA website, available at:</p> <p><a href="https://comptroller.texas.gov/purchasing/publications/divestment.php">https://comptroller.texas.gov/purchasing/publications/divestment.php</a>.</p>
<p><b>Debarment Check</b> - Confirms the vendor has not been debarred by the CPA.</p>	<p>Check the debarred vendor list posted on the CPA website, available at:</p> <p><a href="https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/debarred-vendors.php">https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/debarred-vendors.php</a>.</p>
<p><b>Franchise Tax Check</b> - Confirms whether the vendor has the right to transact business in Texas.</p>	<p>Check the CPA Tax Policy Division website, available at:</p> <p><a href="https://comptroller.texas.gov/taxes/franchise/">https://comptroller.texas.gov/taxes/franchise/</a>.</p>
<p><b>Iran, Sudan, &amp; Foreign Terrorist Organization Check</b> - Confirms the vendor does not do business with a foreign terrorist organization.</p>	<p>Check the divestment lists (maintained by the Texas Safekeeping and Trust Company) and posted at the CPA website, available at:</p> <p><a href="https://comptroller.texas.gov/purchasing/publications/divestment.php">https://comptroller.texas.gov/purchasing/publications/divestment.php</a>.</p>
<p><b>Secretary of State - Legal Operation Check</b> - Confirms whether the vendor is legally operating in Texas.</p>	<p>Check the Secretary of State website available at:</p> <p><a href="http://www.sos.state.tx.us/">http://www.sos.state.tx.us/</a>.</p>
<p><b>System for Award Management (SAM) Check</b> - Confirms whether the vendor is excluded from a federal contract or grant.</p>	<p>Check the System for Award Management (SAM) website, available at:</p> <p><a href="https://www.sam.gov/portal/SAM/#1">https://www.sam.gov/portal/SAM/#1</a>.</p>
<p><b>Warrant/Payment Hold Check</b> - Confirms whether the vendor is on warrant/payment hold for an outstanding debt.</p>	<p>Check the CPA Statewide Fiscal Services Division website available at:</p> <p><a href="https://fmx.cpa.texas.gov/fmx/payment/index.php">https://fmx.cpa.texas.gov/fmx/payment/index.php</a>.</p>

## **Appendix C: Purchasing Accountability and Risk Analysis Procedure**

*This procedure must be followed for procurements and contracts with a value of \$100,000 or more, to determine procurement and contracting risk.<sup>33</sup> This procedure complies with the purchasing accountability and risk analysis requirement in TEX.GOV'T CODE § 2261.256.*

### **Procurement Risk Assessment**

1. The purchaser during the acquisition planning process, determines whether the solicitation has a value of \$100,000 or more.
2. If the solicitation has a value of \$100,000 or more the purchaser follows the Acquisition Planning and Procurement Risk Assessment policies to complete the acquisition plan and procurement risk assessment.
3. At the end of the solicitation, the purchaser forwards the acquisition plan and procurement risk assessment to the assigned contract manager. The purchaser retains the plan and risk assessment in the procurement file.

### **Contract Risk Assessment**

1. If a contract has a value of \$100,000<sup>34</sup> or more, the contract manager completes a contract risk assessment for each contract awarded under the procurement.<sup>35</sup>
2. The contract manager informs relevant stakeholders of the results of the contract risk assessment, in accordance with the contract risk assessment procedure/template.
3. The contract manager adds the contract risk assessment to the procurement risk assessment procedure/ template (if applicable) and retains the documents in the contract file.

### **Staff Resources**

Procurement and Contracting Policies and Procedures are provided on the OAG intranet: <https://intranet.oag.state.tx.us/contract-oversight-team>.

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<sup>33</sup> The instructions for managing procurement and contracting risk, to include enhanced monitoring, are provided in the risk assessment procedure/template.

<sup>34</sup> The value refers to the initial contract term for the contract risk assessment.

<sup>35</sup> Contract risk assessments may be completed for other contracts, at the discretion of PCO leadership.

## Appendix D: Acronym Key

Acronym	Meaning
<b>BAFO</b>	Best and Final Offer
<b>CAT</b>	Contract Advisory Team
<b>CATRAD</b>	Contract Advisory Team-Review and Delegation
<b>CMBL</b>	Central Master Bidders List
<b>COS</b>	Contract Operations Section
<b>COT</b>	Contract Oversight Team
<b>CPA</b>	Texas Comptroller of Public Accounts
<b>CTCD</b>	Certified Texas Contract Developer
<b>CTCM</b>	Certified Texas Contract Manager
<b>CTP</b>	Certified Texas Purchaser
<b>CTPM</b>	Certified Texas Procurement Manager
<b>DIR</b>	Department of Information Resources
<b>EAM</b>	Executive Action Memo
<b>ESBD</b>	Electronic State Business Daily
<b>HUB</b>	Historically Underutilized Businesses
<b>HSP</b>	HUB Subcontracting Plan
<b>IFB</b>	Invitation for Bid
<b>LBB</b>	Legislative Budget Board
<b>MIRP</b>	Major Information Resources Project
<b>NIGP</b>	National Institute of Governmental Procurement
<b>OAG</b>	Office of the Attorney General
<b>OMR</b>	Open Market Requisition
<b>PCO</b>	Procurement and Contract Operations Division
<b>PO</b>	Purchase Order
<b>POCN</b>	Purchaser Order Change Notice
<b>PR</b>	Purchase Requisition
<b>RFI</b>	Request for Information
<b>RFO</b>	Request for Offers
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Qualifications
<b>QAT</b>	Quality Assurance Team
<b>SAM</b>	System for Award Management
<b>SME</b>	Subject Matter Expert



<b>SPD</b>	Statewide Procurement Division
<b>TAC</b>	Texas Administrative Code
<b>TXMAS</b>	Texas Multiple Award Schedule
<b>VPTS</b>	Vendor Performance Tracking System

## Appendix E: Glossary of Key Terms

**Amendment** - The written change to an executed contract.

**Contract Manager** - The assigned OAG staff responsible for management of one or more contract(s) from planning through contract close-out.

**Automated Information Systems/Telecommunications** - Services that include: computers and computer devices on which an information system is automated, including computer and computer devices that the CPA identifies in guidelines in consultation with DIR and pursuant to Texas Government Code, Chapter 2054 and rules adopted under that chapter; a service related to the automation of an information system, software(s) or computers; a telecommunications apparatus or device that serves a component of a voice, data, or video communications network for transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on the network, and services related to telecommunications services; for the department (DIR) as telecommunications provider for the state, includes any service provide by a telecommunications provider, as defined by Texas Government Code § 2157.001.

**Best and Final Offer (BAFO)** - A negotiation process used for RFPs or RFOs that allows the procuring agency, to request a final offer from one or more vendors.

**Best Value** - The factors to be considered in determining lower overall cost and value in making goods or services purchases as defined by Texas Government Code, § 2155.074 (non-information technology related) and Texas Government Code, § 2157.003 (information technology related).

**Certified Texas Contract Developer (CTCD)** - The purchasing certification issued by the CPA to staff who have successfully completed a training curriculum and passed a written qualifying examination. This certification replaces the CTPM certification.

**Certified Texas Contract Manager (CTCM)** - The contract management certification issued by the CPA to staff who have, successfully completed a training curriculum and passed a written qualifying examination. A state agency employee must be certified as a CTCM to engage in contract management activities on behalf of a state agency if the employee has the job title of "contract manager" or

“contract administration manager” or “contract technician”; performs contract management activities as fifty percent (50%) or more of their job activities; or manages any contract in excess of \$5,000,000.<sup>36</sup>

**Certified Texas Purchaser (CTP)** - The procurement certification issued by the CPA to staff who have the required experience, successfully completed a training curriculum, and passed a written qualifying examination.

**Certified Texas Procurement Manager (CTPM)** - The procurement manager certification issued by the CPA to staff who have the required experience, successfully completed a training curriculum, and passed a written qualifying examination.

**Consulting Services** - The service of studying or advising an agency under contract that does not involve the traditional relationship of employer and employee.<sup>37</sup>

**Contract** - A legally enforceable agreement between two or more parties.<sup>38</sup>

**Contract Advisory Team (CAT)** - The CPA team created to assist state agencies in improving contract management practices.<sup>39</sup>

**Contract Management** - The process of managing a contractor’s performance to ensure compliance with contract terms and conditions, from contract execution through contract close-out.

**Contract Manager** - The assigned OAG staff responsible for management of one or more contracts from planning through contract close-out.

**Contractor** - A business entity or individual that has a contract to provide goods or services to the State of Texas. The term may be used interchangeably with “vendor”.<sup>40</sup>

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<sup>36</sup> Texas Comptroller of Public Accounts retrieved from: <https://comptroller.texas.gov/purchasing/training/contract-manager/>.

<sup>37</sup> TEX. GOV'T. CODE § 2254.021 retrieved from: <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2254.htm>.

<sup>38</sup> *Texas Procurement and Contract Management Guide* retrieved from: <https://comptroller.texas.gov/>.

<sup>39</sup> TEX. GOV'T. CODE § 2262.101 retrieved from: <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2262.htm>.

<sup>40</sup> *Texas Procurement and Contract Management Guide* retrieved from: <https://comptroller.texas.gov/>.

**Contract Oversight Team (COT)** - The OAG internal working group charged with advising on procurement and contracting functions.

**Electronic State Business Daily (ESBD)** - The website for posting state solicitations that exceed \$25,000 in value.

**Emergency Procurement** - A situation requiring the state agency to make the procurement more quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state.<sup>41</sup>

**E-PRO** - The OAG electronic procurement system used to process and manage purchase requisitions.

**Goods** - The term describing supplies, materials or equipment.<sup>42</sup>

**Grant** - The method for awarding state or federal funding to local entities to implement program activities, OR federal or state funding allocated to a local or state government to award to local entities.

**Historically Underutilized Businesses (HUB)** - An entity with its principal place of business in the state as defined by Texas Government Code, Chapter 2161 and 34 TAC § 20.82.<sup>43</sup>

**HUB Subcontracting Plan (HSP)** - The required plan which is submitted with a solicitation response, when the contracting agency has determined that subcontracting opportunities are probable under the potential contract.

**Information Resources Technologies** - Data processing and telecommunications hardware, software, services, supplies, personnel, facility resources, maintenance, and training.<sup>44</sup>

**Invitation for Bids (IFB)** - The competitive solicitation method used to procure goods or services that is based on pricing. Negotiation of price is not permitted under this solicitation method, unless there is only one qualified vendor.

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<sup>41</sup> TEX. GOV'T. CODE § 20.25 retrieved from: <https://comptroller.texas.gov/>.

<sup>42</sup> TEX. GOV'T. CODE § 2155.001 retrieved from: <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2155.htm>.

<sup>43</sup> *Texas Procurement and Contract Management Guide* retrieved from: <https://comptroller.texas.gov/>.

<sup>44</sup> TEX. GOV'T. CODE § 2054.003 retrieved from: <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2054.htm>.

**Major Consulting Services Contract** - A consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000, or \$25,000 for an institution of higher education other than a public junior college.<sup>45</sup>

**Major Contract** - A contract with a value of at least \$1 million.<sup>46</sup>

**Major Information Resources Project (MIRP)** - An information resources technology project identified in a state agency's biennial operating plan whose development cost exceed \$5 million and that:

- (a) requires one year or longer to reach operations status;
- (b) involves more than one state agency; OR
- (c) substantially alters work methods of state agency personnel or the delivery of services to clients; and
- (d) any information resources technology project designated by the legislature in the General Appropriations Act as a major information resources project.<sup>47</sup>

**Major Information System** - A system that includes:

- (1) one or more computers that in the aggregate cost more than \$100,000;
- (2) a service related to computers, including computer software, that costs more than \$100,000; and
- (3) a telecommunications apparatus or device that serves as a voice, data, or video communications network for transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on the network and costs more than \$100,000.<sup>48</sup>

**Offer** - A proposal to contract with the State, submitted in response to an RFO.

**Procurement and Contract Operations Division** - The OAG division responsible for the implementation and management of the agency procurement and contracting function.

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<sup>45</sup> *Texas Procurement and Contract Management Guide* retrieved from: <https://comptroller.texas.gov/>.

<sup>46</sup> TEX.GOV'T CODE § 2262.001 retrieved from: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2262.htm#2262.001>.

<sup>47</sup> TEX. GOV'T. CODE § 2054.003 retrieved from: <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2054.htm>.

<sup>48</sup> *Texas Procurement and Contract Management Guide* retrieved from: <https://comptroller.texas.gov/>.

**Procurement Manager** - The purchaser assigned to manage a procurement from identification of need through contract award.

**Proprietary Purchase** - A purchase in which the specifications and conditions describe a product that is proprietary to one vendor and does not permit an equivalent product to be supplied.<sup>49</sup>

**Public Procurement Professionals** - An agency employee that conducts purchasing, contract development, or contract management activities.<sup>50</sup>

**Purchaser** - The staff member assigned a requisition to initiate a purchase and determine a purchasing method. The staff member may have the title of Purchaser or Purchasing Liaison and have one of the following certifications: Certified Texas Contract Developer (CTCD), Certified Texas Procurement Manager (CTPM) or Certified Texas Purchaser (CTP).

**Purchase Order Change Notice (POCN)** - The procedure for making a change to an executed purchase order.

**Purchase Requisition (PR)** - The internal electronic procedure in E-PRO for initiating a purchase for goods or services.

**Quality Assurance Reviews** - The assessment method for verification of compliance with procurement and contracting policies and procedures.

**Request for Information (RFI)** - A formal procurement planning method for soliciting information on available products or services from the marketplace. The RFI may be used prior to the advertisement of a formal solicitation.

**Request for Offers (RFO)** - The solicitation method used to procure Information Technology goods or services.

**Request for Proposals (RFP)** - The solicitation method used to procure goods or services through the competitive process. This solicitation method allows for negotiation of costs.

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<sup>49</sup> TEX. GOV'T. CODE § 2155.067 retrieved from: <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2155.htm>.

<sup>50</sup> *Texas Procurement and Contract Management Guide* retrieved from: <https://comptroller.texas.gov/>.

**Request for Qualifications (RFQ)** - The solicitation method used to procure professional services pursuant to the definition provided in Texas Government Code § 2254.002.

**Risk Analysis** - The process for assessing procurement or contract risk, to identify areas for targeted technical assistance, enhanced monitoring, or other risk management strategies.

**Risk Management** - The process for management of procurement or contract risk based on a formal or informal risk analysis.

**Service** - The furnishing of skilled or unskilled labor or professional work.<sup>51</sup>

**Solicitation** - A document requesting submittal of bids or proposals for goods or services in accordance with the advertised specifications.<sup>52</sup>

**Statewide Procurement Division (SPD)** - The division within the CPA responsible for the statewide procurement function.

**Subject Matter Expert (SME)** - A person with demonstrated knowledge and experience in one or more content areas.

**Texas Comptroller of Public Accounts (CPA)** - The Texas Comptroller of Public Accounts, (SPD) is the central authority for state agency procurement guidelines, education and statewide contract development services.<sup>53</sup>

**Texas Multiple Award Schedule (TXMAS)** - An alternative purchasing method developed by the CPA. This method allows state agencies to leverage state and federal government contracts (for certain goods and services) to achieve best value.

**Vendor** - A potential provider of goods or services to the state.<sup>54</sup>

**Vendor Performance Tracking System (VPTS)** - The system provided by the CPA for evaluating vendor performance pursuant to Texas Government Code § 2155.089, § 2262.055 and Texas Administrative Code Title 34, § 20.509.

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<sup>51</sup> *Texas Procurement and Contract Management Guide* retrieved from: <https://comptroller.texas.gov/>.

<sup>52</sup> *Ibid*, 51.

<sup>53</sup> *Ibid*, 51.

<sup>54</sup> *Ibid*, 51.