

Office of General Counsel  
Financial Services Division

**Texas Higher  
Education**  
**COORDINATING BOARD**

# **Procurement and Contract Management Handbook**

**March 2024**

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## Introduction

The Texas Higher Education Coordinating Board (THECB), in compliance with Texas Government Code (Tex. Gov't Code) § 2261.256(b), developed the THECB Procurement and Contract Management Handbook (the "Handbook") to assist staff in the areas of ethics, procurement of goods and services, and the contract management process.

The Texas Comptroller of Public Accounts' Statewide Procurement Division (SPD) is the central authority for state agency procurement guidance, education, and statewide contract development services. SPD is the successor to TPASS. Consequently, any reference to the TPASS division in forms, templates, or other publications held by an agency is now a reference to SPD.

Further guidance, in addition to the Handbook, is available in the [Comptroller's State of Texas Procurement and Contract Management Manual](#).

## Purpose

The purpose of this Procurement and Contract Management Handbook (Handbook) is to offer THECB Contract Managers assistance on improving existing contract management processes and practices and to assist staff in the procurement of goods and services. The Handbook is not designed to relieve the staff and contractors of their obligation or responsibility to ensure compliance with laws, rules, and regulations related to their specific programs and funding sources.

This Handbook will be a guide for THECB staff involved in the development and management of contracts that commit the agency. It does not attempt to address all issues that may need to be considered in a particular circumstance. For complex or unusual contracts, staff should seek specific legal assistance as early as possible in the contracting process.

## Ethics and Standard of Conduct Policy

**A significant responsibility is imposed on everyone who is entrusted with the awarding and expenditure of state funds. As a state employee and staff member of THECB, you should avoid any appearance of impropriety when interacting with contractors, potential contractors, grantees, and students. All THECB employees must act in an ethical, transparent, and professional manner at all times.**

### State Ethics Policy

Authority: Tex. Gov't Code § 572.001(a) and 572.051(c).

It is the policy of the State of Texas that a state officer or state employee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the officer's or employee's duties in the public interest.

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

State purchasing personnel must adhere to the highest level of professionalism in discharging their official duties. The nature of purchasing functions makes it critical that everyone in the purchasing process remains independent and free from the perception of impropriety. Any erosion of public trust or any shadow of impropriety is detrimental to the integrity of the purchasing process. Consequently, the credibility of a purchasing program requires that a clear set of guidelines and rules be established. Such guidelines are designed to prevent actual and potential vendors from improperly influencing state officers or employees in discharging their official duties. Furthermore, these guidelines will help prevent state officials' and employees' independent judgment from being compromised.

Therefore, with these principles in mind and in accordance with state law, the following policies and procedures should be adhered to by all state agency employees, contractors and potential contractors. Also, see the section below on [Disclosures of Conflicts of Interest](#) for the policy at THECB for maintaining high ethical standards as listed on the website.

### **THECB Ethics Policy**

Authority: Tex. Gov't Code § 572.051(a), 572.051(c), and Tex. Penal Code § 39.02(a)(2) and 39.06.

THECB's policy and procedures manual details nine standards of conduct. The policy states that an employee will not:

1. Accept or solicit any gift, favor, or service that might reasonably tend to influence the employee in the discharge of official duties, or that the employee knows or should know is being offered with the intent to influence the employee's official conduct;
2. Intentionally or knowingly solicit, accept or agree to any benefit for having exercised official power or in the performance of official duties in favor of another;
3. Disclose confidential information;
4. Accept other employment, including self-employment, or compensation or engage in a business, charity, nonprofit organization, or professional activity that could reasonably be expected to impair judgement in performance of official duties;
5. Make personal investments, or have a personal or financial interest that could reasonably be expected to create a substantial conflict between private and public interest;
6. Utilize state time, property, facilities or equipment for any purpose other than official state business, unless such use is reasonable and incidental;
7. Utilize an official position or state issued items, such as a badge, indicating such position for financial gain, obtaining privileges, or avoiding consequences of illegal act;
8. Knowingly make misleading statements, either oral or written, or provide false information in the course of official state business; or
9. Engage in any political activity while on state time or utilize state resources for any political activity.

All staff involved in procurement and/or contract management must complete the agency's State Standards of Conduct training and submit their certificate of completion to Procurement and Contracting.

### **Nepotism**

Authority: Tex. Gov't Code § 573.

Nepotism is a form of conflict of interest that involves an explicit act of using one's position to favor a relative. Relationships between family members are classified by consanguinity or affinity.

- A relationship by consanguinity is one established through bloodlines. The consanguinity relationship may be either lineal (persons in a direct line of descent) or collateral (persons not in a common line of descent but with a common ancestor).
- Relationships by affinity arises by virtue of marriage. A relationship by affinity exists between an individual and either the blood relatives of the individual's spouse or the spouses of the individual's blood relatives. Simply stated, if at least two marriages are required to establish a link between two persons, they are not related by affinity.

To determine if specific relationships could violate nepotism provisions, please see Chapter 573 of the Texas Government Code.

### Appearance of Impropriety

Authority: Tex. Gov't Code § 572.

The root of ethical behavior in public procurement is the commitment of public procurement professionals to ensure they neither gain personally from, nor unduly favor anyone, in the execution of their official duties. They are guided by a duty to serve the public for whom they are employed. Accordingly, public procurement professionals must not only comply with the minimum legal standards of ethical conduct established by statutes, agency rules and policies, and professional certifications, but they must also conduct themselves in a manner that avoids even the appearance of impropriety.

A public servant's ethical dilemma may often be resolved by following this simple criterion: if it *feels* wrong, it probably *is* wrong.

### Bribery

Authority: Tex. Penal Code § 36.02.

Bribery is a criminal offense. Bribery occurs if a person intentionally or knowingly *offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept* any benefit as consideration for a violation of a public servant's legal duty or a public servant's decision, opinion, recommendation, vote, or any other exercise of discretion. A salary is a benefit. A state employee, therefore, is subject to criminal prosecution if the employee accepts; e.g., employment as consideration for an official act.

### Suspected Fraud, Waste, or Abuse

Authority: Tex. Gov't Code § 321.013, 321.022(a), and 2261.256.

Each agency must develop and comply with a purchasing accountability and risk analysis procedure that includes an assessment of the risk of fraud, abuse, or waste in the contracting process, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts. The State Auditor's Office (SAO) investigates allegations of fraud, waste, or abuse. Administrative heads of agencies who have reasonable cause to believe that money was lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred are required to report this information to the SAO. A reasonable cause to believe exists when a set of facts would lead a reasonable and prudent person to believe that an offense may have been committed. Employees and vendors who become aware of a situation that involves suspicious activities or fraudulent acts may also report the allegations to SAO.

Criminal offenses investigated by SAO include, but are not limited to, the following:

- theft,

- forgery,
- tampering with a governmental record,
- securing execution of document by deception,
- misapplication of fiduciary property,
- conversion of funds,
- abuse of official capacity,
- gift to a public servant by a person subject to his or her jurisdiction, and
- bribery.

Reports of fraud, waste, or abuse involving state resources may be submitted through the State Auditor’s Office (SAO) [website](#), by phone at 1-800-TX-AUDIT (892-8348), or by mail to State Auditor’s Office, Attn: IAS, P .O. Box 12067, Austin, TX 78711-2067. Someone who reports fraud may choose to remain anonymous.

### **Collusion**

Collusion occurs when two people or representatives of an entity or organization make an agreement, implicit or explicit to deceive or mislead another. Such agreements are usually secretive and involve fraud or gaining an unfair advantage over a third party, competitors, consumers or others with whom they are negotiating. The collusion, therefore, makes the bargaining process inherently unfair. Collusion can involve promises of future benefits, price or wage fixing, kickbacks, or misrepresenting the independence of the relationship between the colluding parties.

### **Standards of Conduct**

Please see [Ethics](#) section above, and [Part I of the Texas Ethics Commission’s guide](#) for state employees on standards of conduct and conflicts of interest, and “the should not’s.”

### **Prohibition of Economic Benefit**

Authority: Tex. Penal Code § 39.06(a)(1).

In accordance with the Texas Constitution, an officer or employee of the state may not, directly or indirectly, profit by or have a pecuniary interest in the preparation, printing, duplication, or sale of a publication or other printed material issued by a department or agency of the executive branch (such as THECB). A person who violates this section shall be dismissed from state employment.

### **Disclosure of Potential Conflicts of Interest**

Authority: Tex. Gov’t Code § 2261.252(a) and 2261.252(a-1); 34 Tex. Admin. Code § 20.158.

THECB employees and officers are considered public servants who owe a responsibility to the people of Texas in the performance of their official duties. THECB employees and officers should act fairly and honestly and avoid even the appearance of impropriety. THECB’s Ethics Policy is found in [Chapter E - Ethics and Standards of Conduct Policy](#) of THECB’s Agency Policies and Procedures.

All persons involved in procurement, contract management, and grants are required to disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official 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. All persons involved in procurement, contract management, and grants must sign the form in [Appendix A](#) annually. Procurement staff must sign the form in [Appendix B](#) annually. If an individual becomes aware of any potential conflict of interest at any time, they must notify the Office of General Counsel immediately.

## Gifts Offered to THECB Employees

The Texas Ethics Commission's publications [A Guide to Ethics Laws for State Officers and Employees](#) and [Can I Take It?](#) provide an overview of gifts or benefits that if offered to state employees may present legal and/or ethical problems. The Texas Penal Code prohibits state officers or employees from accepting gifts worth more than \$50.

## Financial Interest

Authority: Tex. Gov't Code § 2261.252, and 34 Tex. Admin. Code § 20.158.

A state agency may not enter into a contract with a private vendor for the purchase of goods or services if the amount of the purchase exceeds \$25,000 and any of the following agency employees or officers have a financial interest in the vendor:

- a member of a state agency's governing body;
- the governing official, executive director, general counsel, chief procurement officer, or procurement director; or
- a family member related to one of the persons described in items (1) or (2) within the second degree of kinship by affinity or consanguinity.

An agency employee or official has a financial interest in a vendor if the employee:

- owns or controls, directly or indirectly, an ownership interest of at least 1% in the person, including the right to share in profits, proceeds, or capital gains; or
- could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.

## Restrictions for a Current Employee

Authority: Tex. Gov't Code § 572.001(a) and 572.051(a).

State officers or employees may not:

- Participate in any work on a contract knowing that the employee, or member of that employee's immediate family, has an actual or potential financial interest in the contract, including, but not limited to, prospective employment. The term "participate" includes, but is not limited to, decision making, approval, disapproval, recommendation, giving advice, investigation or similar action.
- Accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;
- accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
- accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;
- make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or
- intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.

## Restrictions for a Former Employee

Authority: Tex. Gov't Code § 2252.901 and 2254

Agencies may not enter into employment contracts, professional services contracts, or consulting services contracts with former or retired employees before the first anniversary of the last date on which the individual was employed by the agency if appropriated funds are used to make payments under the contract.

A former state officer or employee of a state agency, who during the period of state service or employment, participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the officer's or employee's service or employment with the state agency ceased.

## Violations

When an actual or potential violation of any of these standards is discovered, the person involved shall promptly file a written statement concerning the matter with an appropriate supervisor. The person may also request written instructions for disposition of the matter.

If an actual violation occurs or is not disclosed and remedied, the employee involved may be reprimanded, suspended, or dismissed. The vendor or potential vendor may be barred from receiving future contracts and/or have an existing contract canceled.

If you wish to learn whether a specific action violates the ethics rules, please contact the Office of the General Counsel.

## Purchasing Staff Accountability

Authority: Tex. Gov't Code § 2261.256(a)(3), 19 Tex. Admin. Code § 1.16, and 34 Tex. Admin. Code § 20.82

### Delegation of Authority

The Statewide Procurement Division (SPD) is authorized to delegate its purchasing functions to agencies. A delegation of authority may be:

1. Provided by SPD rule for a pre-approved class of procurements, such as a particular procurement type (e.g., emergency purchases) or contract value (e.g., one-time purchases of goods that do not exceed \$50,000), or
2. Obtained on a case-by-case basis by the agency through the SPD Review and Delegation Process.

For the purposes of determining contract value for delegation of purchasing authority, an agency's cost estimate must be developed in good faith using a method that is reasonable under the circumstances.

A delegation of authority may be provided for a pre-approved class of procurements, such as particular procurement type or contract value, or obtained on a case-by-case basis upon request by the agency.

See [Procurement](#) section to determine delegation of authority.

### THECB Contracts and Procurement Staff

The Contracts Team and Procurement Team review purchase requisitions, contracts, and grants for federal, state, and agency compliance. The teams are also responsible for post-award reporting. Within the first year of hire, Procurement, Contracts and Grants team members shall obtain Certified Texas Contract Manager (CTCM) and Certified Texas Contract Developer (CTCD) certifications.

### Purchasing Authority

SPD offers two levels of certification: Certified Texas Contract Developer (CTCD) and Certified Texas Contract Manager (CTCM). Contract Developers and Contract Managers working in Texas state government must attend mandatory courses and pass an exam to become certified as either CTCD or CTCM.

## THECB Receiving Department

THECB's Receiving Department and/or Ordering Department ensure verification of the inspection of merchandise or receipt of services by the agency.

## Historically Underutilized Businesses (HUBs)

Authority: Tex. Gov't Code § 2161.122, and 34 Tex. Admin. Code § 20.284(b).

THECB HUB Coordinator: Linda Natal, Director of Procurement

THECB actively supports the Historically Underutilized Business (HUB) Program by procuring goods and services from HUB vendors to support THECB operations. THECB's Historically Underutilized Business (HUB) Program promotes full and equal business opportunities in an effort to remedy historical disparities in state procurement and contracting.

THECB must maintain, and compile monthly, information relating to its use of Historically Underutilized Businesses (HUBs), including information regarding subcontractors and suppliers. On a monthly basis, THECB must require its prime contractors to report the identity and amount paid to each HUB and non-HUB subcontractor to whom the prime contractor has awarded a subcontract for the purchase of supplies, materials and equipment. Prime contractors must report to THECB the progress payments made to subcontractors and suppliers each month in which such payment is made.

THECB is required to make a good faith effort to assist Historically Underutilized Businesses (HUBs) to receive a portion of the total contract value that THECB expects to award in a fiscal year in accordance with the following THECB-pertinent statewide goals:

- 23.7 percent for professional services contracts;
- 26.0 percent for all other services contracts; and
- 21.1 percent for commodities contracts.

These goals can be achieved through contracting directly with HUBs or indirectly through subcontracting.

## Vendor Communication

### Vendor Communication Guidelines

Communication between public procurement professionals and vendors is imperative and encouraged. However, steps must be taken to maintain a fair opportunity to compete for all vendors and avoid any appearance of favoritism. THECB personnel must be mindful that one-on-one communications with vendors occurring prior to contract award are subject to enhanced scrutiny due to the importance of maintaining a "level playing field" among all eligible vendors during competitive procurements. THECB's vendor communication guidelines are below. For any communications outside the parameters of this guidance, please contact the Office of General Counsel for further counsel.

#### Fact-gathering Communication

Fact-gathering communications with vendors is allowed. If you are seeking to reach out to the vendor community to conduct market research, please consult with the Procurement Team before taking any action. Examples of fact gathering communications include proposals to introduce a product, service, or other innovative idea that is not in response to a solicitation and conducting market research. However, please note that if a vendor is compensated by an agency for its assistance in drafting specifications or scope of work for a solicitation, that vendor will not be eligible to bid on the resulting contract.

Steps must be taken to maintain a fair opportunity to compete for all vendors. One-on-one communications with vendors occurring prior to contract award are subject to enhanced scrutiny. Please follow the procedures listed below for all pre-solicitation vendor communications.

- **Procurement Notification**

If you receive any communication from a vendor, please notify the Procurement Division immediately prior to communicating further.

- **Communication Guidelines**

When communicating with vendors, whether via email, phone call, or in-person or virtual meetings, the following guidelines should be followed:

- Each vendor communication should include the following statement: "This conversation is for the purpose of market research or other informational purposes only. This is not a formal solicitation or a commitment to contract with you or your company in the future. Engaging in this communication will not give you any advantage in any future procurement. Nothing discussed in this meeting authorizes you to work, start work, or bill for work. Any understanding on your part to the contrary is not valid."
- You may ask questions but avoid expressing opinions or preferences.
- When possible, avoid communicating exclusively with incumbents or only a small number of vendors and enlist other informed agency personnel to join the communication.
- Do not give, or accept, preferential treatment from any private party. Report any potential or actual conflicts of interest promptly to agency legal counsel.
- Always make the information provided to one vendor the same as provided to all vendors. Do not provide nonpublic information.
- Document the results of the meeting. Record the date, place, and meeting participants, including company affiliation and contact information.

### **Vendor Communications During a Solicitation.**

In the event, the procurement requires a formal solicitation to be sent to multiple vendors, communication with all vendors must cease, particularly by those selected to serve as an evaluation committee member or a technical advisor for that solicitation. If the agency has started drafting a solicitation, the only point of contact for vendor communication is the designated Procurement personnel.

### **Dispute Resolution**

Authority: Tex. Gov't Code § 2260.004.

Disputes with vendors related to the purchase of goods or services must be documented by notating the contract number, along with providing supporting documentation. Incorrect vendor invoices are primarily resolved through email correspondence. If there is a dispute, THECB shall notify the vendor and request a corrected invoice.

THECB must include as a term of every contract with private vendors a provision stating that, if necessary, the formal dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the contract. The objective of any dispute resolution process is to resolve problems before they escalate. To avoid escalation of problems to the next level and ensure the

agency has not exacerbated potential problems, it is imperative that agency personnel respond promptly to all contractor inquiries.

Initial steps to be taken are:

- Identify the problem - many times what may appear to be a problem can be resolved by providing the contractor with information or clarification. THECB must follow internal escalation points and the Office of General Counsel must be included if a legal dispute arises.
- Research facts – THECB staff must obtain all the information regarding the potential problem from all relevant sources, including the project manager and the contractor.
- Evaluation - THECB must review all of the facts in conjunction with the requirements and terms and conditions of the contract. THECB must then determine the appropriate course of action.

## **Contracting and Procurement Life Cycle**

Major Stages in the Lifespan of a Contract:

- Planning
- Procurement
- Evaluation
- Vendor Selection
- Contract Development and Awarding
- Monitoring and Reporting
- Contract Close-out

### **Planning**

**Program staff should determine the following prior to submitting a request to procure goods or services:**

- Why do I/we need these goods/services?
- What is the intent of the service?
- Do these goods or services exist via a state operation?
- Can these goods or services be provided or developed by another state agency or institution of higher education?
- What deliverables are expected from grant recipients?
- What is the timeframe for procuring services?
- What is the anticipated cost of these services? Do we have funding to support those costs?
- Will the services involve sharing or receiving confidential data?

**Contract managers should determine the following prior to requesting contract services:**

- What should the contract cover?
- What does the contract require?
- Does the contract have clear goals and objectives?

- Is there statutory authority for THECB to enter into the proposed contract for these services?
- What are the requirements for THECB to supply to the vendor?
- Who has “ownership” for the contract? Explain “ownership,” who owns it?
- Who is accountable to THECB Executive Management to provide contract updates?
- Does the Program have a THECB Contract Team assembled?
- Has sufficient time been factored into contract development?
- Have milestones been identified? Are they included in the contract?
- What is the anticipated cost for the contract services and has funding been identified?
- Will the services involve sharing or receiving confidential data?

For information regarding average lead times for agency procurements, see [Procurement Lead Times](#).

### Intake Form

The first step for any project that involves a potential procurement or contract is to submit a [Contracts and Procurement Intake Form](#) (Intake Form). All projects require an Intake Form whether or not you are spending funds. Projects include, but are not limited to, contracts, contract amendments, Texas Department of Information Resources - Shared Technology Services purchases, grants, no-cost agreements, purchase orders, purchase order amendments, requests for temporary services, requests for quotes, and solicitations. Once an Intake Form has been submitted, the assigned contract developer or purchaser will reach out to program staff to schedule a needs assessment meeting, if necessary.

### Needs Assessment

Authority: Tex. Gov’t Code § 2155.

The success of the procurement or contract is often dependent upon how well the business requirements are documented during the Procurement Planning phase. Once an Intake Form has been submitted, Contracts and/or Procurement staff will work with program staff on the needs assessment, where the necessary details are obtained to identify key business requirements. As part of the needs assessment, the agency may conduct market research, study historical spending, use benchmarking, and issue a Request for Information (RFI) to the vendor community.

When conducting the needs assessment, public procurement professionals must be mindful that an agency may not accept a response or award a contract to a vendor that received compensation from the agency to participate in the preparation of the specifications or solicitation on which the proposal or contract is based. A respondent or contract participant may, however, provide free technical assistance to an agency in the preparation of the specifications, subject to approval by the Procurement Team and Office of General Counsel.

### Funding Source

As part of the procurement planning activities, the agency should determine the funding source that will be used to pay the vendor. Sources of funding include General Revenue, General Revenue-Dedicated accounts, Federal Funds, and Other Funds. The agency must ensure that the procurement complies with any laws, special regulations, restrictions or limitations applicable to the source of funding. Information regarding funds and accounts may be found in the [Texas Comptroller Manual of Accounts](#) and [THECB’s Comptroller Manual of Accounts](#) posted on the CPA website.

Additionally, certain information resources technology projects with costs anticipated to exceed \$5 million may require inclusion in the agency's Biennial Operating Plan and be subject to other procurement and contract

approval and monitoring requirements. Please consult with Financial Services during the Planning phase for any project that may meet this description.

### **Allowable Use of Appropriated Funds**

Authority: Tex. Gov't Code § 2113.001(2), 2113.101, 2113.102, 2113.104, 2113.105, 2113.106, and 2113.107(b).

The agency must ensure that the procurement is not prohibited by law, including the General Appropriations Act. For example, agencies are prohibited from using appropriated funds for certain goods and services unless the procurement falls within a statutorily authorized exemption. This list contains the most common prohibitions, but it is not exhaustive. If you have specific questions or concerns, please consult with Financial Services.

- food for agency staff;
- alcoholic beverages;
- tips;
- live or artificial indoor plants;
- an audit of the financial records or accounts of the agency, without delegation and approval from the State Auditor;
- postage stamps or a post office box from an entity other than the U.S. postal service;
- membership in or dues for professional organizations; unless the membership is for a public purpose and approved by Commissioner or Commissioner's designee;
- promotional items unless specifically statutorily authorized;
- private facilities for meetings, conferences or exams; and
- generally informational, promotional, or educational periodicals and publications issued by the agency intended for use by the general public and not essential for achievement of a statutory objective of the agency.

NOTE: In certain cases, some expenditures on food or meetings may be allowable when conference funds are used. The use of appropriated funds for employee travel is ordinarily outside the purview of the procurement and contracting process. Please consult with your management team, who may need to consult with Financial Services and/or the Office of General Counsel.

## **Procurement**

### **State Use Program**

Authority: Tex. Hum. Res. Code Chapter 122; Tex. Gov't Code Chapter 497; Tex. Gov't Code § 2155.441; and Tex. Educ. Code § 61.051.

The State Use Program includes goods and services provided by the following:

- WorkQuest (Formerly TIBH)
- Texas Correctional Industries (TCI)
- Department of Information Resources (DIR)
- Term Contracts on Texas Smart Buy online system

As a state agency, THECB must first procure through the State Use Program if the desired good or service is provided by an included program. If the desired service or good cannot be adequately provided through the State Use Program, THECB may procure using the appropriate procurement method described below.

### Purchase of Goods (non-IT)

Authority: Tex. Gov't Code § 2155.132(e).

- **\$10,000 or less-** Purchases for this amount do not require a competitive process. Follow THECB's internal procedures and policies for procuring commodities in an amount of \$10,000 or less. Time permitting, we will solicit more than one vendor to include HUBs.
- **\$10,000.01 to \$25,000-** THECB is required to obtain three informal bids with a minimum of two (2) bids from HUBs. Allow five business days for responsive bids. Purchasing staff will decide whom to award based on best value for the state.
- **\$25,000.01 to \$50,000-** THECB is required to issue a [formal solicitation](#). Estimate between two (2) to six (6) months to complete the formal solicitation process. A list of formal solicitation types can be found on Table 2, [Formal Solicitation Methods](#).
- **\$50,000.01 and above-** In addition to the requirements above, THECB must submit its delegation request as an Open Market Requisition (OMR) to the Statewide Procurement Division. THECB is responsible for downloading the most current [OMR form](#) posted on the CPA website. The OMR with all applicable attachments must be submitted to [open.market@cpa.texas.gov](mailto:open.market@cpa.texas.gov). If the delegation request is denied, SPD will procure the goods on behalf of the agency.
- **\$5,000,000 or above -** In addition to the requirements above, the solicitation documents must be submitted to the Contract Advisory Team (CAT) prior to posting. CAT reviews and makes recommendations on the solicitation documents.

### Procurement Card (P-Card) Purchases

#### Allowable Purchases:

- Small dollar items that are not available via DIR and Texas Smart Buy Term Contracts;
- Registrations;
- Memberships; and
- Software under \$1K that has been approved by ISS for compatibility.

\*See [Appendix C](#) for list of PCC Codes

### Procurement Methods for Services (Non-IT)

### **Procurement Method - Services (non-IT)**

Authority: Tex. Gov't Code § 2155.132(e).

- **\$10,000 or less-** Purchases for this amount do not require a competitive process. Follow THECB's internal procedures and policies for procuring services in an amount of \$10,000 or less. Time permitting, we will solicit more than one vendor to include HUBs.
- **\$10,000.01 to \$25,000-** THECB is required to obtain three informal bids with a minimum of two (2) bids from HUBs. Allow five business days for responsive bids. Purchasing staff will decide whom to award based on best value for the state.
- **\$25,000.01 or above-** THECB is required to issue a [formal solicitation](#). Estimate between two (2) to six (6) months to complete the formal solicitation process. A list of formal solicitation types can be found on [Table 2: Formal Solicitation Methods](#).
- **\$100,000.01 or above-** In addition to the requirements above, unless subject to an exception, THECB must submit its delegation request and its solicitation through the Procurement Oversight & Delegation portal. If the delegation request is denied, The Comptroller's Statewide Procurement Division (SPD) will procure the services on behalf of the agency.
- **\$5,000,000 or above -** In addition to the requirements above, the solicitation documents must be submitted to the Contract Advisory Team (CAT) prior to posting. CAT reviews and makes recommendations on the solicitation documents.

### **Procurement Method- Professional Services**

Authority: Tex. Gov't Code § 2254.

Professional services refer to services that are either:

- within the scope of the practice, as defined by state law, of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing; or
- provided in connection with the professional employment or practice of a person who is licensed or registered as one of the following: a certified public accountant, an architect, a landscape architect, a land surveyor, a physician, including a surgeon, an optometrist, a professional engineer, a state certified or state licensed real estate appraiser, or a registered nurse; or
- provided by a person lawfully engaged in interior design, regardless of whether the person is registered as an interior designer under Chapter 1053 of the Occupations Code.

THECB is authorized to procure professional services under Chapter 2254, Subchapter A, of the Texas Government Code. Acquisition of professional services is delegated to THECB by statute and does not require a delegation of authority from SPD.

### **Procurement Method- Audit Services**

Authority: Tex. Gov't Code § 321.020.

Section 321.020 of the Texas Government Code specifies that a state agency or corporation that is dedicated to the benefit of a state agency may enter into a contract for audit services only if:

- the agency or corporation is authorized to contract with a private auditor through a delegation of authority from SAO;
- the scope of the proposed audit has been submitted to SAO for review and comment; and

- the services of the private auditor are procured through a competitive selection process in a manner allowed by law.

### **Procurement Method- Consulting Services**

Authority: Tex. Gov't Code § 2254.

Consulting service refers to the service of studying or advising an agency under a contract that does not involve the traditional relationship of employer and employee. THECB may contract with a consultant only if there is a substantial need for the consulting services and THECB cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with a state governmental entity. Consulting services procurements are usually advertised as an RFP.

THEC is authorized to procure consulting services pursuant to Chapter 2254, Subchapter B, of the Texas Government Code. Acquisition of consulting services is delegated to THECB by statute and does not require a delegation of authority from SPD. The procurement of consulting services is subject to ESBD posting requirements as well as requirements applicable to CAT reviews.

Particular care must be taken to closely follow all statutory requirements for procuring consulting services. A consulting services contract, or renewal, amendment, or extension, is void under the following circumstances:

- the contract is entered into without complying with the ESBD posting requirements and notification requirements to the LBB and Governor's Budget and Planning Office. (Refer to the "Pre-Award Notification and Publication Requirements for Major Consulting Services Contracts," "Post-Award Notification and Publication Requirements for Consulting Services Contracts," and "Notification and Publication Requirements for Renewals, Amendments, and Extensions to Consulting Services Contracts" described in the State of Texas Procurement and Contract Management Guide); or
- the contract is entered into with a private consultant who has been employed by that agency or by another agency at any time during the two years preceding the making of the offer and failed to disclose in the offer:
  - a. the nature of the previous employment with the agency or the other agency;
  - b. the date the employment was terminated; and
  - c. the annual rate of compensation for the employment at the time of its termination.

If the contract is void, CPA may not draw a warrant or transmit money to satisfy an obligation under the contract and an agency may not make any payment under the contract with state or federal money or money held in or outside the state treasury.

### **Procurement Method- Legal Services**

Authority: Tex. Gov't Code § 2254.

The OAG provides legal services to state agencies. The OAG may require agencies to obtain outside legal services through a competitive procurement process, under conditions prescribed by the OAG. Unless an exemption is obtained from the OAG, THECB is required to publish a Request for Qualifications (RFQ) on the ESBD for a minimum of thirty calendar days before selecting outside counsel, regardless of the anticipated maximum liability of the anticipated Outside Counsel Contract (OCC). To obtain OAG approval for the use of services provided by outside counsel, the agency must electronically submit a Request to Retain Outside Counsel and the proposed OCC to the OAG.

Additionally, all invoices for OCCs must be approved by the OAG prior to issuance of payment.

### **Procurement Method- Interagency Contracts (IACs)**

Authority: Tex. Gov't Code § 771.

An interagency contract is a written understanding between two or more agencies as authorized by Chapter 771 of the Texas Government Code. An agency may agree or contract with another agency for the provision of necessary and authorized services (including technical services) and materials and equipment. Competitive bidding requirements do not apply to Interagency Contracts.

#### **Procurement Method – Interlocal Contracts**

Authority: Tex. Gov't Code § 791.

An interlocal contract is a written understanding authorized by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The purpose of the Interlocal Cooperation Act is to increase the efficiency and effectiveness of local governments by authorizing them to contract, to the greatest possible extent, with one another and with agencies of the State.

#### **Procurement Method – Texas Disaster Act of 1975**

Authority: Tex. Gov't Code § 418.

Under Chapter 418 of the Texas Government Code, the Governor may, by executive order or proclamation, declare a state of disaster if a disaster has occurred or that the occurrence or threat of disaster is imminent. The Governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of an agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster. For example, the Governor may suspend enforcement of statutes and administrative rules regarding contracting or procurement that would impede any agency's emergency response that is necessary to protect life or property threatened by a declared disaster.

A purchase made under a disaster must clearly relate to the disaster, conform to the directives of the disaster declaration, and occur within the timeframe specified in the disaster declaration. The procurement file, at a minimum, must contain a copy of the disaster declaration, documentation explaining how the purchase clearly relates to the disaster and indicating Commissioner approval for the use of the disaster declaration, receipt of goods or services, and approval of the payment.

#### **Procurement Method - Emergency Purchases**

Authority: Tex. Gov't Code § 2155

For purposes of an emergency purchase under SPD's delegated authority, an emergency purchase occurs when the agency must make the procurement quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state. Proper procurement planning for anticipated business needs is expected. Pending expiration of funds does not constitute an emergency. Emergencies occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat or to avoid undue additional cost to the state.

Note: Emergency purchases discussed in this section are different from agency purchases conducted under a Declaration of Disaster by the Governor. SPD authority does not extend to purchases made under the Texas Disaster Act of 1975. Refer to Procurement Method – Texas Disaster Act of 1975.

Notwithstanding the immediate nature of an emergency, all procurements conducted as emergencies should be made as competitive as possible under the circumstances. The agency should make a reasonable attempt to obtain at least three informal bids. Emergency procurements over \$25,000 must be posted to the ESBD; however, the minimum time for posting the solicitation does not apply to the extent necessary to address the emergency.

### **Purchase of IT Related Goods and Services**

Authority: Tex. Gov't Code § 2157.068

Under DIR's statewide procurement authority, DIR establishes and manages contracts under the following program areas for use by eligible customers: (1) Cooperative Contracts program, (2) Shared Technology Services (e.g., Private Cloud, Public Cloud, Print/Mail/Digitization), and (3) Telecommunications. DIR may consider strategic sourcing and other methodologies to select the vendor offering the best value on IT commodity items. IT commodities include commercial software, hardware, and technology services, including managed services, IT staff augmentation contracts, technology training, and deliverables-based IT services. THECB is required to procure all goods and services under these program areas through DIR, unless DIR has approved an exemption.

There are certain DIR [Blanket Exemptions](#).

Specific requirements related to [temporary IT staffing](#) are also available.

### **IT-Related Monetary Thresholds for Competitive Actions**

When purchasing under a DIR contract, THECB must follow the following procedure:

- For a contract or purchase with a value of no more than \$50,000, THECB may directly award the contract to a vendor included in the category to which the contract relates without submitting a price request to other vendors in the same category;
- For a contract or purchase with a value of more than \$50,000 but not more than \$1 million, THECB must submit a request for pricing to at least three vendors or resellers included in the category to which the contract relates; and
- For a contract or purchase with a value of more than \$1 million but not more than \$5 million, THECB must submit a request for pricing to at least six vendors included in the category to which the contract relates or all vendors in the category if the category has fewer than six vendors.
- For a contract with a value of more than \$5 million but not more than \$10 million, if THECB utilizes DIR Cooperative Contracts, THECB must submit a request for pricing to at least six vendors included in the category to which the contract relates or all vendors in the category if the category has fewer than six vendors.

For a contract with a value of more than \$5 million but not more than \$10 million, THECB may opt to utilize DIR cooperative contracts or may issue a solicitation on the open market using the Request for Offers (RFO) purchasing method, as designated by the Comptroller under § 2157.006(a)(2) of the Texas Government Code.

THECB may not enter into a contract to purchase a commodity item through the DIR Cooperative Contracts Program if the value of the contract exceeds \$10 million unless it is a DIR coordinated bulk purchase.

### **Determining Contract Value of IT Commodity Item Procurements**

An agency must use its best judgement to determine the monetary value of the anticipated contract. The dollar value of a contract is determined by the total value of the contract over its term as well as any modifications, renewals, or optional extensions of the contract. It does not include the following for purposes of determining the monetary threshold applicable to an IT commodity item procurement under a DIR contract:

- documents executed for purposes of encumbering funds but not constituting a binding transaction; or
- any related document without an accompanying purchase order, including but not limited to statements of work, license agreements, maintenance agreements, or service agreements.

### **IT Services Statement of Work (SOW) Development**

Authority: Tex. Gov't Code § 2157.0685.

For IT cooperative contract service procurements with an estimated value of more than \$50,000 but less than \$5,000,000, THECB must develop a "Statement of Work" (SOW) to initiate IT services under the contract and must receive DIR approval before submitting the SOW to vendors and posting the SOW on THECB's website. THECB must submit a completed draft DIR SOW to DIR for review at least thirty business days before anticipated submission of the DIR SOW to vendors. The DIR submission must include:

- the completed DIR SOW which at a minimum includes: the scope of the project, milestones, deliverables description, schedule, acceptance criteria, and any other items DIR may require; and
- a list of DIR cooperative contracts to which the DIR SOW will be advertised.

DIR may accept or reject the submitted DIR SOW. THECB may not submit the DIR SOW to vendors until DIR has issued written approval. If rejected, THECB may resubmit with required modifications. DIR will not issue retroactive or backdated reviews.

DIR contracts requiring SOWs include, but are not limited to:

- Deliverables-Based Information Technology Services (DBITS),
- Managed Services for Information Technology,
- IT Security Services,
- Cloud Services,
- Web Development, and
- IT Staffing Services (when an SOW is Issued).

A DIR SOW is not applicable to:

- IT staffing services when using Request for Resumes;
- Contracts exclusively for hardware or software and not including services; or
- The vendors' standard commercially available support, maintenance, and warranties as documented in the DIR cooperative contract or modified in accordance with the DIR cooperative contract provision addressing modification of contract terms and/or amendments.

For this section, a "statement of work" means a document that states the requirements for a contract of more than \$50,000, including deliverables, performance specifications, and other requirements, specific to the vendor under that contract that are not specified in DIR's cooperative contract. A statement of work executed by a state agency under a contract awarded by the department under Tex. Gov't Code § 2157.068 is not valid and money may not be paid to the vendor under the terms of the statement of work unless the department first signs the statement of work.

### **Software-as-a-Service Solutions**

THECB must procure all Software-as-a-Service (SaaS) and Platform-as-a-Service (PaaS) software through the Shared Technology Services (STS) program, unless subject to an exemption approved by DIR. DIR has established the STS commodities process through which THECB will procure this type of software. Program staff submitting an Intake request to purchase SaaS or PaaS software must note in their Intake submission that the requested software is a SaaS or PaaS, if known.

### **Cloud Computing Services (TX-RAMP)**

Cloud computing is a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction.

The Texas Risk and Authorization Management Program (TX-RAMP) is a standardized approach to the assessment and evaluation of cloud computing services. THECB may not enter into or renew contracts to receive cloud computing services with any vendor who has not provided documentation of its compliance with TX-RAMP certification requirements.

### **Major Information Resources Projects**

THECB is required to submit additional documentation prior to posting a solicitation or entering into a contract for any major information resources project. A major information resources project (MIRP) is any information resources technology project identified in a state agency's biennial operating plan whose development costs exceed \$5 million and that requires one year or longer to reach operations status, involves more than one state agency, or substantially alters work methods of state agency personnel or the delivery of services to clients. It also includes any information resources project designated by the Legislature in the General Appropriations Act as a major information resources project. Development costs are considered to be all costs necessary for the project to reach operations status but may also include post-operations costs as well.

Program staff submitting an Intake request for a possible MIRP must indicate that in their submission. All documentation relating to a MIRP, including the solicitation and contract documents, must be reviewed by the Quality Assurance Team (QAT) prior to issuance. The QAT is composed of representatives of the LBB, DIR, and CPA, with SAO participating as an advisor. Any awarded contract for a MIRP will be subject to QAT monitoring and reporting requirements.

### **Proprietary Purchases**

Authority: Tex. Gov't Code § 2155.067(a), 2155.067(c), 2155.063, and 34 Tex. Admin. Code § 20.25(45), 20.209(b)(4).

A proprietary purchase is one where the specifications or conditions of the proposed purchase are proprietary to one vendor and do not permit an equivalent product or service to be supplied. The term "proprietary" refers to a product or service that has a distinctive feature or characteristic which is not shared or provided by competing or similar products or services. Proprietary purchases include products or services manufactured or offered under exclusive rights of ownership, including rights under patent, copyright, or trade secret law.

Proprietary procurements are still subject to ESBD posting requirements, as well as requirements applicable to SPD delegation, CAT reviews, and QAT reviews. The solicitation for a proprietary procurement must include the following statement:

"These specifications are being advertised under Section 2155.067 of the Texas Government Code. Only bids on items conforming exactly to these specifications, which include proposing only the brand name(s), make and model number(s) specified, will be considered in determining an award."

Proprietary purchases, by definition, preclude competition because an attribute of the purchase limits consideration to only one product or supplier. In today's robust marketplace, it is unusual for only one product or one vendor to be capable of addressing an agency's business need. Because Texas procurement law promotes the use of competitive bidding for purchases, proprietary purchases are subject to enhanced scrutiny.

\*Please see Office of General Counsel for proprietary determination.

## Issuing a Formal Solicitation

### Drafting the Solicitation

The Program area will work together with the assigned contract developer, attorney, and all other relevant stakeholders to ensure that the solicitation contains, at a minimum, the scope of the project, milestones, deliverables description, calendar of events, acceptance criteria, evaluation criteria, and all other items required by law or recommended by the SPD.

The Deputy Commissioner for the Program area that has requested the service or good shall approve the evaluation criteria prior to posting the solicitation on the ESBD, or otherwise.

### Advertising Formal Solicitation on Electronic State Business Daily (ESBD)

Authority: Tex. Gov't Code § 2155.083(h)-(i); 34 Tex. Admin. Code § 20.214.

THECB is required to post procurements with a contract value of more than \$25,000 to the ESBD, regardless of the source of funds to be used for the contract, to include grant funds. To ensure solicitation is competitive, purchasing staff will post the solicitation on the ESBD. Vendors may browse agency procurement opportunities and find recent awards by searching for solicitations using various criteria including agency name, NIGP Class/Item code, posting date, and solicitation closing date.

In the event the action resulting from the ESBD posting is not a contract award, THECB must post notice of the non-award to the ESBD within two business days. Depending on the procurement, THECB may also choose to notify each respondent in writing of the non-selection. The Contract Developer must maintain proof of the ESBD posting in the procurement file.

### Formal Solicitation Posting Requirements:

Authority: Tex. Gov't Code § 2155.083(h)-(i); 34 Tex. Admin. Code § 20.215.

It is best practice to advertise a solicitation for 30 days or longer. THECB is required to advertise each solicitation for a minimum of 14 days. Staff are encouraged to consider the solicitation posting times on a case-by-case basis, keeping the statutorily mandated minimum time periods in consideration. A particularly complex or unusual scope of work may result in many vendor questions, in which case, an extended solicitation period would be recommended. Evaluation of the proposals may take more or less time, depending on the size of the evaluation committee and the complexity of the procurement. Likewise, the number of proposals to be evaluated impacts the evaluation time frame. The evaluation period could also be extended if there are presentations, discussions, or best and final offers.

### Communicating with Agency Personnel

Authority: Tex. Gov't Code § 2262.051(i).

All THECB solicitations will provide THECB's designated point(s) of contact and identify acceptable forms of communication with the agency, such as telephone or email. An agency may choose to create a shared email account that is accessible to designated procurement staff who can assist vendors with additional concerns, while following the protocols established in the solicitation. THECB uses a shared email address to ensure backup for communicating with vendors.

Once THECB has started drafting a solicitation, only the purchaser or contract developer assigned to that solicitation, or the Office of General Counsel where appropriate, can communicate with potential vendors regarding the solicitation. Communication with vendors by any other agency personnel may require the solicitation to be canceled or placed on hold.

### Canceling a Formal Solicitation

If THECB decides not to make the procurement, THECB will amend the posting to indicate the effective date of the cancellation within two business days of canceling the procurement.

**Formal Solicitations**

**Table 2: Formal Solicitation Methods**

<b>Procurement Method</b>	<b>Use When</b>	<b>Advantages</b>	<b>Disadvantages</b>
Competitive Bids (IFB)	Lots of competition exists. The product or service is available from more than one source.	Award process is simpler. Award is made to the lowest responsive, responsible bidder providing the best value to the State.	Defined specifications may be difficult to develop. Does not encourage innovative solutions.
Competitive Proposals (RFP's/RFO's)	When factors other than just price are evaluated. When negotiations are desired. Vendor is expected to provide innovative ideas.	Allows factors other than price to be considered. Allows for customized proposals suggesting different approaches to the same business need. Allows for negotiations in order to obtain the best value for the state.	Lead times for procurement are much greater. Evaluations are more complex and subjective.
Request for Information (RFI)	There is insufficient information to write specifications for any procurement method.	Provides information to prepare a complete bid or proposal document. Allows the business community to have input into the agency's solicitation document based on current industry practices and market factors. Informs agency of any potential problems early in the procurement.	
Request for Qualifications (RFQ) [When used, this method is usually required by statute (e.g., Professional Services)]	Selection is made solely on the skills and qualifications of the contractor. Price is not a factor until after a vendor is selected.	Emphasizes the competency of the proposed contractors.	Contractor is tentatively selected before price is negotiated.

**Risk Mitigation Measures when Drafting Solicitations**

For high-risk or high dollar procurements, it is best practice to require each respondent to provide evidence of financial capability to perform all the services required by the solicitation as well as all services offered in the response. For capital-intensive projects, the solicitation should also require disclosure of the source of any outside financial resources the respondent will utilize to enable it to perform under the awarded contract.

The agency may require submission of the following information in the response to assess the financial viability of a respondent:

- A copy of the most recent audited financial statements, including financial statements with all sub-schedules and footnotes, to include balance sheets, profit and loss statements, change in financial position and management letters, with findings and responses to findings; or
- If audited financial statements are unavailable, unaudited financial statements compiled, reviewed and attested by an independent certified public accountant or certified public accounting firm.

## Evaluation

### Bid Process

It is best practice for the bid tabulation or scoring matrix to be reviewed by a second Contract Developer prior to finalization to ensure that the evaluation was conducted in conformance with applicable purchasing procedures.

### Evaluation Committee

Evaluation committee selection should occur prior to receipt of the responses. It is common for the evaluation committee members to have been involved in the procurement planning activities. The Contract Developer may be designated as the committee chair, serving as a non-scoring member of the evaluation committee. The recommended size of an evaluation committee is three to five scoring members. To avoid potential individual bias, it is preferable that the committee does not have fewer than three scoring members.

For all IT-related solicitations, a member of THECB's Information Solutions and Services (ISS) Division shall serve as a scoring member of the evaluation committee. For all solicitations, the Deputy Commissioner for the Program area that has requested the service or good shall approve the evaluation committee selection prior to the evaluation by the committee.

Each committee member will be expected to score each response on how it meets, exceeds or fails to meet the standards established in the solicitation. If THECB plans to use individuals during the evaluation process (e.g., evaluation committee members, technical advisors) who are not agency employees, it is recommended that agency legal counsel be consulted to ensure that appropriate procedures are implemented to protect the interests of the State.

To safeguard the integrity of the evaluation process, individuals serving on an evaluation committee or as technical advisors must sign a non-disclosure agreement prior to receiving the responses or participating in evaluation committee activities. Committee members may not communicate with respondents or anyone else outside the committee regarding the responses received or the evaluation process without prior approval of the Contract Developer or the agency legal counsel, as appropriate.

For procurements with an expected value of \$1 million or more, the [SAO Nepotism Disclosure Statement for Purchasing Personnel](#) must also be utilized. Any actual or potential conflicts of interest must be reported promptly to agency legal counsel.

## Vendor Selection

### Verification of Use of Best Value Standard

Authority: Tex. Gov't Code § 2155.074, 2156.007, 2157.003, 2254.003, 2254.027, and 34 Tex. Admin. Code § 20.217(a).

The best value selection of a contractor 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 industry standards compliance.

THECB Procurement and Contracting Staff must:

1. approve each agency contract for which the agency is required to purchase goods or services using the best value standard;
2. ensure that, for each contract, the agency documents the best value standard used for the contract;
3. acknowledge in writing that the agency complied with the agency’s procurement and contract management guide in the purchase; and
4. ensure that the agency shall evaluate the contractor’s performance based on:
  - a. information prepared by the agency in planning the procurement that assessed the need for the purchase together with the specifications for the good or service and the criteria to evaluate the responses resulting in an award and contract;
  - b. compliance with the material terms of the contract;
  - c. ability to correct instances of contractual non-compliance; and
  - d. other evaluation criteria presented in the on-line vendor performance tracking system (VPTS).

## **Contract Development, Awarding and Execution**

### **Elements of a Contract**

The essential elements necessary to form a binding contract are usually described as:

- An Offer;
- Acceptance;
- Legal Purpose/Objective;
- Certainty of Subject Matter;
- Consideration; and
- Competent Parties.

### **Scope of Work**

Authority: Tex. Gov’t Code § 2157.0685.

The scope of work should be written in a manner which provides a clear and thorough description of the products and services to be provided.

The scope of work should set specific deadlines for completion of tasks and a schedule for submittal, i.e., staff overseeing the contract performance, deliverables, required meetings, presentations, or other activities. The contract manager must consider monitoring methods to ensure the contractor performs as specified in the statement of work.

See [Appendix D](#) for additional Scope of Work resources.

### **Items to Include in Every Contract, Grant, or Amendment**

- A justification for awarding, giving additional funding, or issuing a no-cost extension amendment. Always strive for unambiguous contract language.

Ambiguous– Amendment will expand professional development to support program to further the statewide goals of Building a Talent Strong Texas.

Unambiguous – The contract is being amended for an additional 4 months to allow Grantee to host five additional professional development events to further reach key stakeholders such as Education Service Centers (ESC), local counselors, and school district representatives.

- Budget information:

Ambiguous– Grantee will receive an additional \$15,000.

Unambiguous – The additional \$15,000 will be used toward salary expenses for Grantee’s state coordinator to host five two web-based and three face to face professional development events. All five events will be hosted between September 1, 2018, and December 31, 2018, to allow participating stakeholders to attend.

- Payment

Ambiguous– Grantee will receive an additional \$15,000 upon execution.

Unambiguous – After each professional development event, Grantee will submit to THECB an expenditure report with supporting documentation for reimbursement. After the THECB’s acceptance of the report, THECB will issue payment.

- Reporting:

Ambiguous– Grantee will submit expenditure report.

Unambiguous – After each professional development event, Grantee will submit within thirty calendars after event, an expenditure report in addition to a list of attendees with contact information. Grantee will provide attendees with a survey to complete at each event. The use of an online survey is acceptable. Results of the survey shall be sent to the THECB point of contact.

- Monitoring:

Ambiguous– THECB staff will monitor the Grantee.

Unambiguous – THECB staff will monitor each expenditure report against the financial documentation. In addition, THECB staff will review event information to ensure Grantee is performing the deliverables.

- All required and applicable recommended terms contained in the [Comptroller’s State of Texas Procurement and Contract Management Manual](#).

## Internal Routing Process

### **Routing for Monetary Contracts, Purchase Orders, Grants, and Amendments**

Authority: 19 Tex. Admin. Code § 1.16.

All contracts, purchase orders, grants, and amendments thereto which have a monetary component (whether receivable or payable by THECB) MUST be routed and approved in CAPPs Financial prior to execution. The Office of General Counsel may assist in drafting the contract, but signature should not be obtained until it has been electronically approved in CAPPs Financial.

The CAPPs Financial system has five types of workflow categories. To determine which category to select, staff must understand the type of purchase and the funding authority.

## CAPPS Workflow Categories:

### Origin , Description

- GRT , Grant
- SVC , Service Contract
- IAC , Interagency Contract
- MOU , Memorandum of Understanding
- RCV , Receivables Contract
- PRQ , Purchase Requisition
- PRO , Procurement Card

### **Routing for No-Cost Agreements (NCA)**

All non-monetary, no-cost agreements and contracts THECB enters into must first be routed and approved in NCAA prior to execution. This includes the following categories of agreements:

- Memorandum of Understanding (MOU);
- Program Participation Agreement (PPA);
- Data Sharing Agreement (DSA);
- Free or Trial Software Terms and Conditions (FSTC); and
- Other Non-Monetary Agreement (OTH)

### **Pre-Award Compliance**

Authority: Tex. Gov't Code § 2155.077, 2252.001(2), 2252.152, 2252.153, 2270.021, 2270.001(3), 2270.002, 808.051, and 2252.903.

#### **Debarment Check**

Contracting and Procurement Staff must check the debarred vendor list posted on the CPA website to establish that the vendor has not been debarred by SPD. THECB may not award a contract to a debarred vendor.

#### **SAM Check**

Contracting and Procurement Staff must check the SAM (System for Award Management) database to verify that the vendor is not excluded from grant or contract participation at the federal level. A contract cannot be awarded to a vendor named on the U.S. Treasury Department, Office of Foreign Assets Control's master list of Specially Designated Nationals & Blocked Persons (with limited exceptions set forth in the Order).

#### **Iran, Sudan, & Foreign Terrorist Organization Check**

Governmental entities may not contract with a company doing business with Iran, Sudan, or a foreign terrorist organization. Prior to award, the Contract Developer or purchaser must check the divestment lists to determine if the potential awardee is in violation of this requirement. The divestment lists are maintained by the Texas Safekeeping Trust Company and posted to the CPA website. If the business is in violation, the contract may not be awarded to that vendor.

#### **Boycott Israel Check**

Governmental entities may not contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract. Prior to award, the Contracting and Procurement Staff must check the divestment lists to determine if the potential awardee is in violation of this requirement. The divestment lists are maintained by

the Texas Safekeeping Trust Company and posted to the CPA website. If the potential awardee is on the list, the contract may not be awarded to that vendor.

### **Energy Company Boycott Check**

Governmental entities may not contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott energy companies and will not boycott energy companies during the term of the contract. Prior to award, the Contracting and Procurement Staff must check the divestment lists to determine if the potential awardee is in violation of this requirement. The divestment lists are maintained by the Texas Safekeeping Trust Company and posted to the CPA website.

### **Warrant/Payment Hold Check**

Contracting and Procurement Staff must check warrant hold status of the vendor.

### **Risk Assessment Analysis**

Authority: Tex. Gov't Code § 2261.256.

THECB has developed a risk analysis procedure that:

1. Assesses the risk of fraud, abuse, or waste in the contractor selection process, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts;
2. Identifies contracts that require enhanced contract or performance monitoring or the immediate attention of contract management staff; and
3. Establishes clear levels of purchasing accountability and staff responsibilities related to purchasing.

The Risk Assessment Analysis is required for all contracts, purchase orders, and grants.

[See Appendix E.](#)

### **Awards with a Value Exceeding \$1 Million**

#### Contract Reporting Requirements

Authority: Tex. Gov't Code § 2261.254, 34 Tex. Admin. Code § 20.511

In accordance with Tex. Gov't Code § 2261.254, THECB shall develop and implement contract reporting requirements that provide information on;

1. Compliance with financial provisions and delivery schedules under the contract
2. Corrective action plans required under the contract and the status of any active correction action plan; and
3. Any liquidated damages assessed or collected under the contract.

Tex. Gov't Code § 2261.254 also requires that THECB verify:

1. The accuracy of any information reported under Subsection (a) that is based on information provided by a contractor; and
2. The delivery time of goods or services scheduled for delivery under the contract.

THECB reports on contracts for goods or services valued at over \$1 million annually through the life of the contract. Contracts exceeding \$1 million must also be approved by the governing officer or governing board, if applicable, and signed by the governing officer or board chair, if applicable, unless this approval and signature authority has been delegated to the agency's executive director. Under Rule 1.16, THECB has delegated approval and signature authority to the Commissioner of Higher Education for all contracts up to \$5 million.

The Contracts with a Value Exceeding \$1 Million Form is required to be completed for all contracts and amendments exceeding \$1 million. [See Appendix F.](#)

#### Vendor Disclosures

Authority: Tex. Gov't Code § 2252.908 (H.B. 1295, 84R).

Certain non-state entities receiving awards with a value over \$1 million or that need approval by the Board are required to complete "Form 1295" directly from the Texas Ethics Commission's website. The form is completed by the Contractor/Grantee and submitted to THECB for review. The THECB Contract Developer will formally acknowledge the form by logging into the Texas Ethics Commission's portal. See [Appendix G.](#)

### **Awarding and Executing a Contract**

Authority: 34 Tex. Admin. Code § 20.3.

With limited exceptions, THECB shall sign all contracts last. THECB will accept electronic signatures. Electronic signature is a signature that is an image of a hand-made signature such as on a transmitted facsimile, an electronic document created by scanning the original physical document, or an electronic document (such as one created in a PDF) where a separate image of a hand-made signature has been overlaid onto the electronic document in place of a physical hand-made signature.

### **Approval and Signature Authority**

Authority: Tex. Gov't Code § 2155.088; 19 Tex. Admin. Code § 1.16.

Each agreement, which includes contracts, grants, interagency contracts, and amendments, must be approved by the appropriate approver, depending on contract value and in accordance with 19 Tex. Admin. Code § 1.16. Additionally, each contract is required to be signed by an authorized signor of the contracted party. A contract must be approved by THECB within CAPPs or NCAA prior to obtaining signatures.

Dollar thresholds for approval and signature authority are inclusive of all amendments and changes and all optional renewal periods. If an amendment increases the total dollar value of an agreement to a higher level of approval and signature, proper approval for the new total value must be obtained.

The requirement for the Board to approve agreements over \$5 million does not apply for agreements required by state law that are non-discretionary, pass-through funding to a third-party. For example, transfers of appropriations to a specific institution of higher education as directed by the General Appropriations Act would not require Board approval, while discretionary purchases of shared technology services through the Department of Information Resources Data Center Services (DCS) would require either Commissioner or Board approval, depending on the dollar amount, despite the statutory requirement for THECB to participate in DCS. Please consult with OGC to determine whether this exception applies to agreements over \$5 million before determining Board approval is not needed.

Regardless of the total contract value, material changes to a contract for goods or services must be considered by the Board in a meeting. State law and Rule 1.16 specify that a material change includes a change that:

- Extends the length of or postpones completion of a contract for six months or more; or
- Increases the total amount to be paid to the contractor by 10 percent or more.

<b>THECB Approval and Signatory Authority for Contracts and Grants</b>				
*Note: All requirements based on contract value apply equally to payable and receivable agreements.				
<b>Agreement Value or Type</b>	<b>Approval Authority under Rule 1.16</b>	<b>CAPPS/NCAA Approval Authority</b>	<b>Delegated Signature Authority</b>	<b>Approval Documentation Needed</b>
All Agreements with the Federal Government, or any department or agency of the Federal Government, regardless of value and including no-cost	N/A	Commissioner	Commissioner	N/A except as otherwise needed based on agreement value (see below)
All Agreements that must be entered into or approved by "the Board" by statute, regardless of value and including no cost	N/A	Commissioner	Commissioner	N/A
Free software terms and conditions	N/A	Deputy Commissioner for Administration	Deputy Commissioner for Administration	N/A
Data Sharing Agreements that are stand-alone and not an exhibit of a larger monetary contract	N/A	Assistant Commissioner	Assistant Commissioner	N/A
>\$5 million agreements that the agency is required to enter into by law; non-discretionary	Commissioner	Commissioner	Commissioner	N/A
> \$5 million	Board	Deputy or Associate Commissioner, with Board approval uploaded	Commissioner	Board agenda item and minutes
\$1-5 million	Commissioner	Deputy or Associate Commissioner, with Commissioner	Commissioner	Commissioner vendor approval memo and Board notification email

		approval uploaded		
\$100,001-\$1 million	Commissioner	Deputy Commissioner or Associate Commissioner, with Commissioner approval uploaded	Deputy Commissioner	Commissioner vendor approval memo (See <a href="#">Appendix H</a> )
≤ \$100,000	Deputy or Associate Commissioner	Deputy or Associate Commissioner  If Deputy or Associate Commissioner is on leave, an Assistant Commissioner may approve with Deputy Commissioner approval uploaded	Assistant Commissioner	If approval is delegated, Deputy or Associate Commissioner approval email
≤ \$10,000 (Includes no-cost agreements that are not addressed above)	Assistant Commissioner	May only delegate to an equal or higher level	Assistant Commissioner	N/A

### Contract Monitoring and Reporting

Contract managers, i.e., staff overseeing contract performance, should ensure the methods used to monitor contractor performance are clearly stated in the solicitation and contract. The amount of monitoring should be balanced and adequate to meet the need, but limited in type, scope and frequency sufficient to achieve the desired result without unnecessarily increasing costs.

**Contract management may involve a variety of distinct disciplines and roles including:**

- Executive Management;
- Organization Management;
- Project Management;
- Planning;
- Program Staff (subject matter experts and monitors);
- Contractor Management;

- Purchasers;
- Accounting/Budget;
- Legal;
- Audit and Compliance

### Responsibilities of a Contract Manager (i.e., staff overseeing contract performance)

- Participating with the Procurement Team and Office of General Counsel in solicitation development and the review of contract documents;
- Serving as the primary point of contact for agency communication with the contractor regarding all matters pertaining to the contract;
- Managing any state property used in contract performance, (e.g., computers, telephones, identification badges);
- Implementing a quality control and contract monitoring process;
- Monitoring the contractor's progress and performance to ensure goods and services procured conform to the contract requirements and keep timely records of findings;
- Timely escalating any concerns with contractor performance or contract deliverables to Executive Management;
- Consulting with agency legal counsel in a timely manner to address any legal concerns and/or issues;
- Managing, approving, and documenting any changes to the contract through the amendment process authorized by the terms of the contract;
- Monitoring contract term in order to timely submit amendment requests or requests to re-procure services if needed;
- Inspecting and approving the products and/or services by submitting a written document accepting the deliverables or obtain documentation from the end users responsible for receipt that inspection and approval have been completed;
- Verifying accuracy of invoices and authorizing payments consistent with the contract terms;
- Monitoring the contract budget to ensure sufficient funds are available throughout the term of the contract;
- Identifying and resolving disputes with the contractor in a timely manner;
- Exercising state remedies, as appropriate, when a contractor's performance is deficient;
- Maintaining appropriate records in accordance with the records retention schedule;
- Confirming all products and/or services have been delivered and delivery is completed prior to the expiration date of the contract; and
- Performing contract closeout processes by ensuring the contract file contains all necessary contract documentation, vendor performance reported to VPTS, and document lessons learned.

Each contract shall have a Contract Management Checklist to ensure THECB's compliance with state laws and rules relating to the acquisition of goods and services. **The Contract Manager is responsible for regularly updating the Contract Management Checklist and maintaining a master contract file of records produced throughout the life of the contract.** In the event the contract documents are not maintained in a central repository, the Contract Manager will maintain a list identifying the location of the contract documents.

### **Contract managers are not authorized to:**

- Allow the contractor to commence work before the contract is fully executed;
- Change the scope or extend the term of the contract without complying with the formal amendment process prescribed by the contract;
- Authorize the contractor to perform work that is not specifically described in and funded by the express terms of the contract; or
- Allow the contractor to recover costs incurred prior to the effective date of the contract or recover costs above the budget limit set by the contract.

### **Monitoring Plan**

Contract managers should develop a monitoring plan to ensure the contractor is adhering to the Terms and Conditions and meeting the deliverables specified in the contract.

When developing the scope of work, staff should consider the strategy they will utilize to monitor the quality of the contractor's performance. The methods used to monitor contractor performance should be clearly stated in the solicitation. Requiring a contractor, without prior notice, to produce time-consuming reports or maintain stringent testing standards outside normal industry parameters is grounds for legal challenge.

The monitoring activities chosen by the agency should be balanced in type, scope, and frequency to achieve the desired result for the particular procurement. Overly restrictive oversight may interfere with the contractor's ability to accomplish the work and may unnecessarily and inadvertently increase costs. Examples of monitoring activities which may be included in the scope of work include an established timeline for completion of major tasks, scheduled meetings, and submission of status reports. To the extent that particular vendor performance monitoring activities are mandated by an applicable funding source, such as federal funds, these must be specified in the scope of work.

### **Enhanced Contract or Performance Monitoring**

All purchases for goods and services are approved under 19 Tex. Admin. Code § 1.16 and reviewed by either the Financial Services Division, the Office of General Counsel, or both, prior to awarding, dependent on the type and dollar amount of the purchase. Each contract, purchase order (PO), or grant is required to have a risk assessment completed prior to routing for approval. A copy of a risk assessment form can be found in [Appendix E](#).

Agency staff shall utilize THECB's Procurement and Contract Management guidelines and THECB's Risk Assessment tool to determine which contracts require enhanced contract or performance monitoring. The risk analysis is based on a risk factor assessment score. Cost, impact to public or agency, access to confidential data, time constraints, and contractor experience are scored. Any current or prior issues related to the contractor or grantee will also factor into the analysis.

Contracts considered high risk to the agency are identified as needing enhanced contract or performance monitoring. Enhanced contract or performance monitoring can include additional site visits, additional reporting requirements, contractor meetings with contract managers with leadership involvement, and meaningful access to the progress towards the identified goals and outcomes.

### **Amendments**

Authority: 19 Tex. Admin. Code § 1.16.

All contract and grant amendments are approved under THECB's rules and in accordance with state law. A Contract Manager interested in obtaining guidance on amending a contract should submit an Intake request. Amendments will be approved only as allowed under Texas law. If an amendment seeks to extend the contract

term, it must comply with all provisions of the General Appropriations Act governing contract extensions. For more information, see the following section titled "[Agency Verification of Contract Extension Compliance](#)." Please note that for certain contract extensions, THECB is required to provide advance notice to the Legislative Budget Board (LBB) thirty (30) days before entering into the extension. Contract Managers must submit Intake requests for amendment processing to the Procurement and Contracts Teams with sufficient time to allow for this notice.

Amendments to monetary contracts or grants, including amendments that do not add funds to the contract or grant, are routed as requisitions in CAPPs. Amendments to non-monetary agreements are routed in NCAA. Each amendment document shall reference the original contract and any subsequent amendment numbers. An amendment to the contract or grant must be agreed upon by the parties prior to the original contract's termination date.

### **Agency Verification of Contract Extension Compliance**

It is the intent of the Legislature that agencies and institutions minimize the use of extensions that extend a contract beyond the base term and any optional extensions provided in a contract. As a result, THECB may not use appropriated funds to pay for an extension to an existing agency contract beyond the base term and optional extensions provided for in that contract unless all of the following conditions are met:

- (1) The extension is limited in duration and cost to not more than one additional option period, as defined in the contract, to address the immediate operational or service delivery needs. If a contract does not contain a defined option period, the extension is limited to one year;
- (2) THECB provides notice of the extension to the LBB at least 30 days prior to execution of the extension, by uploading required information to the LBB contracts database. Required information includes but is not limited to the following: the cost of the contract; the duration of the contract; the reason for the extension of the contract; and a plan to ensure that the contract can be completed within the extension period; and
- (3) THECB ensures, prior to providing the notice above, that all information and documents specified in General Appropriations Act, 88th Leg., R.S., Sec. 7.11(d) have been uploaded to the LBB contracts database regardless of whether the information and documents are otherwise required to be uploaded under General Appropriations Act, 88th Leg., R.S., Sec. 7.11.

To comply with this requirement, the Contract Manager must work with the Office of General Counsel or Financial Services Division (POs) to complete the Agency Verification of Contract Extension Compliance Letter (see [Appendix H](#)) and route for signature by the Deputy Commissioner for Administration. The assigned contract developer or purchaser will submit the notice to LBB at least thirty (30) days prior to execution of the contract extension.

### **Major Information Resources Project Amendments**

THECB is required to file a Project Plan with the QAT before it spends more than 10 percent of allocated funds for a major information resources project. THECB may not amend a contract for a major information resources project with a value of at least \$10 million if the contract is at least 10 percent over budget or the associated major information resources project is at least 10 percent behind schedule unless THECB (1) conducts a cost-benefit analysis with respect to canceling or continuing the project and (2) submits the cost-benefit analysis to QAT.

Prior to amending a contract related to a major information resources project, THECB must notify the governor, lieutenant governor, speaker of the house of representatives, presiding officer of the standing committee of each house of the legislature with primary jurisdiction over appropriations, and the QAT if:

1. the total value of the amended contract exceeds or will exceed the initial contract value by 10 percent or more; or

2. the amendment requires the contractor to provide consultative services, technical expertise, or other assistance in defining project scope or deliverables.

THECB must also provide to the QAT a justification for an amendment discussed above.

## Contract Termination

Contract Managers shall notify the Office of General Counsel when issues first arise with a vendor. In the event that THECB desires to terminate a contract early, the Contract Manager must first consult with the Office of General Counsel. If a Contract Manager receives notice from a vendor of its intent to terminate an agreement, the Contract Manager shall consult with the Office of General Counsel as soon as possible.

## Reporting

THECB's Contract and Procurement Teams are responsible for preparing the following contract related reports:

**Procurement Plan:** THECB must complete an agency procurement plan that identifies its management controls and purchasing oversight authority in accordance with the policy guidance contained in the State of Texas Procurement and Contract Management Guide. The Financial Services Division will submit its procurement plan to SPD annually by November 30.

**HUB Program Reports:** On a form prescribed by SPD, THECB must report to SPD, not later than March 15 of each year regarding the previous six-month period and on September 15 of each year regarding the preceding fiscal year, the total dollar amount of HUB and non-HUB contracting and subcontracting participation in all of the agency's contracts for the purchase of goods, services and public works payments. THECB must include contracting and subcontracting participation paid from treasury and non-treasury funds.

**SAO Contracting and Procurement Improvements Report:** Texas Government Code 2261.258 requires the SAO to assign ratings to indicate whether additional, standard, or reduced monitoring of contracting is warranted for each of the twenty-five largest state entities. At the request of the SAO, THECB's Contract and Procurement Teams will provide an annual report detailing specific improvements that the agency has made to its contracting processes and/or additional internal analysis related to agency contracting and procurement processes.

**Quarterly Board Reports:** Submitted to the Board quarterly is a list of all contracts and grants that total \$10,000 or greater, inclusive of all amendments. The list includes allocation grants (e.g., Texas Grant, Community College 10-pay), gifts, memoranda of understanding, and interagency contracts.

In addition, THECB is responsible for posting contract information for certain contracts and grants on its website. See [Appendix L](#) for a list of these reports.

Contracts may contain additional reporting requirements.

## Contract Close-Out

### Contract and Grant Close-Out Form

Every contract and grant award requires a close-out form documenting the results of the contract or award. A close-out form is required to be uploaded prior to closing out the contract or award in CAPPs or NCAA. See [Appendix J](#).

If any inconsistencies are noted, it will require the signature of the Assistant Commissioner for that division along with the Associate or Deputy Commissioner's signature. A copy of the close-out form with inconsistencies listed will be provided to Internal Audit.

After a Contract Manager uploads a completed close-out form to a CAPPs or NCAA record, they must send an email to the THECB Contract Developer(s) asking that the applicable CAPPs or NCAA number be closed. The Contract Developer will review the close-out form and close the record if appropriate.

## Vendor Performance Report

No later than thirty calendar days after the completion or termination of a purchase order or contract, the Contract Manager shall submit a performance review to the vendor performance tracking system (VPTS) on the Comptroller's web page. A THECB Contract Developer will send staff an email requesting detailed information to reflect vendor's performance during contract period. See [Appendix K](#).

Interagency contracts, interlocal agreements, and memoranda of understanding are not subject to the VPTS reporting requirements.

A contractor's performance must be reported to [VPTS](#) once a contract with a value greater than \$25,000 is completed or otherwise terminated. If the value of the contract exceeds \$5 million, the Contract Manager must review the contractor's performance at least once each year during the term of the contract and at each key milestone identified for the contract.

THECB must evaluate the contractor's performance based on the following:

- information prepared by THECB in planning the procurement that assessed the need for the purchase together with the specifications for the good or service and the criteria to evaluate the responses resulting in an award and contract;
- compliance with the material terms of the contract;
- ability to correct instances of contractual non-compliance; and
- other evaluation criteria presented in the VPTS.

For information on how to use the VPTS, refer to the [VPTS User Guide](#) located on the CPA website.

The Contract Manager must request best value criteria from the purchaser and review contract documents. In assessing contractor performance, the Contract Manager should consider the following:

- Did the contractor satisfactorily meet the requirements in the contract?
- Were there any other criteria besides meeting price and specifications in the contract?

If so, the Contract Manager must consider those criteria in the vendor performance evaluation.

The Contract Manager must consult all agency personnel involved in the contract, including the Contract Developer and the end user, to determine the fulfillment of best value criteria. Ideally, the Contract Manager or end user would provide the report.

## Records Retention

A contract solicitation document that is an electronic document must be retained in the document's electronic form. For purposes of records retention, the term "contract solicitation document" includes any document, whether in paper form or electronic form, which is used by THECB to evaluate responses to a competitive solicitation for a contract issued by the agency. THECB may print and retain the document in paper form only if THECB provides for the preservation, examination, and use of the electronic form of the document during the records retention period, including any formatting or formulas that are part of the electronic format of the document.

THECB shall ensure that each contract contains provisions requiring contractors to maintain their records and accounts in a manner which shall assure a full accounting for all funds received and expended by the contractor in connection with the Contract Project. These records and accounts (which includes all receipts of expenses incurred by the contractor) shall be retained by contractors and made available for inspecting, monitoring, programmatic or financial auditing, or evaluation by THECB and by others authorized by law or regulation to do so for a period of not less than seven (7) years from the date of completion of the Contract or the date of receipt by THECB of Contractor's final claim for payment or final expenditure report or until any litigation/billing issues are resolved, whichever is later. If an audit has been announced, the records shall be retained until such audit has been completed. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the services provided in this Contract. Contractor and any subcontractors shall provide any Audit Entities with any information such entity deems relevant to any monitoring, investigation, evaluation, or audit.

### **Post-Payment Audits**

CPA performs audits on documents submitted to the Uniform Statewide Accounting System (USAS). Agencies are audited for compliance with certain state laws and rules concerning payroll, travel, purchase and procurement and with the processing requirements of USAS, the Centralized Accounting and Payroll/Personnel System (CAPPS), and the Standardized Payroll/Personnel Reporting System (SPRS).

## Definitions and Acronyms

**Automated Information Systems (AIS)** – Computers and computer devices on which an information system is automated, including computers and computer devices, service related to the automation of an information system, including computer software or computers, a telecommunications apparatus or device that serves as 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.

**Centralized Accounting and Payroll/Personnel System (CAPPS) Financial System** – THECB's contract routing and invoicing system. The system is maintained and updated, as necessary and appropriate, by the Texas Comptroller of Public Accounts.

**The Contract Advisory Team (CAT)** – was created to assist state agencies in improving contract management practices by reviewing the solicitation of contracts with a monetary value of \$5 million or more.

**The Contract Advisory Team-Review and Delegation (CAT-RAD)** – section is dedicated to the review of solicitations and delegation of purchasing authority for contracts for services greater than \$100,000, and coordination of the mandatory interagency Contract Advisory Team review for contracts with a value greater than \$5 million. Review and Delegation by the CAT-RAD section is required when state agency purchasing staff exceed the established dollar limits and are not authorized to make the purchases elsewhere in statute. If an agency wishes to exceed the established dollar limits of \$100,000 for services, it must seek delegated authority from the Comptroller's Statewide Procurement Division (SPD) to make these purchases.

**Comptroller of Public Accounts (CPA)** – Texas Comptroller's office is the state's chief tax collector, accountant, revenue estimator and treasurer.

**Contracts** – All documents requiring dual signature. Based on deliverables and reporting requirements. May also include amendments.

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

**Deliverables-Based IT Services (DBITS)** – Developed by the Department of Information Resources (DIR), DBITS contracts provide deliverables-based, outsourced systems integration or application development projects. Benefits state agencies by shortening the lead times to procure and contract for information technology (IT) related services.

**Department of Information Resources (DIR)** – Texas state agency for automated information systems and IT related services.

**Disaster** – the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, other public calamity requiring emergency action, or energy emergency. See Tex. Gov't Code § 418.004(1).

**Electronic State Business Daily (ESBD)** – The electronic marketplace where State of Texas bid opportunities over \$25,000 are posted.

**Grants** – An award of financial assistance by the state or federal governments to carry out a program in accordance with rules, regulations, and guidance by the grantor agency. See Grant Management Handbook for more information.

**Historically Underutilized Business (HUB)** – A historically underutilized business as defined by Tex. Gov't Code § 2161.001-.2153 and 34 Tex. Admin. Code § 20.282. Additional information may be found on the [comptroller's website](#).

**Invitation for Bids (IFB)** – A procurement process consisting of a written request for submission of a bid used when the requirements are clearly defined, price is the major determining factor for selection and negotiations are not necessary. However, negotiations are allowed if only one response is received. The IFB uses the competitive sealed bid method and is also referred to as a bid invitation.

**Major Information Resources Project** – Any information resources technology project identified in a state agency's biennial operating plan whose development costs exceed \$5 million and that requires one year or longer to reach operations status, involves more than one state agency, or substantially alters work methods of state agency personnel or the delivery of services to clients; any information resources project designated by the Legislature in the General Appropriations Act as a major information resources project; and any information resources project designated by state law for additional monitoring by SAO if the development costs for the project exceed \$5 million.

**Multi-Vendor, Single-PCA** – CAPPs workflow. Grant funds are allocated directly to institutions of higher education. No contract required. Should only be used for grants.

**No-Cost Agreement Approval (NCAA)** – THECB's system for routing no-cost agreements for approval and signature.

**Quality Assurance Team** – The Quality Assurance Team (QAT) is an interagency working group established in 1993 to provide on-going oversight to reduce risk of project overruns and failures of major information resources projects that receive appropriations from the Legislature. QAT reviews and provides recommendations on contracts for the development or implementation of a major information resources project with a value of at least \$10 million.

**Request for Application (RFA)** – Type of solicitation notice in which an organization announces that grant funding is available and allows researchers and other organizations to present applications on how the funding could be used. RFA's will typically outline what type of programs are eligible, what the expectations are and how applications are to be submitted and reviewed. *Prior to routing a RFA in CAPPs, please consult with the Office of General Counsel.* <http://www.investopedia.com/terms/r/request-for-application.asp>

**Request for Information (RFI)** – A document requesting information for a potential future solicitation. The RFI is typically used as a research and information gathering tool for preparation of a solicitation.

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

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

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

**Single-Vendor, Multi-PCA** – CAPPs workflow category used when there are multiple sources of funding for the agreement. (This category may be used for either a contract or a grant.)

**Statewide Procurement Division (SPD)** – A division within the Texas Comptroller providing an assortment of contract development, contract management operations and customer service that is core to State of Texas purchasing, including administering the HUB program, the Centralized Master Bidders List (CMBL) and the Texas Smart Buy online ordering system. In addition, SPD Contract Development processes hundreds of solicitations and awards for the statewide Term, Managed, TXMAS and open market contracts, which are managed by SPD Contract Management Office (SCM).

**Texas Correctional Industries (TCI)** – Texas Correctional Industries (TCI) is a division of the Texas Department of Criminal Justice (TDCJ) that manufactures goods and services using primarily offender labor for purchase by Texas governmental entities.

**Texas Multiple Award Schedules (TXMAS)** – The Texas Multiple Award Schedule (TXMAS) Program adapts existing competitively awarded government contracts to the procurement needs of the State of Texas.

**Texas Smart Buy** – The State’s central e-procurement system for non-IT goods and services.

**Vendor** – See Contractor definition.

**Vendor Performance Tracking System (VPTS)** – The Comptroller’s statutorily mandated tracking system to help agencies evaluate vendor performance and reduce risk in the contract award process.

**Work Quest [Formerly Texas Industries for the Blind and Handicapped (TIBH)]** – The central non-profit agency that links community’s rehabilitation centers and the Texas Council on Purchasing from People with Disabilities (TCPPD) in support of the Texas State Use Program.

# Appendices

The forms in this appendix are samples of the documents to be completed.

All forms are available on the [Procurement, Contracts, and Grants](#) SharePoint site.

## Appendix A: Non-Disclosure and Conflict of Interest Certification



### TEXAS HIGHER EDUCATION COORDINATING BOARD NON-DISCLOSURE AND CONFLICT OF INTEREST CERTIFICATION

Fiscal Year \_\_\_\_\_ Certification

A special responsibility is imposed on all people who are entrusted with the disposition of the state's funds. The fiduciary nature of the purchasing function, particularly when expending public funds, makes it critical that all persons involved in the process remain independent, free of obligation or suspicion, and free from the perception of impropriety. Premature or unauthorized disclosure of information regarding a proposed solicitation irreparably harms the state's interests and may constitute a violation of Texas Penal Code § 39.02, the antitrust laws of the United States and the state of Texas, and/or the Texas Public Information Act (Chapter 552, Texas Government Code). Credibility and public confidence are vital throughout the purchasing and contracting system. The appearance of impropriety can be as harmful as the conduct itself. It is with this in mind that the following certification is set forth.

I, \_\_\_\_\_, the undersigned, hereby certify that I understand and agree to be bound by the commitments contained herein.

I participate in procurement processes for the Texas Higher Education Coordinating Board.

I agree that I will disclose any information about which I am aware regarding my involvement in any agency decision-making or recommendations on a procurement that could constitute a conflict of interest or create the appearance of impropriety. I understand my relationship with an employee of a business entity that is or may be a respondent or subcontractor may constitute a conflict of interest when that employee is my spouse, child, spouse's child, parent, spouse's parent, child's spouse, brother, sister, grandparent, spouse's grandparent, grandchild, spouse's grandchild, spouse's sibling, sibling's spouse, nephew, niece, uncle, aunt, great-grandparent, or great-grandchild. For purposes of this disclosure, a step-relationship or adoptive relationship is considered the same degree as a natural relationship. If, during any procurement process, I become aware of any actual, potential, or perceived conflict, I will immediately notify my manager and the assigned legal counsel or my agency's ethics office.

I agree that I will not participate in any procurement process if I have, or if I am aware that any member of my immediate family has, an actual, potential, or perceived financial interest in a procurement, including, but not limited to, employment or prospective employment, in a business or organization that may be a respondent (a respondent may be called a proposer, an offeror, a bidder or other like term) or a subcontractor to a respondent. The term "immediate family" as used in this Certification means: One's parents, spouse, children, brothers and sisters, whether residing together or not.

I agree that I will not solicit or accept anything of value from an actual or potential respondent. Should I receive a gift, whether solicited or unsolicited, from an actual or potential respondent or a current, potential, or previous vendor, I agree to follow my agency's policies regarding disposal of the gift.

When participating in procurement processes, I will act on my own accord and not act under duress. I will not participate in a procurement process if I am currently employed by, or if I am receiving any compensation from, or if I will be the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in return for favorable consideration of a respondent(s) during a procurement process.

I will not let any preconceived position I may have regarding the relative merits impact the fair and impartial performance of my responsibilities, nor will I perform my responsibilities based on a personal preference or position regarding the worth or standing of any respondents participating in any procurement. Further, I will, to the utmost of my ability, ensure that the solicitation and the specifications provide all potential respondents an equal and fair opportunity to submit a proposal for evaluation, taking care to ensure that specifications and evaluations are not intended to favor any particular respondent, performing any and all tasks related to the solicitation in an unbiased manner, to the best of my ability, and with the best interest of the state of Texas paramount in all decisions.

I agree not to disclose or otherwise divulge any information pertaining to a procurement including, but not limited to, the following: the development of the solicitation, the content of any response received, the ranking of any response, or the status of the procurement, to anyone other than authorized agency personnel (*e.g.*, approved evaluators, management) assigned to the procurement unless such communication is lawful and in the ordinary course of business consistent with my agency's purchasing policy. I understand the terms "disclose or otherwise divulge" to include but are not limited to, reproduction of any part or portion of any response, or removal of same from designated areas without prior authorization from my manager. If I receive a request for information regarding a procurement from a vendor or other member of the public, I will follow my agency's procedures for responding to such requests which may include providing notification to personnel designated by my agency to manage public information requests.

I agree to perform any and all duties relating to the award process in an unbiased manner, to the best of my ability, and with the best interest of the state of Texas paramount in all decisions.

I will immediately inform both my management and the legal counsel assigned to my division or my agency's ethics office if, at any time during the procurement process, any of these statements are no longer true and correct.

I have been given the opportunity to review this statement prior to signing. If I have questions or concerns about this statement, I am to contact my management or assigned legal counsel or my agency's ethics office. I have not made any changes or deletions on this form without informing my manager or assigned legal counsel or my agency's ethics office.

Should I violate any of the conditions of this agreement, I understand that I may be subject to the agency's disciplinary policies as well as actions relating to any professional certifications or licenses that I may hold.

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Signature

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Date

## Appendix B: Non-Disclosure and Conflict of Interest Certification for Procurement Staff



### TEXAS HIGHER EDUCATION COORDINATING BOARD NON-DISCLOSURE AND CONFLICT OF INTEREST CERTIFICATION

Fiscal Year \_\_\_\_ Certification

A special responsibility is imposed on all people who are entrusted with the disposition of the state's funds. The fiduciary nature of the purchasing function, particularly when expending public funds, makes it critical that all persons involved in the process remain independent, free of obligation or suspicion, and free from the perception of impropriety. Premature or unauthorized disclosure of information regarding a proposed solicitation irreparably harms the State's interests and may constitute a violation of Section 39.02 of the Texas Penal Code, the antitrust laws of the United States and the State of Texas, and/or the Texas Public Information Act (chapter 552, Texas Government Code). Credibility and public confidence are vital throughout the purchasing and contracting system. The appearance of impropriety can be as harmful as the conduct itself. It is with this in mind that the following certification is set forth.

I, \_\_\_\_\_, the undersigned hereby certify that I understand and agree to be bound by the commitments contained herein.

I agree that I will not participate in any procurement process if I have, or if I am aware that any member of my immediate family has, an actual or potential financial interest, including employment or prospective employment, in a contract that may result from the procurement. The term "immediate family," as used in this Certification means:

One's parents, wife or husband, children, brothers, and sisters, whether residing together or not. I agree that I will not participate in any procurement process if I have, or if I am aware that any member of my immediate family has, an actual, potential, or perceived financial interest, including, but not limited to, employment or prospective employment, in a business or organization that may be a respondent (a respondent may be called a proposer, an offeror, a bidder or other like term) or a subcontractor to a respondent. If, during any procurement process, I become aware of any actual, potential, or perceived conflict, I will immediately notify my Manager and the assigned legal counsel.

#### **Statewide Procurement Division**

When participating in procurement processes, I will act on my own accord and not act under duress. I will not participate in a procurement process if I am currently employed by, or if I am receiving any compensation from, or if I will be the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in return for favorable consideration of a respondent(s) during a procurement process. I will have no preconceived position on the relative merits of any of the responses, nor will I have established a personal preference or position on the worth or standing of any respondents participating in any procurement. Further, I will, to the utmost of my ability, ensure that the solicitation and the specifications provide all potential respondents an equal and fair opportunity to submit a proposal for evaluation, taking care to ensure that specifications and evaluations are not intended to favor any particular respondent, performing any and all tasks related to the solicitation in an unbiased manner, to the best of my ability, and with the best interest of the State of Texas paramount in all decisions.

I will immediately inform both my management and the legal counsel assigned to my division if, at any time during the solicitation process, any of these statements are no longer true and correct. I have been given the opportunity to review this statement prior to signing. If I have questions or concerns about this statement, I am to contact my management and/or assigned legal counsel. **I have not made any changes or deletions on**

**this form without informing my Manager and assigned legal counsel.** Should I violate any of the conditions of this agreement, I understand that I may be subject to the agency's disciplinary policies as well as actions relating to any professional certifications or licenses that I may hold.

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(Signature)

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(Date)

## Appendix C: PCC List

A - SPD term contracts using Texas Smart Buy. See 34 Texas Administrative Code § 20.220 – Term Contracts.

C - Purchases from SPD Managed term contracts. See 34 Texas Administrative Code § 20.220 – Term Contracts.

D - Purchases of information technology commodities (products or services) not available through DIR contracts. See 34 Texas Administrative Code § 20.222 – Request for Offer Purchase Method.

E - Purchases of goods and services when the total purchase is estimated to be \$0.00 to \$10,000.00. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.

F - Purchases of goods (not services) in the total estimated amount of \$10,000.01 or more but not more than \$25,000.00. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.

G - Purchases for non-delegated goods or services from a contract awarded by SPD on behalf of a particular agency. See 34 Texas Administrative Code § 20.184 – Requisitions and Specifications.

H - Credit Card Purchases.

I - Purchases of commodity items from DIR Contracts that are not coordinated bulk purchase. See Texas Government Code § 2157 – Purchase of Automated Information Systems (commodities or services).

K - Purchases of publications directly from the publisher with no dollar limits or professional members. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.

L - Purchases of Perishable Foods. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.

N - Purchase of commodity items from DIR contract that are coordinated bulk purchases. See Tex. Gov't Code § 2157 – Purchase of Automated Information Systems (commodities or services)

M - Purchases of distributor items, e.g., repair parts for a unit of major equipment that is needed immediately, or maintenance contracts for laboratory/medical equipment with no dollar limits. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.

P - Purchases of fuel, oil, and grease. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.

Q - Purchases of services (not goods) in the amounts estimated to be \$10,000.01 or more but not more than \$25,000.00. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.

S - Purchases of services or goods in an amount estimated to exceed \$25,000.00. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.

T - Emergency purchases of goods and services exceeding \$25,000.00. See 34 Texas Administrative Code § 20.210 – Emergency Purchases.

X - Purchases of items from SPD TXMAS Contracts. See 34 Texas Administrative Code § 20.231-.233 – Multiple Award Schedule.

0 – Exempt Purchases

B, J, O, R, U, V, W, Y, Z were not set forth herein.

MINIMUM REQUIREMENTS FOR SPD DELEGATED PURCHASES*									
Contract Value	Purchases of Goods**	Purchases of Services**	Direct Publication Purchases	Professional Memberships Purchases	Perishable Goods Purchases	Distributor Purchases	Fuel, Oil and Grease Purchases	Internal Repair Purchases	Emergency Purchases**
\$0.00 to \$10,000.00	Competitive Process Not Required PCC E	Competitive Process Not Required PCC E	Competitive Process Not Required PCC K	Competitive Process Not Required PCC K	Competitive Process Not Required PCC L	Competitive Process Not Required PCC M	Competitive Process Not Required PCC P	Competitive Process Not Required PCC E	Competitive Process Not Required PCC E
\$10,000.01 to \$25,000.00	Informal Competitive Solicitation PCC F	Informal Competitive Solicitation PCC Q	Competitive Process Not Required PCC K	Competitive Process Not Required PCC K	Informal Competitive Solicitation PCC L	Informal Competitive Solicitation PCC M	Informal Competitive Solicitation PCC P	Informal Competitive Solicitation PCC Q	Informal Competitive Solicitation PCC Q
\$25,000.01 to \$50,000.00	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC L	Formal Competitive Solicitation PCC M	Formal Competitive Solicitation PCC P	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation When Possible PCC T
\$50,000.01 to \$100,000.00	Non-delegated PCC S	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC L	Formal Competitive Solicitation PCC M	Formal Competitive Solicitation PCC P	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation When Possible PCC T
Over \$100,000.00	Non-delegated PCC S	Non-delegated PCC S	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC L	Formal Competitive Solicitation PCC M	Formal Competitive Solicitation PCC P	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation When Possible PCC T

\* Procurements made under SPD's delegation authority are subject to ESBD posting requirements as well as requirements applicable to CAT and QAT reviews.

\*\* Purchases for printing must comply with the [Printing Services and In-House Copy Centers](#) procedures.

## Appendix D: Scope of Work

### Overview

The scope of work is a description of the products and services to be provided by the vendor who is awarded the contract. The Contract Developer should use the business requirements identified in the Needs Assessment as the starting point for drafting the scope of work. The success or failure of a contract can usually be linked to the adequacy of the planning, analysis, and thoroughness of the scope of work. Time spent planning, analyzing, and drafting the scope of work will result in savings of time, resources and money, and will improve the quality of products and service provided. The scope of work should be written in a manner which provides a clear and thorough description of the products and services to be provided while at the same time fostering competition. A scope of work should be logically organized and tailored to the agency's business needs.

Because agency procurement and contracting staff are not subject matter experts, the program staff is expected to be able to craft a scope of work. Program staff must consult directly with ISS when drafting the scope of work for any IT-related product or service. A scope of work should be able to explain to a layperson, or a court, what the agency is expecting the vendor to provide and how they will provide it. Further, the program staff should be able to define how the vendor will be selected and evaluated and paid upon award of the contract.

Matters customarily addressed in a scope of work include the following:

- Vendor responsibilities
  - Provide compliant deliverables by the due date
  - Furnish services using qualified personnel
  - Perform tasks at a specified location
- Constraints on the vendor
  - Limited availability of agency resources (e.g., Mon.-Fri. 8 a.m. to 1 p.m. CT access only)
  - Agency security policies (e.g., state building admittance procedures, email encryption protocols)
- Agency responsibilities
  - Permit reasonable access to agency personnel
  - Grant suitable access to agency facilities (including storage space for vendor materials and supplies), equipment, and computer systems
- Evaluation of vendor performance (e.g., standards of performance, inspection, testing, and deliverable acceptance and rejection process)
- Communication protocol (e.g., designated points of contact, routine communications, and escalation plan for problem resolution)

### Specifications

A specification is a description of a product or service the agency seeks to procure and is also what the vendor must offer to be considered for contract award.

**Performance-Based Specifications-** Performance-based specifications focus on outcomes or results rather than the process by which the products and services are produced. Respondents bear the burden of choosing the approach that will be utilized to accomplish the agency requirement. Performance based specifications

allow respondents to bring their own expertise, creativity, and resources to satisfy the agency requirement. Agencies must ensure that performance specifications are reasonable and measurable.

**Design-Based Specifications-** Design-based specifications focus on how the vendor must perform the service or how the product is made rather than what the product or service does. Respondents have very little discretion as to the methods or detailed processes to be used. Agencies must ensure that processes are in place to properly inspect and test for compliance with the specifications.

**Descriptive Specifications- Referenced Brand or Equal-** Descriptive specifications for products must provide those principal physical, functional or other characteristics that are essential to the minimum business needs while providing open and competitive bidding. The specifications should not include minimum or maximum restrictive dimensions, weights, materials or other characteristics that are unique to one brand name or would eliminate competition of other products. As a best practice, a minimum of two known acceptable manufacturer/brand names and model numbers that are currently being manufactured should be referenced as “or equal.” Restrictive descriptive characteristics which are essential to the intended use may be included only if all the manufacturer/brands referenced in the solicitation can qualify.

### **Deliverables and Milestones**

Deliverables and milestones are often used in projects to assess whether required tasks are being provided in accordance with an agreed timeline.

**Deliverable-** A deliverable is a measurable task or outcome (e.g., product, service). A report is one of the most common contracts or provided deliverables. There are various types of agency-requested reports. For example, a status report is used by the agency to assess whether products and services are being provided by the contractor on schedule; a time sheet, however, is used by the agency to track time spent by contractor personnel in performance of the contract.

**Milestone-** A milestone is a scheduled event associated with a deliverable. Milestones are a means to gauge progress. For instance, a milestone may be the date when a specified percentage (e.g., 10 percent) of work is complete or mark the occurrence of the installation of a critical piece of equipment.

### **Professional Licenses and Certifications**

If the type of service to be procured requires a professional license or certification, the solicitation must describe the applicable licensing and certification standard. The solicitation must require the contractor to maintain the license and certification during the term of the contract, notify the agency if there is a change in status, and specify the remedies available to the agency for contractor non-compliance.

### **Established Standards**

If a standard is incorporated by reference, the scope of work must identify any industry, state or agency standards of performance that relate to each activity, task, work product or deliverable. If an industry standard is used, the scope of work should specifically identify the industry standard by name and number.

Examples of national and international standards include American National Standards Institute (ANSI), American Society for Testing and Materials (ASTM), International Organization for Standardization (ISO), Occupational Safety and Health Organization (OSHA), and National Institute of Standards and Technology (NIST).

### **Monitoring Activities**

When developing the scope of work, the agency should consider the strategy it will utilize to monitor the quality of the contractor’s performance. The methods used to monitor contractor performance should be clearly stated in the solicitation.

### **Payment and Pricing Terms**

Advanced payment- THECB may not pay for goods or services before their delivery to the agency unless the advance payment is necessary and serves a public purpose. A list of exceptions to the advance payment prohibition is located on eXpendit State Purchase Policies on the CPA website. Exceptions include, but are not limited to, lease costs, subscriptions, and maintenance contracts. An agency that makes an advance payment to a contractor is responsible for pursuing appropriate legal remedies to recover the payment if the contractor fails to provide the good or service.

Reimbursement - Payments should be structured to fairly compensate the contractor and encourage timely and complete performance of work.

Invoicing Requirements- The solicitation must specify any invoice procedures that apply to the procurement.

**Acceptance Criteria**

It is common for information technology contracts to have language regarding testing and acceptance criteria in order to determine functionality and compatibility with the agency’s IT systems. In these cases, the agency may not pay the vendor until the product or service is deemed to be accepted under these criteria.

**Contract Term and Termination**

As a general policy, it is recommended that the maximum duration for a contract without reissuing a competitive solicitation is four years. This includes any renewal or extension periods. Individual business needs may dictate a different period and agencies should consult their legal counsel for advice on this matter early in the planning process.

**Drafting Tips**

- Organize Content for Readability
- Use Short, Precise Sentences
- Use Active Voice. Active verbs
- Use “Shall,” “Must,” “May,” and “Should” Appropriately
- Use Terminology Consistently
- Avoid Ambiguity
- Avoid Repetition
- Proofread

**Appendix E: Risk Assessment Analysis**

Prior to Contractor/Grantee selection, please complete the Risk Assessment Analysis to assess the risk involved with this purchase or acquisition of goods and/or services. For PRQs, Purchasing staff will complete the Risk Assessment upon vendor selection.

<b>Preliminary Information:</b>	
1. IT Related <input type="checkbox"/> Yes <input type="checkbox"/> No	2. CAPPs or NCAA#: <a href="#">Click here to enter text.</a>
3. Contract Administrator: <a href="#">Click here to enter text.</a>	

<p>4. Type of Contract or Procurement: Click here to enter text.</p>	<input type="checkbox"/> Grant <input type="checkbox"/> Interagency <input type="checkbox"/> PRQ/Purchase Order <input type="checkbox"/> No-Cost Agreement	<input type="checkbox"/> Service Contract <input type="checkbox"/> Receivables Contract <input type="checkbox"/> Request for Applications
<p>5. Describe the need for the goods, services, and/or deliverables. i.e., why is this contract needed? Click here to enter text.</p>		
<p>6. Is this good, service, and/or deliverable currently provided under an existing contract?  <input type="checkbox"/> Yes. Current Contract #: Click here to enter text. Contract End Date: Click here to enter text.  <input type="checkbox"/> No</p>		
<p>7. Is this purchase required by Statute?  <input type="checkbox"/> Yes. If yes, provide the statutory citation: Click here to enter text.  <input type="checkbox"/> No</p>		
<p>8. Is Board Approval Required (See THECB Rule 1.16.)?  <input type="checkbox"/> Yes  <input type="checkbox"/> No</p>		
<p>9. Proposed Contract Start Date: Click here to enter text. End Date: Click here to enter text.</p>		
<p>10. Funding Source:  <input type="checkbox"/> General Revenue (State)  <input type="checkbox"/> Federal  <input type="checkbox"/> Private  <input type="checkbox"/> N/A  If more than one source, please provide details: Click here to enter text.</p>		

<p><b>Conflict of Interest:</b></p>
<p>11. Each state agency employee or official who is involved in procurement or in contract management for a state agency must disclose to the agency any potential conflict of interest specified by state law (Texas Government Code § 2261.252) or agency policy (Chapter E. Ethics and Standards of Conduct and Policy; see also Attachment A) that is known by the employee or official 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.</p> <p>Conflict of Interest Disclosure: Click here to enter text.</p>
<p><b>Risk Assessment</b></p>

<p>12. Dollar Amount</p>	<p><input type="checkbox"/> Between \$0 and \$5,000  <input type="checkbox"/> Between \$5,000.01 and \$25,000  <input type="checkbox"/> Between \$25,000.01 and \$100,000  <input type="checkbox"/> Between \$100,000.01 and \$750,000  <input type="checkbox"/> Between \$750,000.01 and \$1,000,000  <input type="checkbox"/> Over \$1,000,000</p>
<p>13. Contract Experience</p>	<p><input type="checkbox"/> Repeat Vendor with THECB  <input type="checkbox"/> Vendor has never done this type of work before  <input type="checkbox"/> Vendor has contracted with the state before but not for this type of work  <input type="checkbox"/> Vendor has done this type of work before but not for THECB</p>
<p>14. Any Current or Prior Issues Related to this Contractor/Grantee?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No  If Yes, identify issue(s): <a href="#">Click here to enter text.</a></p>
<p>15. Will Contractor have access to confidential data? Describe access needed.</p>	<p><a href="#">Click here to enter text.</a></p>
<p>16. Type of Monitoring by Staff:</p>	<p><a href="#">Click here to enter text.</a></p>
<p>17. Payment (Including Reimbursement) Schedule and Rates:</p>	<p><a href="#">Click here to enter text.</a></p>

18.

**Evaluation Criteria**

	1	2	3	4
Cost	Between \$0 and \$25,000*	Between \$25,000 and \$100,000	Over \$100,000, but less than or equal to \$750,000	Over \$750,000
Impact to public or agency	No impact	Minimal impact	Some impact	High impact
Access to Confidential Data	No Access	Minimal Access	Some Access	Full Access
Time Constraints	Should be completed in less than 3 months	Should be completed in 3 -6 months	Should be completed within 6 months - 1 year	Should be completed in longer than 1 year
Contractor Experience	Repeat Vendor	Vendor has done this type of work before but not with THECB	Vendor has contracted with state before but not for this type of work	Vendor has never done this type of work before

**\*Office supplies such as pencils, pens, computer paper, paper notepads, etc. are not included.**

19.

**Evaluation Table**

Risk Factor	Score
Cost	<a href="#">Click here to enter text.</a>
Impact to public or agency	<a href="#">Click here to enter text.</a>
Access to Confidential Data	<a href="#">Click here to enter text.</a>
Time Constraints	<a href="#">Click here to enter text.</a>
Contractor/Grantee Experience	<a href="#">Click here to enter text.</a>
<b>Total Score:</b>	<a href="#">Click here to enter text.</a>

20.

**Risk Assessment:**

- Very High                      16-20
- High                                11-15
- Moderate                         6-10
- Low                                 0-5

21.

**Recommendations based on assessment:**

Click

[here to enter text.](#)

## Instructions to Complete the Risk Assessment Analysis (RAA)

Below are instructions for completing the (RAA). Instruction numbers match those used in the form.

1. Indicate if ISS will be used under the scope of the procured or contracted goods, services, and/or deliverable work product. If so, contracts will be required to comply with accessibility requirements.
2. Enter CAPPS or NCAA# assigned to this contract, agreement, or grant.
3. Please provide the first and last name of the person responsible for initiating the procurement process. This person should be the intended contract or grant administrator responsible for monitoring the agreement(s) ultimately entered into.
4. The procurement or contract type will impact the contracting process and requirements. For assistance in making this determination, please contact the Office of General Counsel for assistance.
5. Provide a description of the goods, services, and/or deliverables that will be included in the procurement or contract. Provide a brief justification of the goods, services, and/or deliverables needed.
6. If services are currently being provided, please include current contract information.
7. If applicable, please include a reference to the authorization for the purchase (statute, rule, legislation, action memo, etc.)
8. Will this procurement require Board Approval, per Rule 1.16?
9. Proposed Contract Start and End Date (Include the intended duration of the agreement including all expected renewals or extensions.)
10. Indicate if the proposed procurement, grant, or contract will be funded through general revenue, federal funds, or private funding.
11. Disclose any conflicts of interest anyone in the Division may have related to the procurement of this contract and list the name of the Contract Administrator.
12. Estimate a total dollar amount for the duration of the contract.
13. What is the contractor's/grantee's experience providing these goods, services, and/or deliverables to THECB and the State of Texas?
14. In reviewing the Texas Comptroller's Vendor Performance Tracking System, how has this vendor been rated? If there are any current or prior issues related to the contractor/grantee please note them in this section. Legal staff will determine if additional contractual language is required.
15. Indicate if the contractor(s)/grantee(s) will have access to confidential information. If yes, please list types of data needed. (Responses to question #15, will be used to determine contracting requirements for access to confidential information and may necessitate the execution of a Data Sharing Agreement to be drafted and/or reviewed by the Office of General Counsel.)
16. Who will be assigned to monitor the contract/grant and determine the method of monitoring (on-site or desk review)?

On-Site: Site visits can be used to verify actual performance against scheduled or reported performance. These can ensure the contractor/grantee is dedicating sufficient resources and appropriate personnel to the contract/grant.

Desk Review: Typically, these are reviews of reports submitted by the contractor/grantee to THECB.

17. Please indicate the payment and reimbursement rates to be paid to contractor/grantee.
18. The Evaluation Criteria table ranks Risk Factors on a scale of 1 -4. One being a low risk and four being a very high risk to the agency. Your selection for each Risk Factor will be used for #19.
19. Based on your selection, score each risk factor a 1, 2, 3 or 4.
20. Calculating your total score for #19, select whether this vendor falls under the Very High, High, Moderate, or Low category.
21. A recommendation will be based on the information gathered on the assessment.

## Appendix F: Contracts with a Value Exceeding \$1 Million Form

**Tex. Gov't Code Sec. 2261.254 / 19 Tex. Admin. Code Rule § 1.16(a)(3)**

Contract/Amendments #s: \_\_\_\_\_

Contracted Party: \_\_\_\_\_

Rule 1.16(a)(3): For each contract for the purchase of goods or services that has a value exceeding \$1 million, there must be contract reporting requirements that provide information on the following:

- i. Compliance with financial provisions and delivery schedules under the contract  
Identify the sections of the contract: \_\_\_\_\_
- ii. Corrective action plans required under the contract and the status of any active corrective action plan; and  
Identify the sections of the contract: \_\_\_\_\_
- iii. Any liquidated damages assessed or collected under the contract.  
Identify the sections of the contract: \_\_\_\_\_

Verification is required of:

- iv. The accuracy of any information reported under paragraph (3) of this subsection that is based on information provided by a contractor; and the delivery time of goods or services scheduled for delivery under the contract.

At the time of final payment and close out, program staff will complete a formal Contract Close Out form, certifying all Terms of the contract were satisfactorily completed, documentation adequately shows receipt and acceptance of all contract items (e.g. reports, expenditures), all financial matters have been resolved, and if a service contract, a Vendor Performance Report has been completed

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

## Appendix G: HB 1295 Instructions for Certain Contractors/Grantees

Pursuant to Texas Government Code Section 2252.908, which was added by H.B. 1295, 84th Leg. Session, R.S. (2015), Contractor shall submit a disclosure of interested parties to THECB at the time Contractor submits the signed contract to THECB.

This section applies only to a contract of a governmental entity or state agency that either:

- requires an action or vote by the governing body of the entity or agency before the contract may be signed;  
or
- has a value of at least \$1 million.

If Contractor receives written notice from THECB of its failure to submit the disclosure of interested parties and fails to submit the disclosure before the 10th business day after Contractor receives the written notice, then THECB reserves the right to void the contract.

To submit a “Certificate of Interested Parties” form:

1. Go to the [Texas Ethics Commission \(TEC\) online portal](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) to create a username and password.  
The portal and instructional video are located at [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm).
2. Log into the TEC portal and complete the “Certificate of Interested Parties” form.
3. Print the form.
4. Sign the form and ensure the “UNSWORN DECLARATION” section is complete.\*
5. Email completed form to [contracts@highered.texas.gov](mailto:contracts@highered.texas.gov).

\*The “unsworn declaration,” including the date of birth and address of the signatory, replaces the notary requirement that applied to contracts entered into before January 1, 2018.

If you have questions about how to complete the HB 1295 form, please contact:

[Texas Ethics Commission](https://www.ethics.state.tx.us)

(512) 463-5800

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

**CERTIFICATE OF INTERESTED PARTIES**

**FORM 1295**

Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.	<b>OFFICE USE ONLY</b>
<b>1 Name of business entity filing form, and the city, state and country of the business entity's place of business.</b>	Must file online at <a href="http://www.ethics.state.tx.us/File">www.ethics.state.tx.us/File</a>
<b>2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.</b>	

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

**5** Check only if there is **NO** Interested Party.

**6 UNSWORN DECLARATION**

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address is \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(month) (year)

\_\_\_\_\_  
 Signature of authorized agent of contracting business entity  
 (Declarant)

**ADD ADDITIONAL PAGES AS NECESSARY**

## Appendix H:

**PLEASE ADD THE TEXT BELOW TO THE THECB CURRENT LETTERHEAD**

### MEMORANDUM

To: Harrison Keller, Ph.D. Approved:   
Commissioner of Higher Education Disapproved:

Through: Sarah Keyton Approved:   
Associate Commissioner for Administration Disapproved:   
(Required for ISS-related contracts only.)

From: [Name]  
[Associate/Deputy] Commissioner for [Division]

cc: Nichole Bunker-Henderson, General Counsel  
Linda Natal, Procurement Director  
Anthony Infantini, Chief Financial Officer

Date: February 1, 2024

Re: Approval of Authority to Contract With [Vendor]

Dear Commissioner Keller:

Rule 1.16(a)(1) provides you with authority to approve contracts, grants, and other agreements with a value up to \$5 million, inclusive of all amendments. Texas Administrative Code (TAC), Title 19, Part 1, Chapter 1, Subchapter A, Section 1.16(a)(1).

**Action Requested:** This memo seeks approval to contract with [Vendor]. The proposed contract and project description are set out below.

**Project Description:** [This information may come from Purpose/Description section of contract, grant, or agreement and should include the purpose, key deliverables, and vendor information/qualifications.]

#### Contract Information:

CAPPS No.:	[#####]
PCA	[XXX]
Proposed Vendor:	[Vendor Name]
THECB Contact:	[Program Manager]

Proposed Value:	\$(XXX)
Proposed Term:	[Month Day, Year]–[Month Day, Year]
Board Notification*	[N/A or Proposed Draft Attached]

\*Notification of the Board Chair, Vice Chair, and Agency Operations Committee Chair is required for any agreement valued at \$1 million or more, inclusive of all amendments, prior to execution of the agreement. TAC, Title 19, Part 1, Chapter 1, Subchapter A, Section 1.16(a)(2). See the [Board Notification Email Template and Instructions](#) for detailed guidance.

## Appendix I: Agency Verification of Contract Extension Compliance Template

This memo is required by Article IX, Section 17.09, General Appropriations Act for any contract extension that adds costs to the total contract amount and exceeds the base term and any optional renewals included in the contract. PLEASE ADD THE TEXT BELOW TO THE CURRENT AGENCY LETTERHEAD.

[Insert Date]

Jerry McGinty  
Director Legislative Budget Board  
Robert E. Johnson Bldg., 5th Floor  
1501 N. Congress  
Austin, Texas 78701-1200

Dear Mr. McGinty,

Pursuant to Article IX, Section 17.09(e) of the General Appropriations Act, the Texas Higher Education Coordinating Board (THECB) notifies the Legislative Budget Board (LBB) that THECB intends to extend the following contract:

### A. Contract Information

1. [Vendor's name, address, and phone number];
2. [Contract Identification number];
3. [Maximum amount of the contract, including extension(s)]; and
4. [Term of the contract].

### B. Reason for Extension

[Please explain why the contract extension is necessary].

### C. Plan for Contract Completion

[Please provide a brief plan describing how the contract manager and other agency staff working with the vendor will ensure that the contract can be completed within the additional extension period].

Sincerely,

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Associate Commissioner for Administration

Date: \_\_\_\_\_

## Appendix J: Contract Close-Out Form

CAPPS or NCAA # \_\_\_\_\_ Contracted Party/Grantee \_\_\_\_\_ Type: Contract  Grant  PRQ

If any amendments and/or AY split(s), please list \_\_\_\_\_ Program Name \_\_\_\_\_

Item	Yes	No*	N/A	Notes
Terms of the contract/grant satisfactorily completed (e.g., all deliverables/services/goods)				
Documentation adequately shows receipt and acceptance of all contract/grant items (e.g., reports, expenditures)				
All financial matters have been resolved (e.g., final invoice paid in CAPPs, refund has been received, etc.)				

**If this is a Service Contract or PRQ \$25,000 or above with a non-state entity**, the Texas Comptrollers of Public Accounts requires the THECB to submit a Vendor Performance Report (VPR) within 30 days of contract completion date. Please include a completed VPR along with this Close-Out Form. The VPR is located on the Procurement Contracts and Grants SharePoint.

I certify that the information provided on this document is accurate to the best of my knowledge and belief. This section requires two signatures.

THECB Staff	Print Name	Certification Signature	Date	Notes
Program Manager				
Supervisor				

\*If "No" is checked above, signatures from the Assistant Commissioner and Deputy Commissioner are also required.

THECB Staff	Print Name	Certification Signature	Date	Notes
Assistant Commissioner				
Deputy Commissioner				

All THECB awards are subject to Compliance Monitoring review, pursuant to TEC 61.035 and TAC Rule 1.1

## Appendix K: Vendor Performance Report

Texas Higher Education Coordinating Board

### VENDOR PERFORMANCE REPORT (VPR)

Contract Completion Date: \_\_\_\_\_

CAPPS# <a href="#">Click here to enter text.</a>	Vendor Name <a href="#">Click here to enter text.</a>
Service <input type="checkbox"/> Goods/Commodity <input type="checkbox"/>	Vendor ID (VID) <a href="#">Click here to enter text.</a>
Date Contract Executed <a href="#">Click here to enter text.</a>	Vendor Contact Name <a href="#">Click here to enter text.</a>
Contract Amount \$ <a href="#">Click here to enter text.</a>	Vendor Address <a href="#">Click here to enter text.</a>
THECB Contract Manager <a href="#">Click here to enter text.</a>	Vendor Email <a href="#">Click here to enter text.</a>
Contract Manager Phone <a href="#">Click here to enter text.</a>	Vendor Phone <a href="#">Click here to enter text.</a>
THECB Division: <a href="#">Click here to enter text.</a>	Brief Description: <a href="#">Click here to enter text.</a>

**Best Value** SPD typically utilizes purchase price and whether goods or services met specifications in its determination of whether the vendor met the best value standard (*Please note: Grades D and F are not considered meeting Best Value Standards*)

Did the Vendor Meet the Best Value Standard?  Yes  No

Please indicate at least one of the following Best Value Criteria:

Other Comments:

[Click here to enter text.](#)

### **Positive Performance**

Please check all that apply:

- (301) Shipment made early upon agency/co-op member request
- (303) Product upgrade substitution suggested and accepted at no additional cost to the agency
- (305) Exceptional customer service response
- (309) Provided technical/training/set-up assistance when not required
- (310) Order or service completed satisfactorily
- (311) Voluntary Price reduction for large order
- (399) Vendor commended

### **Negative Performance**

Please check all that apply:

**Delivery:**

- (005) Late Delivery

**Shipment:**

- (014) Failure to identify shipments per contract terms

**Product:**

- (038) Poor product quality and/or performance

Please check all that apply:

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> (006) 1st Written notice issued for late delivery | <input type="checkbox"/> (016) Short/over, weight or count               | <input type="checkbox"/> (083) Failure to meet specifications (Give details below) |
| <input type="checkbox"/> (007) 2nd Written notice issued for late delivery | <input type="checkbox"/> (018) Vendor shipped incorrect merchandise      | <input type="checkbox"/> (085) Poor product quality                                |
| <input type="checkbox"/> (008) Failure to deliver                          | <input type="checkbox"/> (022) Failure to pick up incorrect shipment     |  |
| <input type="checkbox"/> (010) Delivery made at wrong destination          | <input type="checkbox"/> (023) Improper product packaging or palletizing |  |

**Customer Service:**

- (020) Failure to replace damaged goods
- (021) Slow replacement of damaged goods
- (040) Failure to promptly notify TPASS/Agency /CO-OP Member concerning manufacturer discontinuation of an item
- (042) Repair parts not available
- (087) Failure to respond to letter, phone call, or email
- (090) Poor customer service (Give details below)
- (091) Unauthorized substitution

**Work Product:**

- (124) Failure of workforce to meet specifications
- (122) Misrepresentation of qualifications (Give details below)
- (123) Falsification of/fraudulent submittals (Give details below)
- (125) Incorrect allocation of work (Give details below)

**Customer Service Continued:**

- (095) Failure to supply performance bond within required time
- (102) Service not performed within specifications
- (110) Incorrect invoices
- (114) Failure to comply with requirements of HUB Subcontracting Plan (HSP) (Give details below)
- (120) Failure to provide proof of insurance or maintain insurance
- (121) Failure to provide report(s)

**Work Product Continued:**

- (052) Inspection - Receiving Agency
- (100) Unsatisfactory installation
- (129) Failure to comply with code of conduct as specified
- (024) Failure to follow palletizing instructions
- (113) Failure to comply with terms/conditions of contract (Give details below)

**Customer Service Continued:**

- (126) Failure to respond to emergencies as required (Give details below)
- (127) Failure to close out project as specified
- (128) Certification not received on time
- (130) Failure to pay administrative fees

**Miscellaneous Issues:**

- Other

**Performance Details**

[Click here to enter text.](#)

**Satisfactory Resolution**

Please check all that apply:

**Customer Service:**

- (217) Performance bond received
- (220) Invoice corrected
- (236) Entire contract canceled (No Fault of Vendor)
- (249) Order completed
- (255) Substitution approved by awarding agency
- (256) Insurance requirements received
- (258) Certification received
- (259) Resolved and documented (No Fault of Vendor-Give reason below)
- (261) Paid administrative fees

**Work Product:**

- (208) Service met specifications
- (209) Performance corrected
- (212) Equipment performance corrected

**Product:**

- (205) Item met specification via inspection
- (210) Material or item replaced
- (230) Item canceled from contract (No fault of vendor)

**Shipment:**

- (207) Delivery made after vendor was notified
- (251) Correct shipment received

**Miscellaneous:**

- (202) Complaint withdrawn (Give reason below)
- (234) Item/entire order canceled
- (260) Vendor failed to receive purchase order on time (Agency or postal fault)
- (299) Other (Give reason below)

**Unsatisfactory Resolution**

Please check all that apply:

**Cancellation:**

- (228) Item canceled from contract (Vendor failure-vendor initiated)

**Damages:**

- (211) Damages Assessed
- (213) Failure to pay assessed damages
- (237) Damages paid

**Shipment:**

- (201) Late Delivery
- (225) Shipment rejected (Give reason below)

Please check all that apply:

(229) Item canceled from contract (vendor failure-state initiated)

(235) Entire contract canceled (Vendor fault)

(266) Item/entire order canceled (Vendor fault)

(267) Delivery not corrected by vendor

**Unresolved:**

(262) Order not complete (Give reason below)

**Unresponsive:**

(269) Failure to provide required documentation (vendor fault)

(270) Vendor failed to Respond to Complaint

(271) Administrative fees not paid-vendor on warrant hold

**Miscellaneous:**

(263) Manufacturer fault (Give reason below)

(264) Resolved and documented (Vendor fault-give reason below)

(265) Substitution not approved by awarding agency

(298) Other (give reason below)

**Resolution Date:** [Click here to enter text.](#)

**Resolution Comments/Details:**

[Click here to enter text.](#)

**Factors for Potential Debarment**

Please indicate if any of the following referenced in Government Code 2155.077 have occurred:

**Material Misrepresentation**

**Material Breach of Contract**

**Fraud**

**Vendor Grade**

Please rate the vendor's performance for this contract on the scale below:

A= Excellent performance, B= Good performance, C = Satisfactory performance, D = Unsatisfactory performance, F = Extremely unsatisfactory performance

A  B  C  D  F

### Grade Justification

#### Grade Explanation:

<b>Grade A:</b>	Must be given to vendors who met best value criteria and fully complied with all contract material terms with complete or substantial customer satisfaction.
<b>Grade B:</b>	Must be given to vendors who met best value criteria and fully complied with all material terms – or promptly remedied any minor instance of non-compliance with those terms – with substantial or adequate customer satisfaction.
<b>Grade C:</b>	Must be given to vendors who met best value criteria and substantially remedied a majority of the instances of non-compliance with the material terms of the contract with adequate customer satisfaction.
<b>Grade D:</b>	Must be given to vendors who did not meet best value criteria or were in substantial non-compliance with material contract terms and failed to remedy a majority of those instances of that non-compliance.
<b>Grade F:</b>	Must be given to vendors who did not meet best value criteria or were in substantial non-compliance with the material contract terms and failed to remedy a majority of those instances of non-compliance or displayed conduct that would be cause for debarment such as fraud, material misrepresentation, or certain types of contract breach.

*Agencies shall report vendor performance on purchases of goods and services over \$25,000. The information gathered from this report will be submitted electronically, through the Texas Comptroller Public Account, Statewide Procurement Division (SPD) web portal on Texas Smart Buy. A vendor has fourteen (14) calendar days to respond to performance report.*

## Appendix L: Post-Award Reporting Requirements<sup>1</sup>

- 1. Post notice of award to the ESBD for contracts exceeding \$25,000.** A contract award is void if it is in violation of the applicable minimum required posting times or if no ESBD posting was made.
- 2. S.B. 20 Report**

Authority: Tex. Gov't Code § 2261.253.

The [THECB Contract Report](#) is provided in accordance with [Tex. Gov't Code § 2261.253](#), Governor Greg Abbott's January 28, 2015 directive requiring public disclosure of all no-bid contracts, and Senate Bill 20, 84th Texas Legislature, requiring state agencies to post all contracts with private vendors that are not also posted to LBB's Contract database.

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<sup>1</sup> THECB will redact the following from any posted or reported contract:

1. information that is confidential under law;
2. information that the Office of Attorney General has determined can be excepted from public disclosure under exceptions to Chapter 552 of the Texas Government Code, commonly known as the Texas Public Information Act;
3. the social security numbers of any individuals; and
4. information protected under Family Educational Rights and Privacy Act (FERPA)

### 3. THECB Contracts \$100,000 and Above

Authority: Tex. Gov't Code § 2054.126(d)(4).

The [THECB Contracts \\$100,000 and Above Report](#) is provided in accordance with Tex. Gov't Code § 2054.126(d)(4).

### 4. Interagency Contracts Over \$10 Million

**Authority:** General Appropriations Act, S.B. 1, Article IX, Section 7.14, 88th Leg. Session, R.S. (2023)

Annually no later than September 30, THECB is required to post on its website the following information for all Interagency Contracts over \$10 million dollars:

- Contracting agencies;
- Contract Type – Service or Receivable;
- Amount spent by paying agency;
- Method of Finance;
- Relevant agency program(s) affected; and
- Appropriated line item

### 5. Legislative Budget Board (LBB) Notification

Authority: 34 Tex. Admin. Code § 20.218 and 20.511.

General Appropriations Act, S.B. 1, Article IX, Section 7.04, 88th Leg. Session, R.S. (2023) requires the reporting of all contracts and grants \$50,000 and above, including amendments, to the LBB. The award must be reported within 30 days after execution.

### 6. Additional Requirements

General Appropriations Act, S.B. 1, Article IX, Section 7.11, 88th Leg. Session, R.S. (2023) creates additional requirements for reporting certain contracts to LBB:

- Awards \$1 million and above made without an RFA/RFP/RFO or similar require an Attestation Letter to be signed by the Commissioner detailing the award and certifying all state laws were followed.
- Awards \$5 million and above require a certification from the Procurement Director stating all state and agency laws were followed.
- Awards \$10 million and above require an LBB Attestation Letter to be signed by the Commissioner detailing the award and certifying all state laws were followed.

General Appropriations Act, Senate Bill 1, Article IX, Section 17.09(f), 87th R.S. (2021) requires an annual report to LBB and the Governor on steps taken to ensure compliance with state procurement requirements, and any other information required by the LBB.

### Appendix M: Resources

<b>Division</b>	<b>Title</b>	<b>Name</b>	<b>Ext.</b>
Information Solutions and Services	Interim Chief Information Officer	Layla Young	76401
Information Solutions and Service	Chief Information Security Officer	Kirk Burns	76238
Information Solutions and Services	System Infrastructure Lead	Jason Brockdorf	76308
Financial Services	CFO	Anthony Infantini	76173
Financial Services	Deputy CFO	Maria Hernandez	76138
Financial Services	Procurement Director	Linda Natal	76141
Financial Services	Grants Specialist	Channel Wesson Poff	76289
Financial Services	Purchaser	Marcus Garcia	76515
Financial Services	Purchaser	Natasha Jones	76438
Financial Services	Purchaser	Jeffrey Trevathan	76165

<b>Division</b>	<b>Title</b>	<b>Name</b>	<b>Ext.</b>
Financial Services	Accounts Payable	Michelle Gonzales	76323
Financial Services	Financial Analyst	Shellie Schultz	76177
Office of General Counsel	General Counsel	Nichole Bunker Henderson	76297
Office of General Counsel	Deputy General Counsel	Lesli Gattis	76143
Office of General Counsel	Assistant General Counsel (Contracts)	Kaitlyn Yost	76120
Office of General Counsel	Assistant General Counsel (Grants)	Doug Brock	76375
Office of General Counsel	Assistant General Counsel (Public Information Coordinator)	Nina Wiggins	76307
Office of General Counsel	Chief Privacy Officer	Jennie Kennedy	96149
Office of General Counsel	Contract Specialist	Courtney Harris	76142

**Appendix N: 2024 Revisions**

THECB Contracts and Procurement Staff – Updated all references to the Contracts Team, under the Office of General Counsel, and the Procurement Team, under the Financial Services Division, and streamlined explanation of the teams’ roles and responsibilities throughout the Handbook.

CAPPS Financial Implementation – Added information regarding CAPPS Financial and replaced all references to the former contract system (BMS) with CAPPS throughout the Handbook.

Reorganized paragraphs to better align with corresponding headings.

Historically Underutilized Businesses (HUBs) - Provided the name of the HUB Coordinator.

Vendor Communication - Expanded guidelines to align with new agency guidance.

Planning - Added questions for staff to consider when planning a procurement; clarified the need to consult with legal counsel before accepting free technical planning assistance from a potential respondent or contract participant; added guidance on funding planning for potential major information resources projects; and added guidance regarding generally prohibited expenditures.

Procurement Method: Legal Services – Added language to clarify that in addition to the contract being subject to OAG approval, all invoices must also be approved by OAG prior to payment.

Procurement Method: Disaster Act of 1975 – Added language to align requirements for disaster act purchases with current agency policy.

Software as a Service Solutions – Added guidance regarding the agency’s obligations to purchase SaaS software through DIR’s STS program, or obtain an exemption from DIR.

Proprietary Purchases – Added language to align guidance with that provided in the Texas Comptroller’s Procurement and Contract Management Handbook.

Drafting the Solicitation – Added language regarding the solicitation drafting process, including the types of information that should be included and the approval process for the evaluation criteria.

Communicating with Agency Personnel – Added language clarifying appropriate communications with vendors during active solicitations.

Evaluation Committee – Added requirements for composition and approval of solicitation evaluation committees to align with agency policies.

Routing for No-Cost Agreements (NCA) – Added subsection to provide information on the approval routing process for no-cost agreements.

Approval and Signature Authority – Updated the approval and signature matrix for all agency agreements to align with agency policy.

Responsibilities of a Contract Manager – Enhanced and increased list of responsibilities to provide additional guidance to agency contract managers.

Amendments – Provided expanded guidance on the process for submitting amendment requests, legal limitations on amendments, and required reporting.

Agency Verification of Contract Extension Compliance – Provided expanded guidance on the process for complying with GAA requirements for providing LBB advance notice of certain contract extensions.

Contract Termination – Clarified for agency staff the requirement to consult with the Office of General Counsel prior to terminating a contract.

Reporting – Added the SAO Contracting and Procurement Improvements Report to the list of contract-related reports.

[Appendix G](#): HB 1295 Instructions for Certain Contractors/Grantees – Updated to reflect changes in law.

[Appendix I](#): Agency Verification of Contract Extension Compliance – Added a template for providing required LBB advance notification for certain contract extensions.

## Appendix O: Table of Authorities

### **Statutes**

#### Texas Education Code

- [Texas Education Code Section 61.051](#)

#### Texas Human Resources Code

- [Chapter 122](#)

#### Texas Penal Code

- [Section 36.02](#)
- [Chapter 39](#)

#### Texas Government Code

- [Chapter 321](#)
- [Chapter 418](#)
- [Chapter 497](#)
- [Chapter 572](#)
- [Chapter 573](#)
- [Chapter 771](#)
- [Chapter 2054](#)
- [Chapter 2113](#)
- [Chapter 2155](#)
- [Chapter 2156](#)
- [Chapter 2157](#)
- [Chapter 2161](#)
- [Chapter 2252](#)
- [Chapter 2254](#)
- [Chapter 2260](#)
- [Chapter 2261](#)

- [Chapter 2262](#)
- [Chapter 2270](#)

**Rules**

- [Title 34, Texas Administrative Code, Chapter 20](#)
- [Title 19, Texas Administrative Code § 1.16](#)

**Other Authorities**

- General Appropriations Act, 88th Leg., R.S., Article IX, §§ 7.04, 7.11; 7.14, 17.09 (2023)