

# TEXAS SECRETARY OF STATE



## CONTRACT MANAGEMENT HANDBOOK

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## **1. INTRODUCTION**

The Office of the Texas Secretary of State (SOS) Purchasing Division has developed this Contract Management Handbook for all purchases of goods and services by the SOS. This Handbook will be updated periodically to reflect changes in procurement rules and policies. Purchasing Staff stays current on all purchasing rules, policies, and regulations and is the primary source of guidance on procurement processes. The Handbook is also designed to set forth the processes that must be followed in order to adequately manage contracts.

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

## **2. CONTRACT OVERVIEW**

A contract is a written document referring to promises or agreements for which the law establishes enforceable duties and remedies between a minimum of two parties. For the purposes of this Handbook, an original Contract, Amendment, Modification, Extension, Purchase Order (PO), Interagency Agreement, Inter-local Agreement, Inter-cooperative Contract, and a Memorandum of Understanding are all considered contracts.

## **3. PROCUREMENT AND CONTRACT SERVICES**

Purchasing is responsible for coordinating and managing all procurement and contracting activities for the agency. The agency's Purchaser facilitates the procurement and contracting needs for all agency Divisions and all types of purchases to obtain the best value for the Agency. Contracts are approved,

recorded, and monitored consistent with Texas law, regulations, and Agency purchasing procedures.

#### **4. STATE PURCHASING STATUTE AND RULES**

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

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

All agency contracts involving procurements must adhere to the following:

- Texas Government and Administrative Codes;
- Other relevant state laws;
- Federal law;
- State of Texas Procurement Manual;
- State of Texas Contract Management Guide;
- Texas Department of Information Resources Rules;
- General Appropriations Act; and
- SOS Contract Management Handbook.

#### **5. STATE AND AGENCY ETHICAL STANDARDS FOR EMPLOYEES**

All employees who participate in procurement and contracting activities shall adhere to agency policy regarding conflicts of interest. Texas Government Code § 2261.252(a) requires each state agency official or employee who is involved in procurement or in contract management for a state agency to disclose to the agency any potential conflict of interest with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency.

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

State officials and state employees are entrusted with the safety and welfare of the citizenry. In return for their confidence in state government, citizens expect that state employees' private interests will not conflict with public business.

The nature of purchasing functions makes it critical that all participants in the process remain independent, free of obligation or suspicion, and completely fair and impartial. Maintaining the

integrity and credibility of a purchasing program requires a clear set of guidelines, rules and responsibilities to govern the behavior of purchasing employees. Credibility and public confidence are vital throughout the purchasing and contracting system.

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

- A member of the agency's governing body;
- The governing official, executive director, general counsel, chief procurement officer, or procurement director of the agency; or
- A family member related to an employee or official described by Subdivision (1) or (2) within the second degree by affinity or consanguinity.
- A state agency employee or official has a financial interest in a person if the employee or official:
  - Owns or controls, directly or indirectly, at least a 1% interest in the vendor, including the right to share in profits, proceeds, or capital gains or;
  - Could reasonably foresee that a contract with the vendor could result in a financial benefit to the employee or official.
- A financial interest does not include a retirement plan, a blind trust, insurance coverage, or an ownership interest of less than one percent in a corporation.

## **6. CONFLICT OF INTEREST STATEMENT EXECUTED ANNUALLY**

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

## **7. CERTAIN EMPLOYMENT FOR FORMER STATE OFFICER OR EMPLOYEE RESTRICTED**

In accordance with Government Code, Section 572.069 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/vendor may not accept employment from that person/vendor before the second anniversary of the date the officer's or employee's service or employment with the state agency ceased.

## **8. MANAGEMENT CONTROL**

### Internal Request to Purchase

User departments determine products or services needed and complete an internal purchase requisition ("PR") on the Secretary of State's Purchasing System, specifying the requirements and indicating an estimated cost, to request the purchase of specific products or services.

### Approval Process

A paper copy of the purchase requisition is produced from the Purchasing System and the appropriate director signs the requisition to approve the expenditure. Section directors or divisional directors may approve requisitions for their corresponding section/division. All purchase requisitions are then routed to the Director of Administrative Services for budget approval to declare/confirm that monies are available for the requested procurement.

- Any purchase requisition with an estimated cost of \$1,000 or more must be approved by the Secretary or Deputy Secretary.
- Any purchase requisition which requests the payment of membership dues, professional or non-professional, must be approved by the Secretary, Deputy Secretary, or their designee.
- Any purchase requisition which requests a Secretary of State (SOS) employee's attendance to a training session must be approved by the Secretary, Deputy Secretary, or their designee. Note: This does not include attendance to publically offered conferences.

After the appropriate signatures are obtained purchase requisitions are forwarded to the Purchasing Section for processing.

## **9. VERIFICATION OF USE OF BEST VALUE STANDARD**

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

including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the vendor's proposal; the vendor's past performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains compliance standards.

Pursuant to Texas Government Code § 2155.0755, for each contract for which the Agency is required to purchase goods or services using the best value standard, the contract manager or agency procurement manager shall:

- Approve each state agency contract for which the agency is required to purchase goods or services using the best value standard.
- Ensure that, for each contract, the agency documents the best value standard used for the contract.
- Acknowledge in writing that the agency complied with the agency's and comptroller's contract management guide in the purchase.

## **10. STATEMENT OF WORK**

The statement of work (SOW) defines how the Agency will determine that the contract has been satisfactorily completed. The SOW sets a standard for acceptance of the deliverable and establishes a procedure to receive or reject the deliverable based on specific factors. The SOW includes:

- List of services to be performed, actions to be taken by the parties, and/or products to be delivered;

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

### Department of Information Resources SOW Requirements

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

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

#### Contract Value Number of Vendors

- \$50,000 or less May award directly to vendor of choice
- \$50,000 to \$150,000 At least 3 vendors must be solicited for pricing
- \$150,000 to \$1 million At least 6 vendors must be solicited for pricing
- For contracts equal to or greater than \$1 million, agencies are required to conduct their own solicitation process in accordance with other state procurement requirements.

## **11. CONTRACT ADVISORY TEAM REVIEW AND DELEGATION REVIEWS**

1. SOS solicitations of at least \$10 million in value will be submitted to the CAT team for review per Texas Government Code, Sec. 2262.101. CREATION; DUTIES and Sec. 2262.001(4) DEFINITIONS.



- SOS will comply with the CAT's recommendations and comply with the CAT's recommendations on solicitation and contract documents submitted for mandatory CAT review; or
  - submit a written explanation to the CAT regarding why a specific CAT recommendation is not applicable to the contract under review.
2. Substantial Changes to Solicitations

If the initial major contract solicitation document submitted to the CAT changes substantially, SOS will resubmit solicitation document(s) for CAT review. Changes in the major contract solicitation are considered substantial when:

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

### **Delegation Reviews**

1. Any agency contract solicitation (IFB or RFP) for the purchase of services over **\$100,000 per year** will be submitted to TPASS (CATRAD) as a request for delegated purchase authority. Per Texas Government Code, Sec. 2156.121(c) USE OF COMPETITIVE SEALED PROPOSALS.

## **12. VENDOR PERFORMANCE TRACKING SYSTEM**

Reporting of vendor performance is mandated by the Texas Government Code (TGC), §2262.055, and 34 Texas Administrative Code (TAC), §20.108. The requirement applies to purchases over \$25,000 from contracts administered by the CPA or any other purchase over \$25,000 made through delegated authority granted by CPA, purchases made pursuant to Government Code Chapter 10, Subtitle D, or purchases exempt from CPA procurement rules and procedures.

After a contract over \$25,000 is completed or otherwise terminated, the Agency shall review the vendor's performance by filing a report through the CPA's Vendor Performance

Tracking System (VPTS) as required by Texas Government Code § 2155.089.

Per Texas Government Code § 2262.055(d), the agency procurement department will use the VPTS to determine whether to award a contract to a vendor reviewed in the tracking system.

### **13. CONTRACT MANAGEMENT**

Contract management refers to the entire contracting process, which involves planning, forming, and administering contracts through closeout. Contract management activities include administering and monitoring the contract after the award and during contract implementation by measuring completed work, computing and approving payments, monitoring contract performance, incorporating necessary changes and modifications to the contract, and actively interacting with the vendor.

Purchasing staff will utilize this Handbook along with the CPA's Contract Management Guide to achieve contract objectives.

### **14. ACCOUNTABILITY AND RISK ANALYSIS PROCEDURE**

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

- assessing the risk of fraud, abuse, or waste in the vendor selection process,
- contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts;
- Identifying contracts that require enhanced contract monitoring or the immediate attention of contract management staff.
- Establishing clear levels of purchasing accountability and staff responsibilities related to purchasing.

#### **Risk Assessment Matrix (RAM) - Appendix B**

The Agency uses a Risk Assessment Matrix (RAM) tool to analyze contracts to identify areas of risk, i.e., the potential for loss, harm, or damage that may occur due to errors or problems associated with a vendor's performance. Based upon the classification of risk (as low, moderate, high, or extremely high), the contract may require enhanced levels of monitoring. This

assessment is completed to anticipate risks, mitigate or manage risks, and avoid or transfer risk in order to protect the Agency.

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

The risk factors in the Agency's RAM include:

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

Additional risk factors can be considered as appropriate.

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

## **15. ENHANCED CONTRACT MONITORING (see Appendix B)**

When a contract has been identified as requiring enhanced monitoring, the Purchaser will develop a written monitoring plan that sets monitoring frequency, areas to monitor, and key requirements. The plan can call for the following types of review:

- Site Visit – The Purchaser and/or other appropriate staff will visit the vendor's facility to verify actual performance against reported performance;
- Desk Review – The Purchaser will compare performance reports submitted by the vendor against the contract's requirements; and/or

- Expenditure Document Review – The Purchaser will review vendor invoices to determine if the rates and services are the same as allowed by the contract.  
In conducting these types of reviews, the Purchaser will follow guidance provided by the CPA’s Contract Management Guide. All monitoring activities will be documented and maintained with the contract.  
At the conclusion of each monitoring activity, the Purchaser will provide a report to the Director of Administration. The Director of Administration shall immediately notify the Deputy Secretary of State of any serious issue or risk that is identified with respect to a monitored contract as required by Texas Government Code § 2261.253. This communication shall be maintained with the contract.

## **16. CONTRACT PERFORMANCE**

The agency contract manager or designated purchasing staff shall maintain regular communication with the vendor. Respond promptly to all vendor inquiries regarding contract concerns. Work with appropriate staff to develop a strategy to resolve issues and communicate with vendors and thoroughly document all issues and communications pertaining to contract issues.

## **17. CONTRACT DISPUTES**

The following steps should be taken by the Purchasing Manager or the Director of Administration designee to address contract disputes:

- Identify the problem. Early identification of potential problems and effective communication with vendors is essential. Problems can often be resolved by providing the vendor with information or clarification.
- Research facts. Obtain information regarding the potential problem from all relevant sources;
- Evaluation. Review all of the facts in conjunction with the requirements and terms and conditions of the contract.
- Notify the Purchaser and the Director of Staff Services in writing. Provide an overview of the dispute and actions taken towards resolution to date. The Purchasing Manager and Director of Administration will provide guidance and assistance to resolve the dispute. If the dispute is not resolved by the Division Director

- or the Director's designee, the Director of Administration should then facilitate resolution with all parties, with the assistance of the General Counsel as needed. The Director of Administration determines the appropriate course of action and can initiate a written Corrective Action Plan (CAP) or a less formal written procedure. All information related to the dispute and
- its resolution must be documented.

### **18. POSTING CONTRACTS AND CONTRACT DOCUMENTS**

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

### **19. CONTRACT FILES AND RETENTION**

The Purchaser will be responsible for maintaining an official contract file for all contracts that include the request, solicitation, responses, scoring, best and final offers, award documents, corrective actions, contract monitor reports, and change documents. For contracts executed, renewed, or amended after September 1, 2015, Texas Government Code § 441.1855 requires the Agency to retain each contract for a period of seven years after the contract expires, is terminated, or is completed, after all issues have been resolved. Along with the contract, all related solicitation documents, including rejected or unsuccessful bids, shall also be retained. For contracts entered into prior to September 1, 2015, the retention period is four years.

**APPENDIX A: CONFLICT OF INTEREST DISCLOSURE**



**OFFICE OF THE SECRETARY OF STATE  
PROCUREMENT AND CONTRACT MANAGEMENT  
CONFLICT OF INTEREST DISCLOSURE**

Texas Government Code, Section 2261.252, requires any employee or official involved in procurement or contract management to disclose to the agency any known potential conflict of interest specified by state law or agency policy 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. To ensure compliance with this law, any Office of the Texas Secretary of State (“SOS”) employee involved with procurement or contract management must complete this disclosure.

Sections 2.3 and 2.4 of SOS’ Policies and Procedures Manual prescribes standards relating to (1) Personal Interests, Outside Employment, and Financial Activities, and (2) Acceptance of Gifts, Benefits and Favors, respectively, and, accordingly, prohibits various conflicts of interest. In addition, Chapter 572, Subchapter C of the Texas Government Code details various Standards of Conduct and Conflict of Interest Provisions for state employees.

Moreover, pursuant to Section 2261.252(b) of the Texas Government Code, SOS may not enter into a contract for the purchase of goods or services with a private vendor with whom any of the following agency employees or officials have a financial interest: (1) a member of the agency’s governing body; (2) the governing official, executive director, general counsel, chief procurement officer, or procurement director of the agency; or (3) a family member related to an employee or official described by (1) or (2) within the second degree by affinity or consanguinity.

An employee or official has a financial interest in a private vendor if the employee or official: (1) owns or controls, directly or indirectly, an ownership interest of at least one percent in the private vendor, including the right to share in profits, proceeds, or capital gains; or (2) could reasonably foresee that a contract with the private vendor could result in a financial benefit to the employee or official. Retirement plans, blind trusts, insurance coverages, and ownership interests of less than one percent in a corporation are not included in the definition of financial interest.

Do you know of any potential conflict of interest, including, but not limited to, any financial interest referenced above, regarding an SOS contract or bid?

**Choose an item.**

If yes, please briefly describe any conflict of interest that you have identified:

**APPENDIX A: CONFLICT OF INTEREST DISCLOSURE**

**By signing this document, I certify that: (1) I have disclosed to SOS' Purchasing Manager any potential conflict of interest specified by state law or agency policy of which I know, including, but not necessarily limited to, any financial interest, with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by SOS; (2) I will continue to disclose potential conflicts of interest specified by state law or agency policy that I discover in the future in the same manner; and (3) I have no financial interest in any private vendor that has contracted with SOS to provide goods or services.**

**If, after completion of this form, you become aware of a conflict of interest pertaining to a contract or bid, you have a continuing duty to disclose it and are required to contact SOS' General Counsel, SOS' Purchasing Manager, or Human Resources.**

**NAME:**

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**POSITION:**

I hereby certify that I have disclosed any and all known conflicts of interest.

**SIGNATURE:**

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**DATE:**

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## APPENDIX B: ENHANCED CONTRACT MONITORING

Table 1. Evaluation Criteria

Factor	Low	Medium	High	Extremely High
	1	2	3	4
Total Cost	<\$25k	>= \$25k but <\$100k	>= \$100k but <\$1 million	>\$1 million
Type of Contract Purchase	Interagency, MOU or Interlocal	Contract less than 25k	Consulting, Emergency, Sole Source, Proprietary, or Construction > \$25k	Major information technology purchases and leases
Impact to the Public or Agency	No impact to the public or agency	Minimal impact to the public or agency	Some impact to the public or agency	High impact to the public or agency
Agency Mission	Contract services are not critical to SOS's mission	Contract services are moderately critical to SOS's mission	Contract services are critical to SOS's mission	Contract services are critical to SOS's mission
Agency Experience	SOS previously awarded four or more similar contracts	SOS previously awarded two - three similar contracts	SOS previously awarded one similar contract	SOS previously awarded one similar contract of this type
Compliance History	No issues of non-compliance	Moderate instances of non-compliance	Substantial finding of noncompliance	Substantial finding of noncompliance – never contracted with SOS
Stability & Experience of Vendor's Key Management	No recent change and significant experience	No recent change, but not significant experience; or recent change but significant experience	Recent change and not significant experience	Recent change and less than 1 year of experience
Number of Years in Business	More than 5 years	3 to 5 years	1 to 3 years	Less than 1 year
Performance Measures	Contract contains multiple defined and measurable performance measures	Contract contains at least one clearly defined or measurable performance measure	No performance measures included in contract	No performance measures included in contract
Time Constraints	Will be completed in less than 3 mos.	Will be completed within 3 - 6 mos.	Will be completed within 6 mos. - 1 yr.	Will be completed in 1 yr. or longer
Deliverables	Contract contains multiple deliverables that are clearly defined	Contract contains at least one clearly defined deliverable	No deliverables included in contract	No deliverables included in contract
Audit Results	No audit required or no issues or findings in audit(s)	Moderate issues or findings in audit(s)	Substantial issues or findings in audit(s)	Substantial issues or findings in audit(s)
Experience of Agency Purchaser	Purchaser has worked on four or more similar projects	Purchaser has worked on two or three similar projects	Purchaser has worked on one similar project	Purchaser has never worked on projects of this type



## APPENDIX B: ENHANCED CONTRACT MONITORING

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

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

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

<b>Risk Level</b>		<b>Point Range</b>	<b>Description</b>
Extremely High Risk	<b>E</b>	40-52	Projects include unexpected levels of risk, including critical issues that are likely to occur if the contract is not properly managed. Staff Services must consider possible contract risks, document and include them in the contract management plan and determine how risk will be monitored.
High Risk	<b>H</b>	27-39	Projects contain potentially serious risks that may occur. The contract management plan must include language that ensures proactive strategies to reduce risk and the method of monitoring the risk.
Moderate Risk	<b>M</b>	14-26	Projects contain some level of risk that may occur. Staff Services should consider if a contract management plan is required. If contract management plan is not required, the purchaser will identify and document with an explanation of how risks will be managed. This information will be maintained with other contract documentation.
Low Risk	<b>L</b>	0-13	Projects contain minimal risks and are unlikely to occur. Staff Services can proceed with contracting as planned.