Financial Services Division

Contracts and Procurement

Texas Higher Education
COORDINATING BOARD

Procurement and Contract Management Handbook

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Introduction and Purpose

This *Procurement and Contract Management Handbook* (Handbook) is published in compliance with Texas Government Code § 2261.256(b). The purpose of this Handbook is to assist Texas Higher Education Coordinating Board (THECB) staff in the areas of ethics, procurement, and contract management. Further guidance, in addition to the Handbook, is available in the Comptroller's State of Texas Procurement and Contract Management Manual.

While this Handbook serves as a guide, it does not address every issue that may arise in specific circumstances. For complex or unusual contracts, THECB staff should seek assistance from the Contracts and Procurement team as early as possible in the contracting process. The Handbook also does not relieve the staff and contractors of their responsibility to comply with all laws, rules, and regulations applicable to their specific programs and funding sources.

THECB Contracts and Procurement Team

Contracts and Procurement (C&P) serves as a partner and a resource to agency staff, aiming to deliver excellent customer service throughout the contract and procurement process. As a part of THECB's Financial Services Division, C&P provides oversight and support for all procurement and contracting activities, ensuring compliance with federal and state laws as well as agency rules and policies. The C&P team is committed to continuously reviewing and refining its processes to streamline operations and enhance overall agency efficiency.

Within the first year of hire, Contracts and Procurement team members shall obtain the Certified Texas Contract Developer (CTCD) certification, unless otherwise exempt. It is also recommended for Contracts and Procurement staff to obtain the Certified Texas Contract Manager (CTCM) certification.

THECB Budget and Accounts Payable Teams

The Budget and Accounts Payable teams within the Financial Services Division work closely with C&P to ensure that funds are properly encumbered and invoices are received and paid in a timely manner. For questions regarding available budget for a procurement or contract, please contact the Budget team. **If you receive an invoice, please forward it to AccountsPayable@highered.texas.gov as soon as possible**.

THECB Receiving Department

The Receiving Department, part of THECB's Facilities Team, is responsible for verifying and documenting the inspection of merchandise and the receipt of services for the agency.

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

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

- Why do I/we need these goods/services?
- Is there legislative or statutory authority to procure this service? (See the GAA for information on our agency's legislative appropriations)
- Can these goods or services be provided or developed by another state agency or institution of higher education?
- What is the scope of the deliverables or services to be provided and/or what are the specifications of the goods sought?
- By when do I/we need the services or goods?
- 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?
- Who is going to manage the resulting contract?
- Who is accountable to THECB Executive Management to provide contract updates?

For information regarding average lead times for agency procurements, see Procurement Lead Times.

Request Record

The first step for any project involving a potential procurement or contract is to submit a Request Record in THECB's Contract Management System (CMS). All projects require a Request Record, regardless of whether the agency is spending funds.

Projects include, but are not limited to, contracts and contract amendments, Texas Department of Information Resources - Shared Technology Services purchases, no-cost agreements, purchase orders and amendments, requests for temporary services, requests for quotes, and solicitations. Once you submit your Request Record, C&P leadership will assign staff to assist you throughout the process.

Needs Assessment

Authority: Tex. Gov't Code § 2155.

After you submit a Request Record, your assigned Contract Developer or Purchaser and Attorney will collaborate with you and any other stakeholders to gather project details and define key business requirements. For complex projects, C&P will schedule a needs assessment meeting to collect this information. The needs assessment may include market research, analysis of historical spending, benchmarking, or issuing a Request for Information (RFI).

Please note that THECB may not accept a response or award a contract to a vendor compensated by THECB for assisting in the preparation of specifications or solicitations related to the project. Vendors may, however, provide free technical assistance with prior approval from the Contracts and Procurement Team.

Funding Source

During procurement planning, please work with the Budget and C&P teams to determine the appropriate funding source for your project. Funding sources may include General Revenue, General Revenue-Dedicated accounts, Federal Funds, and Other Funds. THECB must ensure that all purchases comply with applicable laws, regulations, and restrictions tied to each funding source. Additional information regarding funds and accounts is available in the Texas Comptroller Manual of Accounts and THECB's Comptroller Manual of Accounts on the CPA website.

Additionally, information resources technology projects with anticipated costs over $5 million may need to be included in the agency's Biennial Operating Plan and could be subject to additional contract approval and monitoring requirements. Please consult with C&P during the Planning phase for any project that may meet these criteria.

Allowable Use of Appropriated Funds

Authority: Tex. Gov't Code §§ 2113.001(2) -.106, and 2113.107(b).

THECB must ensure that each procurement complies with applicable laws, including the General Appropriations Act. For example, appropriated funds may not be used for certain goods and services unless an authorized exemption applies. **The following list contains the most common prohibitions, but it is not exhaustive**. For 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; without an approved Membership Authorization Form;
- Promotional items (aka: "swag") 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 agency's Contracts attorney.

Procurement Authority

Delegation of Authority

The Comptroller of Public Accounts' Statewide Procurement Division (SPD) has authority over all state procurements. THECB must obtain delegation of authority from SPD to procure goods or services independently. Delegation may be:

1. **Granted by SPD rule** for certain pre-approved procurement types (e.g., emergency purchases, IT purchases, etc.) or contract values (e.g., one-time purchases of goods that do not exceed $50,000),
2. **Obtained on a case-by-case basis** by the agency through the SPD Review and Delegation Process.

To determine contract value for delegated purchasing authority, please work with C&P to develop a good-faith cost estimate. **If a one-time delegation of authority is required, SPD requires thirty (30) days lead time to review the delegation request.**

Procurement Method Determination

For most delegated purchases, THECB must first determine whether the good or service is available through applicable state or federal procurement programs. Certain categories—such as printing, copying, and consulting services—are also subject to specific restrictions. Refer to the sections below for details on the appropriate procurement paths for each type of good or service.

State Use Program / Surplus

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.

For most delegated purchases, THECB is required to first check to see if the good or service is available from State or Federal Surplus property programs or of it can be provided under the State Use Program.

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

THECB must first seek goods or services through the State and Federal Surplus Property Programs administered by the Texas Facilities Commission (TFC). If unavailable, THECB must next use the State Use Program when applicable. If the good or service cannot be obtained through these programs, THECB may use an appropriate procurement method outlined below.

Purchase Order (Goods)

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

THECB will first check Texas SmartBuy to see if the requested goods (e.g., supplies, equipment, furniture) are available on an SPD Term Contract. Competitive bidding is not required for items purchased through Texas SmartBuy. If the item is not available for purchase through Texas SmartBuy, the following competitive bidding rules will apply.

- **$10,000 or less** - Purchases for this amount do not require a competitive process. The C&P team will follow internal procedures and policies for procuring the requested good(s).
- **$10,000.01 to $25,000** - THECB is required to obtain three informal bids with a minimum of two (2) bids from Historically Underutilized Businesses. Allow five

business days for responsive bids. C&P 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 four (4) 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 SPD. The C&P team will download the most current OMR form posted on the CPA website and submit to open.market@cpa.texas.gov. If SPD denies the delegation request, SPD will procure the goods on behalf of THECB.
- **$5,000,000 or above** - In addition to the requirements above, C&P must send the solicitation documents to the Contract Advisory Team (CAT) prior to posting. CAT reviews and makes recommendations on the solicitation documents.

Procurement Card (P-Card) Purchases

The C&P team will utilize the agency's Purchasing Card (credit card) in very limited circumstances to complete a purchase. Use of the P-Card is allowed only for the following:

Allowable Purchases:

- Purchases $5,000 or less, where the vendor **only** accepts credit cards;
- IT Software $3,000 or less, where the vendor **only** accepts credit cards;
- Emergency procurements $5,000 or less, with Assistant Commissioner approval.

*See Appendix A for list of PCC Codes

Contracted Services (Non-IT)

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

THECB will first check Texas SmartBuy to see if the requested services are available on an SPD Term Contract. Competitive bidding is not required for services purchased through Texas SmartBuy. If the service is not available for purchase through Texas SmartBuy, the following competitive bidding rules will apply.

- **$10,000 or less** - Purchases for this amount do not require a competitive process. The C&P team will follow internal procedures and policies for procuring the requested good(s).
- **$10,000.01 to $25,000** - THECB is required to obtain three informal bids with a minimum of two (2) bids from Historically Underutilized Businesses. Allow five business days for responsive bids. C&P staff will decide whom to award based on best value for the state.
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- **$5,000,000 or above** - In addition to the requirements above, C&P must send the solicitation documents to the Contract Advisory Team (CAT) prior to posting. CAT reviews and makes recommendations on the solicitation documents.

Professional Services (TGC 2254)

Authority: Tex. Gov't Code § 2254.

Professional services, as defined by Texas Government Code Chapter 2254, are subject to certain additional limitations.

Professional services refer to:

- Accounting services
- Architecture services
- Landscape architecture services
- Land surveying services
- Medicine
- Optometry
- Professional engineering services
- Real estate appraising
- Professional nursing

- Forensic science
- Interior Design

Authority to procure these services is delegated to THECB by statute and does not require a delegation of authority from SPD. THECB will issue a Request for Qualifications (RFQ) in accordance with Texas Government Code Chapter 2254 to procure any of the above listed professional services.

Audit Services

Authority: Tex. Gov't Code § 321.020.

THECB may enter into a contract for audit services only if:

- The scope of the proposed audit has been submitted to the State Auditor's Office (SAO) for review and comment;
- THECB receives delegation from the SAO; and
- THECB procures the services through a competitive selection process in a manner allowed by law.

The C&P team and the Internal Audit and Institutional Assurance Division will collaborate to comply with the above requirements once a Request has been submitted.

Consulting Services

Authority: Tex. Gov't Code § 2254.

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 through a contract with another state governmental entity. <u>Care must be taken to closely follow all statutory requirements for procuring consulting services</u>.

THECB must submit notice of certain consulting service contracts to the Legislative Budget Board (LBB) and the Governor's Office. Consulting services procurements are usually advertised as a Request for Qualifications (RFQ).

Procurement 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.

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:
  - The nature of the previous employment with the agency or the other agency;
  - The date the employment was terminated; and
  - 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.

Legal Services

Authority: Tex. Gov't Code § 2254.

State agencies and officials must obtain authorization and approval from the Office of the Attorney General (OAG) before retaining or using outside counsel. Unless pre-approved by OAG Executive Leadership, hourly rates may not exceed $525 for attorneys and $225 for non-attorney legal work. The OAG requires agencies to post 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), unless justification exists to bypass competitive procurement.

The C&P team will oversee the competitive bidding process. Once outside counsel is selected, C&P will submit a Request to Retain to the OAG for approval of the selected firm or individual and contract scope. The OAG will draft the contract and route it for signatures.

All invoices for OCCs must be approved by the OAG before THECB can issue payment.

Interagency Contracts

Authority: Tex. Gov't Code § 771.

An interagency contract is an agreement between two or more agencies as authorized by Chapter 771 of the Texas Government Code. THECB may agree or contract with another agency for the provision of necessary and authorized services (including technical services) and materials and equipment. THECB will reimburse the performing agency for the direct costs incurred (i.e., personnel costs, expenses, supplies, etc.). **THECB will not issue advance payments for an interagency contract—all payments should be reimbursement-based**. Competitive bidding requirements do not apply to Interagency Contracts.

Interlocal Contracts

Authority: Tex. Gov't Code § 791.

An interlocal contract is an agreement between local governments, or between an agency and a local government, as 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.

Purchases of IT Related Goods and Services

Authority: Tex. Gov't Code § 2157.068

DIR establishes and manages contracts in three program areas for eligible customers: (1) Cooperative Contracts, (2) Shared Technology Services (e.g., Private Cloud, Public Cloud, Print/Mail/Digitization), and (3) Telecommunications. DIR uses strategic sourcing and other methods to obtain best value for IT commodities, including commercial software, hardware, and technology services, such as managed services, IT staff augmentation, training, and deliverables-based projects.

THECB must procure goods and services in these areas through DIR, unless an exemption is approved by DIR. Certain blanket exemptions apply (Blanket Exemptions).

Specific requirements related to temporary IT staffing also apply.

Monetary Thresholds for Competitive Bidding

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

- **$50,000 and Under**: THECB may directly award the contract to a DIR vendor;
- **Over $50,000 to $1 Million**: THECB must submit a request for pricing to at least three (3) vendors or resellers;
- **Over $1 Million to $5 Million**: THECB must submit a request for pricing to at least six (6) vendors or resellers or all vendors in the category if the category has fewer than six vendors; and
- **Over $5 Million to $10 Million**: THECB may utilize a DIR vendor; or THECB may issue a Request for Offers (RFO) on the open market under Texas Government Code § 2157.006(a)(2). If THECB utilizes DIR Cooperative Contracts, THECB must

submit a request for pricing to at least six (6) vendors or resellers or all vendors in the category if the category has fewer than six vendors.

THECB may not execute 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

THECB staff must use their best judgement when estimating the anticipated contract's monetary value. The contract value includes the total amount over the full term, including any amendments, renewals, or optional extensions. For determining the monetary threshold of an IT commodity procurement under a DIR contract, the value **does not include**:

- Documents executed only to encumber funds that do not constitute a binding transaction; or
- Related documents without an accompanying purchase order (e.g., 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 estimated to be between $50,000 and $5,000,000, THECB must prepare a Statement of Work (SOW) to solicit vendors. THECB must submit the draft SOW to DIR for review. DIR review time is **thirty (30) business days**. 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 contract holders to which THECB will send the DIR SOW.

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 DIR 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 a valid exemption has been approved by DIR. DIR has established the STS commodities process through which THECB will procure this type of software.

Program staff requesting the purchase of software should submit a Request Record. The Information Technology Services (ITS) Division and C&P will review and coordinate the procurement through the STS program.

Cloud Computing Services (TX-RAMP)

Cloud computing is a model that enables 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) provides a standardized approach for assessing and evaluating cloud computing services. THECB may not enter into or renew any contract for cloud computing services with a vendor that has not provided documentation demonstrating compliance with TX-RAMP certification requirements.

Major Information Resources Projects

THECB is required to submit additional documentation before posting a solicitation or entering into a contract for any Major Information Resources Project (MIRP). A MIRP is defined as any information resources technology project identified in a state agency's biennial operating plan for which development costs exceed $5 million and that meets one or more of the following criteria:

- Requires one year or longer to reach operational status;
- Involves more than one state agency; or
- Substantially alters work methods of agency personnel or the delivery of services to clients.

A MIRP also includes any information resources project designated as such by the Legislature in the General Appropriations Act. Development costs are all costs necessary for the project to reach operations status but may also include post-operational costs as well.

Program staff submitting a Request Record for a potential MIRP must clearly this designation in their submission. All MIRP-related documentation, 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. Contracts awarded for a MIRP are subject to strict 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 occurs when the specifications or conditions of a procurement restrict the purchase to a single vendor, with no acceptable equivalent product or service. Such purchases involve items or services with unique features or exclusive ownership rights (e.g., patent, copyright, or trade secret).

Proprietary procurements remain subject to all applicable requirements, including ESBD posting, SPD delegation, and CAT and QAT review. Solicitations for proprietary purchases 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."

Because proprietary purchases preclude competition, they are subject to heightened scrutiny. Given today's competitive marketplace, it is rare that only one product or vendor can meet an agency's needs.

Please consult the Contracts and Procurement team for assistance with proprietary determinations.

Disaster Declaration Procurements (Texas Disaster Act of 1975)

Authority: Tex. Gov't Code § 418.

The Governor may declare a state of disaster by executive order or proclamation when a disaster has occurred or is imminent. During a declared disaster, the Governor may suspend statutes or agency rules that would otherwise hinder timely action. For example, the Governor may suspend or waive contracting or procurement requirements to support an agency's emergency response necessary to protect life or property.

Purchases made under a disaster must directly relate to the disaster, follow the declaration's directives, and occur within the specified timeframe.

The procurement file for a disaster declaration procurement must include the following:

- Copy of the disaster declaration;
- Documentation showing the purchase's connection to the disaster;
- List of specific statutes or rules that were waived and explanation of how compliance would have impeded THECB's disaster response;
- Commissioner approval for the use of the disaster declaration;
- Proof of receipt; and
- Payment approval.

Emergency Purchases

Authority: Tex. Gov't Code § 2155

An emergency purchase under SPD's delegated authority is one that must be made quickly to prevent a threat to life, health, safety, welfare, or property, or to avoid undue additional cost to the state. Emergencies result from unforeseeable circumstances requiring immediate action. Proper planning for anticipated needs is expected, and the pending expiration of funds does not constitute an emergency.

Note: Emergency purchases under this section differ from those made under a Governor's disaster declaration. SPD authority does not apply to purchases under the Texas Disaster Act of 1975. See *Procurement Method – Texas Disaster Act of 1975* for details.

Notwithstanding the immediate nature of an emergency, all procurements conducted as emergencies should be made as competitive as possible under the circumstances. THECB 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.

Issuing a Formal Solicitation

Drafting

If formal solicitation is required, C&P will prepare the initial solicitation template and send it to all stakeholders for review. Division staff should ensure that the solicitation contains, at a minimum, the following:

- Scope of the project
- Milestones
- Deliverables
- Payment details
- Calendar of events
- Acceptance criteria
- Evaluation criteria

The C&P team will ensure that the solicitation contains all other items required by law or recommended by the SPD.

Risk Mitigation Measures when Drafting Solicitations

For high-risk or high-value procurements, it is best practice to require respondents to demonstrate financial capability to perform all required and proposed services. For capital-intensive projects, solicitations should also require disclosure of any external funding sources the respondent will rely on to fulfill the contract.

To assess financial viability, THECB may require respondents to submit:

- Audited financial statements for the most recent fiscal year, including all sub-schedules, footnotes, balance sheets, income statements, cash flow statements, 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.

Formal Solicitation Methods

Table 2: Formal Solicitation Methods

Procurement Method	Use When	Advantages	Disadvantages
Competitive Bids (IFB)	Price is most significant factor	Award process is simpler. Award is made to the lowest responsive, responsible bidder providing the best value to the State.	Does not encourage innovative solutions. Negotiation is not allowed.
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 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.	
Request for Qualifications (RFQ)* *Required by statute to be used for certain procurements	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.

Posting the Solicitation

Authority: Tex. Gov't Code §§ 2155.083(h)-(i); 34 Tex. Admin. Code § 20.214-15

THECB is required to post procurements with a contract value of more than $25,000 to the Electronic State Business Daily (ESBD), regardless of the source of funds to be used for the contract. THECB also posts solicitation opportunities on the Vendor

Client Gateway in its Contract Management System. Vendors may browse THECB 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.

If the ESBD posting does not result in a contract award, THECB must post a notice of non-award to the ESBD within two (2) business days. The Contract Developer must retain proof of the ESBD posting in the procurement file.

Solicitations should ideally be advertised for thirty (30) days, though THECB requires a minimum of fourteen (14) days. Posting periods will be determined on a case-by-case basis, with longer periods recommended for complex procurements. Evaluation timelines depend on factors such as project complexity, committee size, proposal volume, and whether presentations or best and final offers are needed.

Vendor Communications During Solicitations

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

All THECB solicitations will designate THECB point(s) of contact and identify acceptable forms of communication with the agency, such as telephone or email.

Once THECB has started drafting a solicitation, <u>**only**</u> the contract developer assigned to that solicitation, or the assigned attorney, where appropriate, can communicate with potential vendors regarding the solicitation. <u>**Communication with vendors by any other agency personnel may require the solicitation to be canceled or placed on hold**</u>.

Cancelling a Solicitation

If THECB decides not to make the procurement, THECB will amend the posting to indicate the effective date of the cancellation.

Evaluation

Invitation for Bid – Scoring Process

Invitations for Bid (IFB) will be scored by C&P using a scoring matrix. Scores will be submitted and reviewed by at least two members of the C&P team to ensure accuracy prior to award.

Solicitation Evaluations

For formal solicitations, an evaluation committee will review and score all responsive proposals. Each scoring committee member will score each response on how it meets, exceeds, or fails to meet the standards established in the solicitation.

Evaluation committee members should be selected prior to receiving responses. It is common for the evaluation committee members to have participated in earlier procurement planning activities.

The Contract Developer will oversee the evaluation process and will serve as a non-scoring member of the evaluation committee. The C&P team recommends appointing **three to five scoring members**. To avoid potential individual bias and ensure balanced assessment, we require a **minimum** of three scoring members. For all IT-related solicitations, a member of THECB's Information Technology Services (ITS) Division shall serve as a scoring member of the evaluation committee.

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. If THECB plans to use individuals during the evaluation process (e.g., evaluation committee members, technical advisors) who are not agency employees, a separate agreement may be required with those individuals to ensure that appropriate procedures are implemented to protect the interests of the State. 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 assigned attorney, as appropriate.

For procurements with an expected value of $1 million or more, the [SAO Nepotism Disclosure Statement for Purchasing Personnel] must also be completed. Any actual or potential conflicts of interest must be reported promptly to C&P.

Vendor Selection

Process for Vendor Selection

The evaluation committee will score all responsive proposals and recommend a vendor for contract award. The C&P team will ensure that the recommendation and all scoring materials are saved to the procurement file and will notify the vendor that they have been selected for tentative contract award, subject to successful contract negotiations.

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 C&P team will ensure that the selected vendor offers the best value to the State and will document the best value justification in the contract record. A best value determination identifies the proposal that provides the optimal balance between price and performance, recognizing that quality is a critical component of performance.

THECB will award contracts 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 successful performance**, including the vendor's ability to meet solicitation requirements on time, with high quality, in a manner that fulfills business objectives and aligns with industry standards.

The best value standard may vary depending on procurement method or procedure, including use of the multiple award purchasing procedure, which allows contracting with more than one vendor for similar goods or services when necessary to ensure adequate delivery, service, or product compatibility.

For every procurement, C&P will:

1. **Approve the contract record** and document the best value factors used to determine the award; and
2. **Ensure that the agency evaluates the contractor's performance** based on the following:
    - Information developed during procurement planning, including the criteria to evaluate the responses resulting in an award and contract;
    - Compliance with the material terms of the contract;
    - Contractor's ability to correct instances of contractual non-compliance; and
    - Additional evaluation criteria presented in the on-line vendor performance tracking system (VPTS).

The C&P team's approval of the contract record in its Contract Management System constitutes written acknowledgement that the agency has complied with all applicable policies in this handbook and in the Comptroller's State of Texas Procurement and Contract Management Manual, as required by law.

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 of a contract should provide **a clear and thorough description** of the products and services to be provided.

The scope of work should set **specific deadlines for tasks and deliverables**. The contract manager must consider monitoring methods to ensure the contractor performs as specified in the statement of work.

See Appendix B 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** details

  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** requirements:

  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** requirements:

  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

Authority: 19 Tex. Admin. Code § 1.16.

All contracts, purchases, and amendments thereto (whether receivable or payable by THECB), including no-cost agreements and purchases made through the DIR-STS program, MUST route for approval in the agency's CMS prior to execution. The assigned attorney may assist in drafting the contract, but final signature should not be obtained until it has been electronically approved in the CMS.

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.

The C&P team shall conduct the following vendor verifications prior to issuing payment to a vendor. The verifications shall be saved in the agency's CMS.

1. **Debarment Check**

   C&P 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.

2. **SAM/Federal Database Check**

   C&P 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 (OFAC) master list of Specially Designated Nationals & Blocked Persons (with limited exceptions set forth in the Order).

3. **Iran, Sudan, & Foreign Terrorist Organization Check**

   Governmental entities may not contract with a company doing business with Iran, Sudan, or a foreign terrorist organization. C&P staff must check the divestment lists, maintained by the Texas Safekeeping Trust Company and available on the CPA website, to determine if the vendor or awardee is in violation of this requirement. If the business is in violation, the contract may not be awarded to that vendor.

4. **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.

5. **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, C&P staff must check the divestment lists to determine if the potential awardee is in violation of this requirement.

6. **Warrant/Payment Hold Check**

   For payments over $500 made on the agency's Purchasing Card, C&P staff must check warrant hold status of the vendor prior to making payment.

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, excluding:

- Open Market contracts under $10,000.00
- DIR purchases under $50,000.00
- All Statewide Procurement Division (SPD) contracts
- All Interagency Contracts (IACs)
- All No Cost Agreements (NCAs)

All Agreements that are excluded from the Risk Assessment Analysis procedure should be reviewed by the contract manager annually to verify there have not been any modifications that would change the agreement from "excluded" to "non-excluded" status.

See Appendix C.

Awards with a Value Exceeding $1 Million

Contracts Over $1 Million Form

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

For every contract over $1 million dollars (excluding Interagency Contracts), C&P staff shall verify the following information by completing the Contracts Over $1 Million form (See Appendix D):

1. The contract contains provisions regarding compliance with financial provisions and delivery schedules;

2. The contract contains language regarding corrective action plans;
3. The status of any active correction action plan; and
4. The contract specifies whether any liquidated damages will be 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.

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 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.

Vendor Disclosures

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

Private companies receiving awards or contracts with a value over $1 million or that need approval by the THECB Board must complete a "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 E.

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, including contracts, grants, interagency contracts, and amendments, must be approved by the appropriate approver based on the total contract value and in accordance with 19 Tex. Admin. Code § 1.16. Additionally, each contract must be signed by an authorized representative of the contracting party. All agreements must receive agency approval in the CMS before signatures are obtained.

Approval and signature authority thresholds are inclusive of all amendments, changes, and optional renewal periods. If an amendment increases the total dollar value of an agreement such that a higher approval or signature level is required, approval for the new total value must be secured.

The requirement for the Board to approve agreements over $5 million does not apply to non-discretionary, state-mandated pass-through funding to third parties. For example, transfers of designated appropriations to an institution of higher education for a specific purpose, as directed by the General Appropriations Act, would not require Board approval. However, discretionary interagency transfers intended to achieve a particular strategy would require the appropriate Commissioner or board approval. Please consult with C&P's Contracts Attorney or Assistant Commissioner to determine whether Board approval is required.

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.

For more information on approval and signature thresholds, please see the chart below.

Agreement Value or Type	**CMS Final Approver (Rule 1.16)**	**Delegated Signature Authority**	**Approval Documentation Needed**
All Agreements with the Federal Government, or any department or agency of the Federal Government, regardless of value and including no-cost	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	Commissioner	Commissioner	N/A
Free software terms and conditions	Associate Commissioner for Agency Operations	Deputy Commissioner for Administration	N/A
Data Sharing Agreements that are stand-alone and not an exhibit of a larger monetary contract	Assistant Commissioner	Assistant Commissioner	N/A
>$5 million agreements that the agency is required to enter into by law; non-discretionary	Commissioner	Commissioner	N/A
> $5 million	Board	Commissioner	Board agenda item and minutes
$1-5 million	Commissioner	Commissioner	Board notification email
$100,001-$1 million	Commissioner	Deputy Commissioner	N/A
≤ $100,000	Deputy or Associate Commissioner	Assistant Commissioner	If approval is delegated, Deputy or Associate Commissioner approval email
≤ $10,000	Assistant Commissioner	Assistant Commissioner	N/A

Contract Management

The contract manager is the staff member within the Division that is responsible for overseeing the lifecycle of the contract to ensure that all parties meet their contractual obligations.

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

Responsibilities of a Contract Manager include, but are not limited to:

- Helping **develop the scope of work** for solicitation and contract documents;
- **Monitoring contractor performance** to ensure goods and services conform to contract requirements;
- Managing **deliverables and timelines**;
- **Ensuring compliance** with contract terms;
- Documenting and timely escalating **performance issues** or disputes;
- Coordinating **amendments or renewals**;
- Serving as the **primary point of contact** with the contractor regarding all matters pertaining to the contract;
- **Managing any state property** used in contract performance, (e.g., computers, telephones, identification badges);
- **Consulting with C&P Contracts Attorney** in a timely manner to address any legal concerns and/or issues;
- **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; and
- **Maintaining appropriate records** in accordance with the records retention schedule;
- **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 page within the CMS. The Contract Manager should use this page to track contract performance, payments, and issues. The Contract Management page is intended to satisfy THECB's compliance with state laws and rules relating to contract management for the acquisition of goods and services. **<u>The Contract Manager is responsible for regularly updating the CMS and maintaining a master contract file of records produced throughout the life of the contract</u>**. 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:

- Permit the contractor to begin work before the contract is fully executed;
- Change the scope or extend the term of the contract without complying with the formal amendment process required by the contract;
- Approve contractor work that is not specifically described in and funded by the contract; or
- Allow the contractor to recover costs incurred prior to the effective date of the contract or recover costs above the contract's established budget.

Contract Management Plan

Contract managers should develop a **contract management plan** to ensure the contractor is meeting the deliverables specified in the contract.

When developing the scope of work, contract managers 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.

Examples of management 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 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 the Financial Services Division prior to awarding. 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 C.

Agency staff shall utilize THECB's Procurement and Contract Management guidelines and THECB's Risk Assessment tool to determine if a contract requires enhanced contract or performance monitoring. The risk analysis is based on a risk factor assessment score. Cost, impact to the public or on the 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 in 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.

For guidance on amendments, contract managers should submit a Request Record in the CMS. All contract and grant amendments must be approved in accordance with THECB's rules and state law. If an amendment proposes 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 certain contract extensions require us to provide the Legislative Budget Board (LBB) with advance notice at least thirty (30) days before executing the extension. Contract Managers must submit Request Records to C&P with sufficient lead time to meet this notice requirement.

All contract amendments, including those that do not add funds, must be routed through the CMS. Each amendment document must reference the original contract and any prior amendments.

Agency Verification of Contract Extension Compliance

Per Legislative direction, **agencies must 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 the following conditions are met:**

(1) **The extension is both 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 C&P to complete the Agency Verification of Contract Extension Compliance Letter (see Appendix F). The assigned contract developer will submit the notice to LBB at least thirty (30) days prior to execution of the contract extension.

Major Information Resources Project Amendments

THECB may not amend a contract for a Major Information Resources Project (MIRP) 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 C&P Contracts Attorney when issues first arise with a vendor. If THECB desires to terminate a contract early, the Contract Manager must first consult with C&P’s Contracts Attorney. If a Contract Manager receives notice from a vendor of its intent to terminate an agreement, the Contract Manager shall consult with legal counsel as soon as possible.

Reporting

Reporting

The C&P team is 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 team 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 I 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. Contract or Grant Managers must complete the closeout form process in the CMS or Grant Management System prior to closing out the contract or award. See Appendix G.

If any contract issues are noted, the Associate or Deputy Commissioner must sign off on the form. After a Contract Manager uploads a completed close-out form to the CMS record, they must **send an email to the THECB Contract Developer(s) asking that the applicable CMS record 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 **valued at $25,000 or more**, the C&P team 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 H.

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

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.

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.

Vendor Communication

Vendor Communication Guidelines

Communication between public procurement professionals and vendors is imperative and encouraged. However, THECB must take steps 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 C&P 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 C&P 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 C&P 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.

Contract managers must document all disputes with vendors related to the purchase of goods or services 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.

Contract managers should take the following initial steps if a dispute arises:

- **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 C&P Contracts Attorney 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 the facts in conjunction with the requirements and terms and conditions of the contract. THECB must then determine the appropriate course of action.

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.

Historically Underutilized Businesses (HUBs)

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

THECB HUB Coordinator: Marcus Garcia, Director for Contracts and Procurement

THECB participates in the Historically Underutilized Business (HUB) Program to the extent required by law. 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.

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).

Ethics and Standard of Conduct Policy

A significant responsibility is imposed on everyone who is entrusted with awarding and spending state funds. As a THECB employee, you must 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 always.

State Ethics Policy

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

The State of Texas prohibits state officers and employees from holding a direct or indirect interest, financial or otherwise, or engaging in any business transaction or professional activity that conflicts with the proper discharge of their official duties. As stewards of public funds, state officials and employees must maintain conduct that promotes public confidence and avoid actions that are improper or appear improper. This standard is especially critical for those involved in purchasing and contract management.

State purchasing personnel and contract managers must adhere to the highest level of professionalism in discharging their official duties. It is critical that everyone in the procurement and contracting 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 The guidelines below are designed to prevent actual and potential vendors from improperly influencing state officers or employees in discharging their official duties and to ensure state officials' and employees' independent judgment remains uncompromised.

In accordance with state law, THECB employees, contractors, and potential contractors must adhere to the following policies and procedures.

THECB Ethics Policy

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

THECB's Ethics policy states that an employee shall not:

1. Accept or solicit any gift, favor, or service that might 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 accept any benefit for having exercised his or her official powers or performed his or her official duties in favor of another;
3. Disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act (Tex. Gov't Code ch. 552), or information that has been ordered sealed by a court, that was acquired by reason of the employee's official position, or accept other employment, including self-employment, or engage in a business, charity, nonprofit organization, or professional activity that the employee might reasonably expect would require or induce the employee to disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act, or information that has been ordered sealed by a court, that was acquired by reason of the employee's official position;
4. Accept other employment (whether paid or unpaid), including self-employment, or compensation or engage in a business, charity, nonprofit organization, or professional activity that could be expected to impair the employee's independence of judgment in the performance of the employee's official duties. Each employee is required to seek approval from HR for any outside employment or activity that may fall under this provision prior to engaging in that employment or activity (see Section 1.2.12 below);
5. Make personal investments, or have a personal or financial interest, that could be expected to create a substantial conflict between the employee's private interest and the 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 and does not result in any direct cost to the state or THECB, interfere with the employee's official duties, and/or interfere with THECB functions;
7. Utilize his or her official position, or state issued items, such as a badge, indicating such position for financial gain, obtaining privileges, or avoiding consequences of illegal acts;
8. Knowingly make misleading statements, either oral or written, or provide false information, during official state business;
9. Engage in any political activity while on state time or utilize state resources for any political activity; or
10. Travel for professional purposes to a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. §791.4.

All staff involved in evaluating and selecting vendors must complete the agency's State Standards of Conduct training and submit their certificate of completion to Procurement@highered.texas.gov.

Honorarium

Any solicitation, acceptance, or agreement to accept an honorarium for services requested to be provided due to the employee's official position or duties violates Texas law. The prohibition extends to an honorarium for in-state and out-of-state engagements if the employee would not have been asked but for his/her official position. The honorarium may not be remitted to a third-party or tax-exempt charity if payment is made in consideration of the services performed and at the direction of the employee. The employee may accept food, transportation, and lodging when in connection with providing services at a conference or a similar event if within reason and, as required, reported in Section XI of her/his annual personal financial statement (Texas Penal Code §36.07). An employee must obtain approval under this policy prior to accepting food, transportation, and lodging under this section.

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 <u>must</u> 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 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 nots."

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 J annually. If an individual becomes aware of any potential conflict of interest at any time, they must notify the Contracts and Procurement Team 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.

Under no circumstances shall a THECB employee accept any gift, regardless of the value of the gift, from an entity associated with a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. §791.4. If an employee is offered a gift, including the offer to travel, from an entity associated with a country on the foreign adversaries list, the employee must report the offer and/or gift, or any alleged violation of this Section to the Office of General Counsel.

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 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 foresee that a contract with the person could result in 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 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 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 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.

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 financial record keeping 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. An early payment discount and the terms of the offer presented in a solicitation response must not be considered in the evaluation.

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.

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.

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.

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 Contracts and Procurement SharePoint site.

Appendix A: 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 B: 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. The 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 ITS 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 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 C: Risk Assessment Analysis

For contracts, please complete the Risk Assessment Analysis to assess the risk involved with this purchase or acquisition of goods and/or services from the selected vendor. For grants, please complete the Risk Assessment Analysis to assess the risk involved with awarding state or federal grant funds to the selected grantee.

<table>
<tr><th colspan="3">Preliminary Information:</th></tr>
<tr><td>1. IT Related ☐ Yes ☐ No</td><td colspan="2">2. CMS#: Click here to enter text.</td></tr>
<tr><td colspan="3">3. Contract Administrator:
Click here to enter text.</td></tr>
<tr><td>4. Type of Contract or Procurement:
Click here to enter text.</td><td>☐ Grant
☐ Interagency
☐ PRQ/Purchase Order
☐ No-Cost Agreement</td><td>☐ Service Contract
☐ Receivables Contract
☐ Request for Applications</td></tr>
<tr><td colspan="3">5. Describe the need for the goods, services, and/or deliverables. i.e., why is this contract needed?
Click here to enter text.</td></tr>
<tr><td colspan="3">6. Is this good, service, and/or deliverable currently provided under an existing contract?
☐ Yes. Current Contract #: Click here to enter text. Contract End Date: Click here to enter text.
☐ No</td></tr>
<tr><td colspan="3">7. Is this purchase required by Statute?
☐ Yes. If yes, provide the statutory citation: Click here to enter text.
☐ No</td></tr>
<tr><td colspan="3">8. Is Board Approval Required (See THECB Rule 1.16.)?
☐ Yes
☐ No</td></tr>
<tr><td colspan="3">9. Proposed Contract Start Date: Click here to enter text. End Date: Click here to enter text.</td></tr>
<tr><td colspan="3">10. Funding Source:
☐ General Revenue (State)</td></tr>
</table>

☐ Federal ☐ Private ☐ N/A If more than one source, please provide details: Click here to enter text.

Conflict of Interest:	
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. Conflict of Interest Disclosure: Click here to enter text.	
Risk Assessment	
12. Dollar Amount	☐ Between $0 and $5,000 ☐ Between $5,000.01 and $25,000 ☐ Between $25,000.01 and $100,000 ☐ Between $100,000.01 and $750,000 ☐ Between $750,000.01 and $1,000,000 ☐ Over $1,000,000
13. Contract Experience	☐ Repeat Vendor with THECB ☐ Vendor has never done this type of work before ☐ Vendor has contracted with the state before but not for this type of work ☐ Vendor has done this type of work before but not for THECB
14. Any Current or Prior Issues Related to this Contractor/Grantee?	☐ Yes ☐ No If Yes, identify issue(s): Click here to enter text.
15. Will Contractor have access to confidential data? Describe access needed.	Click here to enter text.
16. Type of Monitoring by Staff:	Click here to enter text.

17. Payment (Including Reimbursement) Schedule and Rates:	Click here to enter text.

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	Click here to enter text.
Impact to public or agency	Click here to enter text.
Access to Confidential Data	Click here to enter text.
Time Constraints	Click here to enter text.
Contractor/Grantee Experience	Click here to enter text.
Total Score:	Click here to enter text.

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 ITS 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 CMS# 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 Contracts, Procurement, and Grants Team 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 D: Agreements 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 E: 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/Grantee agrees to submit a disclosure of interested parties to THECB at the time Contractor/Grantee 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 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.

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.

*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

(512) 463-5800

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

OFFICE USE ONLY

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.

1 **Name of business entity filing form, and the city, state and country of the business entity's place of business.**

2 **Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

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

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 12/22/2017

Appendix F: 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: Assistant Commissioner for Contracts and Procurement

Date: ____

Appendix G: Contract Close-Out Form

CMS # _______ 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 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 H: Vendor Performance Report

TEXAS HIGHER EDUCATION COORDINATING BOARD

VENDOR PERFORMANCE REPORT (VPR)

The Statewide Procurement Division's (SPD) purpose is to ensure Best Value to state agencies. State agencies are required to report vendor performance for any purchase of goods or services exceeding $25,000 and during key milestones identified in the contract if the value of the contract exceeds $5 million. In addition, at least once each year during the term of the contract. Vendor reporting allows agencies to share vendor performance information and assist in efficient oversight of state contracts.

Parent Contract No.____________________

Amendment No.______________________

Contract Amount: $____________________

Executed/ PO Date:____________________

NIGP Code/Class: _____________________

Service: _____**Goods/Commodity**

Contract Type: ___SPD Delegated ___SPD Term/Managed _DIR Contract

_____IT/Telecommunications ___State Use Prog. TCI & WorkQuest (Doc 9)
_____TXMAS

_____All Other Exempt (Doc 9 other than State Use)

Submission Reason: __ Agency Emergency Purchase ___ Annual Review ___Milestone

______Contract Completion _____Declared Disaster Emergency Purchase
Delay Justification: Provide a delay justification if the VPR being submitted is more than 30 days from the contract completion date or the final invoice paid date.

_____________Personnel Shortages ______Staff limitations

Vendor ID (VID):_________________ Vendor Name:
____

Location Code: ____

Vendor Contact: ____

Vendor Address: ____

Vendor Phone: ____

Vendor Email: ____

Brief Description: ____

Please select all performance factors that apply:

Administration

_______Invoice accuracy and submittal time significantly exceeded specifications

_______Invoice accuracy and submittal time exceeded some specifications

_______Invoice accuracy and submittal time met specifications

_______Invoice was inaccurate or late; issues were corrected

_______Invoice was inaccurate or late; issues were not corrected

_______Report(s) and required documentation significantly exceeded specifications

_______Report and required documentation exceeded some specifications

_______Report and required documentation met specifications

_______Report(s) and required documentation insufficiently provided; issues were corrected.

_______Report(s) and required documentation insufficiently provided; issues were not corrected.

_______Contract completed on budget and financial aspects significantly exceeded specifications

_______Contract completed on budget and financial aspects exceeded some specifications

_______Contract completed on budget and financial aspects met specifications

_______Contract was not completed on budget and financial aspects inadequately met specifications

_______Contract was not completed on budget and financial aspects did not meet specification

_______Vendor paid administrative fees after VPR was submitted (SPD Only)

_______Administrative fees remain unpaid after multiple notification attempt(s) to vendor. (SPD ONLY) Warrant Hold

_______Corrective Action Plan established by agency, issues addressed demonstrated improvement

_______Non-compliance to requirements of HUB Subcontracting Plan (HSP), compliance achieved after contract manager intervention

_______Non-compliance to requirements of HUB Subcontracting Plan (HSP), demonstrated some improvement after contract manager intervention

_______Non-compliant to requirements of HUB Subcontracting Plan (HSP) not rectified

_______Failure to close out project as specified

_______Failure to repay funds escalated for executive resolution

_______Failure to repay funds pending litigation

_______Falsification and/or fraudulent document submittals

_______Agency Corrective Action Plan established - no performance improvement. Escalated for executive resolution.

_______Agency Corrective Action Plan established - no performance improvement. Pending litigation.

_______Material breach of contract and/or material misrepresentation. Escalated for executive resolution.

_______Material breach of contract and/or material misrepresentation. Pending litigation

_______No response to emergencies as required

_______Non-compliant to code of conduct requirement. Escalated for executive resolution.

_______Non-compliant to code of conduct requirement. Pending litigation.

_______No attempt to provide replacement for damaged goods

_______Non-responsive in providing proof of insurance and/or maintaining insurance

Scope

_______Vendor's product substitution was suggested as an upgrade and accepted at no additional cost to the agency

_______Vendor's suggested product substitution and accepted at no additional cost to the agency

_______Vendor recommended product upgrade substitution and accepted with additional cost to the agency

_______Unexpected issues and corrections identified and rectified inadequately

_______Unexpected issues and corrections identified and not rectified

_______Vendor worked exceptionally with agency to meet deadlines and milestones

_______Vendor actively worked with agency to meet deadlines and milestones

_______Vendor worked accordingly with agency to meet deadlines and milestones

_______Order or service provided unsatisfactorily (performance, deadlines, report, invoices, etc) was corrected

_______Order and/or service did not meet requirements (performance, deadlines, report, invoices, etc.)

_______Vendor demonstrated flexibility, and adherence to specifications significantly exceeded requirements

_______Vendor demonstrated flexibility, and adherence to specifications exceeded some requirements

_______Vendor demonstrated flexibility, and adherence to specifications was satisfactory

_______Unexpected issues and corrections identified, rectified with great significance and highly effective

_______Unexpected issues and corrections identified, rectified timely and effectively

_______Unexpected issues and corrections identified, rectified timely or effectively

_______Shipment not delivered to agency, after multiple notifications to vendor

_______Order and/or service exceeded the requirements (performance, deadlines, report, invoices, etc)

_______Order and/or service effectively met the requirements (performance, deadlines, report, invoices, etc)

_______Order and/or service met requirements (performance, deadlines, report, invoices, etc)

_______Unsatisfactory demonstration of flexibility, adherence to specifications provided was resolved

_______Ineffective flexibility and adherence to specifications was not met

_______Unauthorized substitution provided by vendor and for additional cost was accepted by agency

_______Unauthorized substitution provided by vendor and for additional cost and not accepted by agency

_______Inadequately worked with agency to meet deadlines and milestones was resolved

_______Untimely provided proof of insurance and/or maintaining insurance was resolved

_______Failure to meet specifications. Entire contract cancelled

_______Service not performed within specifications. Item/entire order canceled

_______Ineffectively worked with agency to meet deadlines and milestones

_______Failure to comply with terms and/or conditions of contract-No attempt to respond to complaint(s)

_______Evidence of misrepresentation and/or falsification of qualifications

_______Service was not performed within specifications, vendor made no effort to correct

Product

_______Vendor promptly notified agency of product issues prior to scheduled delivery

_______Vendor provided a timely notification(s) to agency of product issues

_______No Product issues

_______Notification to agency for incorrect product, shortage, and/or overage met requirements

_______Product quality and performance was marginally effective

_______Product quality and performance was not effective

Delivery

_______Service completion and/or Product delivery significantly exceeded estimated date/time

Service completed and/or Product delivered on time as scheduled to agency

_______Service/Delivery not completed as scheduled, but in suitable time frame

_______Notification from agency required. Service completion and/or Product delivery was late or Products delivered to incorrect location

_______Slow replacement of damaged goods

_______Failure to identify shipments per or failure to implement a service per contract terms

_______Incorrect items shipped or items shipped to wrong location; adequate arrangements made to pick up shipment, issues were resolved

_______Incorrect items shipped or items shipped to wrong location; Inadequate arrangements made to pick up incorrect shipment and/or to meet shipment instructions.

_______No Delivery

Customer Service

_______Vendor staff demonstrated professionalism and competence that significantly exceeded expectations

_______Vendor staff demonstrated professionalism and competence that somewhat exceeded expectations

_______Vendor staff demonstrated professionalism and competence that met expectations

_______Vendor staff demonstrated professionalism and competence that often did not meet expectations

_______Vendor staff demonstrated professionalism and competence that did not meet expectations

_______Exceptional customer service was provided

_______Effective customer service was provided Adequate customer service was provided

_______Inadequate customer service was provided, demonstrated improvement

_______Inadequate customer service was provided

_______Exceptional technical support, training, and/or assistance was provided

_______Effective technical support, training, and/or assistance was provided

_______Adequate technical support, training, and/or assistance was provided

_______Somewhat adequate technical support, training, and/or assistance was provided, demonstrated improvement

_______Inadequate technical support, training, and/or assistance was not rectified

Communication

_______Vendor established highly effective working rapport with agency

_______Vendor established effective working rapport with agency

_______Vendor established adequate working rapport with agency

_______Inadequate rapport with agency improved

_______Inadequate rapport with agency demonstrated no improvement

_______Vendor provided exceptional communication, accessibility, and feedback

_______Vendor provided effective communication, accessibility, and feedback

_______Vendor provided adequate communication, accessibility, and feedback

_______Inadequate communication, accessibility, and feedback was improved

_______Inadequate communication, accessibility, and feedback demonstrated no improvement

_______Vendor responded to letter(s), phone call(s), or email(s) promptly

_______Vendor responded to letter(s), phone call(s), or email(s) in a timely manner

_______Vendor responded to letter(s), phone call(s), or email(s) adequately

_______Vendor responded to letter(s), phone call(s), or email(s) inadequately, demonstrated improvement

_______Vendor failed to respond to letter(s), phone call(s), or email(s) in multiple instances

<u>Cancellation</u>

_______Item cancelled from PO and/or contract, substitution not accepted - agency initiated

_______Entire item/entire PO and/or contract cancelled, substitution not provided - vendor infraction

_______Vendor failed to resolve product quality and performance

Appendix I: Post-Award Reporting Requirements[1]

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.
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

[1] 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)

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 J: 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.

Signature Date

Appendix K: Resources

Division	Title	Name	Ext.
Financial Services	Assistant Commissioner for Contracts and Procurement	Kaitlyn Yost	76120
Financial Services	Director for Contracts and Procurement	Marcus Garcia	76141
Financial Services	Associate Commissioner for Agency Operations and CFO	Anthony Infantini	76173
Financial Services	Deputy CFO	Maria Hernandez	76138
Financial Services	Director, Budget	Robert Palm	76334
Financial Services	Director, Accounts Payable	Bradley Broaddus	76194
Financial Services	Contracts Attorney	Jon Parker	76374
Office of General Counsel	Chief Privacy Officer	Nathaniel Moore	76220
Information Technology Services	Chief Information Officer	Layla Young	76401
Information Technology Services	Business Operations Manager	Brian Nolte	76419
Chief Information Security Office	Chief Information Security Officer	Kirk Burns	76238

Appendix L: Revisions

FY 2026

Removal of Grants references as Grants team has separated from Contracts and Procurement team.

Replaced all references to CAPPS Financial and NCAA systems with new agency Contract Management System (CMS)

Updated processes and procedures to align with process changes implemented with new CMS.

Re-organized and simplified language to serve as a more user-friendly training guide for agency staff.

Contact Information – Updated all Agency Contact Information and Division Names.

FY 2025

Updated handbook to align with organizational merger of Contracts team and Procurement/Grants team.

Contact Information – Updated all Agency Contact Information and Division Names.

Templates – Updated all Templates to reflect process improvement changes and updates to agency leadership

Risk Assessment – Modifications to Risk Assessment policy

Appendix M: 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)