

# AGENCY CONTRACTS & PROCUREMENTS

## 01.28.00.00

### 28.01.00 CONTRACTS AND PROCUREMENT

#### 01.01 Purpose

This policy establishes certain guidance regarding Department contracts and procurements as well as other documents that may be signed by an authorized signatory of the Department. Additional guidance on DPS and state procurement policy may be found on the [P&CS SharePoint site](#).

Except where specifically noted, this policy applies to all documents which purport to bind the Department, regardless of label.

#### 01.02 Legal References

State procurements and contracts are governed by law, statutes, rules, regulations, policies, procedures, and guidance manuals. Certain other state agencies also have statutory authority over aspects of all types of state purchasing and contracting; such as the Comptroller of Public Accounts ([CPA](#)), the Department of Information Resources ([DIR](#)), the Legislative Budget Board (LBB), and the Office of the Attorney General (OAG).

DPS will adhere to all applicable statutory requirements published in Texas Government Code (TGC) and Texas Administrative Code (TAC), the [Texas Procurement and Contract Management Guide](#), and all other required policies and rules.

#### 01.03 Internal References

The [DPS Procurement and Contract Management Guide](#) outlines Department procurement and contracting practices.

#### 01.04 Contract Signed or Executed Documents

Whenever the Department requires a document to be signed by another party or when the Department signs a document, the signature may be: (1) hand-made, (2) electronic, or (3) digital.

#### Definitions

A signature is defined as any symbol executed or adopted by a person with present intention to authenticate a writing.

A hand-made signature (also known as wet ink or manual signature) is created when a person physically marks a paper document.

An electronic signature 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/portable document format) where a separate image of a hand-made signature has been overlaid onto the electronic document in place of a physical hand-made signature.

A digital signature is a signature that is created as an electronic identifier by cryptographic means involving the use of two mathematically related keys (i.e., a public and private key pair, often referred to as Public Key Infrastructure or PKI); complies with 1 Tex. Admin. Code Ch. 203; and is not a photographic representation of a hand-made signature.

#### Guidance

A signature is valid if the authorized representative submitting the signature is an individual who is authorized to sign the document by virtue of the individual's legal status or the relationship to the entity on whose behalf the signature is executed. An electronic or digital signature is the legal equivalent to a hand-made signature as long as this policy is followed and an authorized representative has signed the document.

A paper document with a hand-made signature must bear the valid hand-made signature of the authorized representative.

An electronic document must bear the valid electronic signature of the authorized representative if that authorized representative is required to sign the paper document for which the electronic document substitutes. An electronic signature on an electronic document is valid if it has been created through means such as facsimile transmittal, scanning of the original signed physical document, or electronic manipulation where a separate image of a hand-made signature has been overlaid onto the electronic document in place of a physical hand-made signature and the individual submitting the electronic signature is an authorized signatory.

A document using a digital signature device must have a code or mechanism that is unique to that authorized representative at the time the signature is created and the authorized representative must be uniquely entitled to use it.

- Authorized representatives must protect the digital signature from compromise and report to Office of General Counsel (OGC) if there is any evidence that the device has been compromised within 24 hours of discovery.
- A digital signature device is compromised if the code or mechanism is available for use by any individual other than the authorized representative.
- An electronic document must bear the valid digital signature of the authorized representative if that authorized representative is required to sign the paper document for which the electronic document substitutes.
- If using a digital signature, if the device is compromised or not signed by the authorized representative, the signature is not valid.

### **01.05 Signature Authority and Approvals**

Authorized signatories of the Department must be responsible and accountable. An authorized employee's signature on a procurement, contract, or other document will reflect a representation that it has been properly submitted, reviewed and approved in accordance with all Department policies and procedures, and that it is in the best interest of the State of Texas.

The following individuals are authorized signatories on behalf of the Department:

1. Director;
2. Deputy Director, Law Enforcement Operations, for contracts with a total estimated value of less than \$1 million;
3. Deputy Director, Homeland Security Operations, for contracts with a total estimated value of less than \$1 million;
4. Deputy Director, Law Enforcement Services, for contracts with a total estimated value of less than \$1 million.

No other employee may sign a document binding the Department without a delegation of authority to do so as set out in this policy. All contracts or other agreements that require signatures or otherwise bind the Department must be submitted through the IOD and reviewed by the OGC.

### **01.06 Delegation of Authority to Sign Documents**

All documents signed under this section must follow the Department's procurement process and are subject to review and approval before signature.

#### **1. Director's Delegation to Division Chiefs for Non-Financial Governmental Contracts**

The Director delegates to Division Chiefs the authority to sign contracts with other governmental entities that involve no exchange of money from any source such as a zero dollar Memorandum of Understanding (MOU). This delegation does not include zero dollar agreements with vendors or other non-governmental entities.

## **2. Director's Delegation to Regional Directors for Non-Financial Governmental Contracts**

The Director delegates to Regional Directors authority to sign operational contracts with other governmental entities that involve no exchange of money from any source such as a zero dollar MOU. This delegation does not include zero dollar agreements with vendors or other non-governmental entities.

## **3. Division Chief Authority to Further Delegate for Non-Financial Governmental Contracts**

a. A Division Chief may further delegate authority granted in Section 01.05(1) to a specific Department employee under the supervision of the Division Chief through a written memorandum identifying the employee and the contracts.

b. Each proposed delegation memo, along with a copy of samples of the relevant contracts, must be submitted by the Division Chief to the OGC.

## **4. Division Chief Requests for Director's Delegation of Authority for Other Specific Categories of Contracts**

A Division Chief may request that the Director delegate authority to the Division Chief to sign other specific categories of contracts.

a. A Division Chief may request delegation from the Director through a written memorandum identifying the specific categories of contracts for which delegation is requested.

b. Each proposed delegation memo, along with a template or copy of samples of the relevant contracts, must be submitted by the Division Chief to the Director through the OGC.

## **5. Division Chief Authority to Further Delegate for Other Specific Categories of Contracts**

a. A Division Chief may further delegate authority granted by the Director in a memo under Section 01.05(4) to a specific Department employee under the supervision of the Division Chief through a written memorandum identifying the employee and the contracts.

b. Each proposed delegation memo, along with a copy of samples of the relevant contracts, must be submitted by the Division Chief to the OGC.

## **01.07 Improperly Entered or Signed Contract or Amendment is Unauthorized**

1. A contract or amendment signed by an employee not authorized to do so is not a valid and enforceable agreement against the Department. In addition to being subject to disciplinary action by the Department, a Department employee who signs a contract or amendment without authority may be personally liable under law for any obligations created by the unauthorized act.

2. A purported oral contract or a contract otherwise not in compliance with all Departmental policies and procedures is not a valid and enforceable agreement against the Department. In addition to being subject to disciplinary action by the Department, a Department employee who purports to enter an oral contract or a contract otherwise not in compliance with all Departmental policies and procedures may be personally liable under law for any obligations created by the unauthorized act.

## **01.08 Enhanced Oversight for Contracts Exceeding \$1 Million**

### **Contract Review Board (CRB)**

The CRB reviews all new contracts valued at \$1 million or more; including available renewal options, contract amendments (excluding renewal options) that increase the value of the original contract by 25% or more; and contract amendments (excluding renewal options) valued at \$500,000 or more. The CRB will also review contracts designated by a CRB member to be reviewed and any contracts prior to submission to the PSC for review that are required by applicable law to be submitted to the PSC for review prior to award. Contracts presented to CRB must be approved by a majority of Contract Review Board members before the contract may be signed on behalf of the Department.

The CRB is comprised of the following members:

Member of PSC, as designated by the PSC (advisory member)

Chief, Infrastructure Operations Division (IOD) (Chairman, non-voting)

Representative from the OGC

Representative from Finance

Representative from IT

Representative from one law enforcement division (rotating member)

Representative from one services division (excluding IOD) (rotating member)

Rotating members from law enforcement and services divisions will serve three-month terms. A rotating member's term may be extended as necessary to ensure consistent review of a specific contract or in cases where there was little contract activity during the member's term.

The Executive Contract Review Board (ECRB) reviews the Department's proposed procurements and contracts with an estimated value of \$500,000 or more; any contract amendments that increase the value of the contract by 10% or more; and any staff augmentation services procurement requests, regardless of contract value. ECRB approval occurs prior to the item being solicited by P&CS. ECRB may also designate a procurement as needing to be managed as an Enterprise Project or may designate a contract as requiring CRB approval prior to award.

The ECRB is comprised of the following members:

Chief, IOD (Chairman, non-voting)

Representative from OGC

Representative from Finance

The Contract Review Board Charter can be found on SharePoint [here](#).

### **Director Approval**

The Department may only enter into a contract valued at \$1 million or more if the Director, acting under the authority given by the PSC, approves and signs the contract.

### **Vendor Oversight**

The awarded vendor must submit a disclosure of interested parties in a format determined by the Texas Ethics Commission to the Department prior to the final execution of a contract with a total value of \$1 million or more.

The Department will develop and implement contract reporting requirements that provide information on:

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

The Department will verify the accuracy of any information reported by a contractor and the delivery time of goods and services.

**Contracts valued at \$5 million or more**

Contracts valued at \$5 million or more will be reviewed by the Contract Advisory Team.

**Contracts valued at \$10 million or more**

Contracts valued at \$10 million or more that qualify as a Major Information Resource Project will be reviewed by the Quality Assurance Team.

**01.09 Contract Monitoring & Risk Assessment**

The Department has developed a purchasing accountability and risk analysis procedure that provides for:

1. Assessing the risk of fraud, abuse or waste in the contractor selection process, contract provisions and payment and reimbursement rates;
2. Identifying contracts that require enhanced contract monitoring or immediate attention of the contract management staff; and
3. Establishing clear levels of purchasing accountability and staff responsibilities related to purchasing.

The Department completes a formal risk assessment (PPP-25) on its procurements and contracts, and this risk assessment is documented in the file by P&CS.

The Department will identify each contract that requires enhanced contract or performance monitoring and submit that information to the Department's governing body. Any member of the CRB or the P&CS Director must immediately notify the Department's governing body, through the Division Chief of Infrastructure Operations Division, of any serious issue or risk that is identified with respect to a contract monitored under this section.

All procurements and contracts that meet the threshold of review by the CRB or the ECRB will be considered to require enhanced contract or performance monitoring, and those monitoring reports will be submitted to the Public Safety Commission's designated CRB Advisory Member by the Division Chief of Infrastructure Operations Division.

For more information reference the [DPS Procurement and Contract Management Guide](#).

**01.10 Vendor Performance**

At a minimum, completion of a Vendor Performance Form (PPP-6) is mandatory for procurements over \$25,000 and optional for procurements up to \$25,000. If the value of the contract exceeds \$5 million, the contractor's performance will be reported at least once each year during the term of the contract and at each key milestone identified for the contract. Completed submissions should be e-mailed to the [Procurement](#) e-mail account.

For more information regarding vendor performance and the submission requirements reference the [Vendor Performance Requirements](#).

**01.11 Required Training**

All Department supervisors and payment card holders will be required to take training on the procurement process each biennium.

Anyone designated as a contract monitor for an item assessed to be at a risk level of high or intermediate must also take the internal Contract Monitor Certification training within 30 days of being designated to serve as a contract monitor.

Anyone designated as a Contract Monitor for an item assessed to be at a risk level lower than intermediate should also take the Contract Monitor Certification training.

Purchase Liaisons must take required training prior to being an authorized purchase liaison and must attend quarterly training to maintain their authorization as a purchase liaison.

### **01.12 Procurement Deadlines**

Fiscal Year-End Deadlines will be published ([here](#)) each November. Department personnel must adhere to these deadlines to guarantee that their requisitions will be processed.

Requisitions for the procurement of goods or services valued at \$500,000 or more that are not available on a state contract must be submitted at least 180 days prior to the need.

### **01.13 Best Value Standard**

Statute permits state agencies to incorporate a best value standard when procuring goods and services. Situations where this standard may be applied include in the determination of lifecycle costs, quality of goods, and indicators of vendor performance. Before a best value standard can be used to make an award, the P&CS Director must:

1. Affirm a contract is authorized to use the best value standard;
2. Ensure the Department has clearly documented the best value standard used; and
3. Acknowledge in writing that the Department complied with the DPS and CPA contract management guides for the procurement.

Best Value criteria must be included in the solicitation, and therefore must be identified and documented prior to soliciting goods or services.

P&CS must include the best value standard documentation with the Comptroller's vendor performance for any contract that uses the standard.

## **28.02.00 ROLES AND RESPONSIBILITIES**

The following sections provide the minimum requirements of the regular parties involved in the procurement process. Additional roles and responsibilities may be required based on the particular contract.

All roles and employees will assess ways to improve performance, effectiveness, and efficiency through contracting and will implement viable opportunities to achieve savings through Department contracting.

### **02.01 Requesting Division Responsibilities**

1. Requesting division personnel are responsible for identifying the needs of their division and ensuring that all requisitions are made in the best interest of the State. After identifying the product or service needed, the division will submit a requisition via the CAPPS system. The requisition must include the following:
  1. Clear and concise description of the product or service;
  2. Estimated cost;
  3. A needs assessment, which is an explanation of why the good or service is necessary and requires an expenditure;
  4. Supporting documentation, such as budgetary estimates, specification sheets, or statements of work when available;

5. A PPP-1, PPP-3, or PPP-3a when required

The requesting division must ensure all appropriate personnel within their own division are listed on the approval path for the requisition.

The requestor and applicable division personnel will also be expected to actively participate in the solicitation process by providing timely feedback and input as requested by P&CS and will be responsible for meeting the acquisition plan schedule.

The requestor and applicable division personnel are also required to provide needed information to P&CS to complete an acquisition plan.

2. Division Contract Monitors are required to:

- a. Attend Department contract monitoring training within 30 days of being listed as a contract monitor on a major contract for those items that are assessed to be of high or intermediate risk;
- b. Ensure requisitions for new awards, renewals, and change orders are entered on time to allow for a thorough and compliant procurement process;
- c. Ensure that specifications and scopes of work accurately and adequately meet the needs of the Department;
- d. Contribute to the development of the acquisition plan and schedule and the risk assessment;
- e. Actively monitor the contract for the life of the contract;
- f. Are accountable for tracking and documenting the progress and status of the deliverables of the contract, contract risks, and contract issues;
- g. Ensure other divisions within the Department that might be impacted by the contract are informed appropriately throughout the lifecycle of the contract;
- h. Immediately notify P&CS of issues with the contract or vendor;
- i. Ensure that receiving is completed within five business days of receipt of goods or services;
- j. Ensure that Accounts Payable and P&CS are notified within five business days of the receipt of a valid or an invalid invoice;
- k. Continuously review vendor performance and report the results through P&CS to the Comptroller at designated periods throughout the contract life and at the termination of the contract through the PPP-5 and PPP-6; and
- l. Not delegate contract monitor duties to other personnel. Contract monitor changes must be formally requested by the requesting Division Chief to the Division Chief of Infrastructure Operations Division. A new contract monitor will not begin their duties until they have completed the required training.

3. Designated division purchase liaison personnel have authority to purchase certain items for their division. Each liaison must abide by all requirements reviewed in training and outlined here.

- a. Division purchase liaisons must maintain Internal Purchase Liaison Certification from the P&CS Director in order to conduct purchasing activities on behalf of the division.
- b. A division purchase liaison may purchase items only for the division in which the liaison is employed, unless the liaison receives written direction or permission from both the purchase liaison's chain of command and the P&CS Director.
- c. A division purchase liaison may only make certain purchases meeting the following criteria, unless otherwise approved in writing by the P&CS Director:
  - PCC A – Purchases from SPD Term Contract up to \$25,000
  - PCC C – Purchases from SPD Managed Contract up to \$25,000
  - PCC D – Purchases not under DIR Contract up to \$5,000

- PCC E – Purchases from the Open Market up to \$5,000
- PCC I – Purchases from DIR Contract up to \$25,000
- PCC X – Purchases from TXMAS Contract up to \$5,000
- DOC 9 – Purchases that are not in Smart Buy, but purchased from TCI or Interagency Agreements up to \$25,000

The P&CS Director may increase the purchasing authority for certain purchase liaison purchases up to \$49,999 through written approval. The P&CS Director, or designee, may require review or approval of any division purchase liaison procurement at any time.

The P&CS Director has the authority to revoke the Purchase Liaison Certification of a division purchase liaison to purchase items on behalf of the division if the P&CS Director finds through review, audit, or by other means that the division purchase liaison has failed to follow laws, rules, regulations, policies, or guidelines.

## **02.02 P&CS Responsibilities**

Assigned P&CS personnel will review each requisition to ensure all applicable information has been completed and submitted.

P&CS will facilitate completion of an Acquisition Plan (ACP) and Risk Assessment and will be responsible for coordinating and developing the acquisition plan and schedule and coordinating accurate and successful completion of the plan and schedule. P&CS will determine the correct procurement method based on the procurement hierarchy and will be responsible for acquiring all applicable required waivers, exemptions and/or delegations. P&CS will facilitate and manage the entire procurement and solicitation process, including development of the solicitation package, reviewing responses, opening bids, gathering quotes, managing evaluations, facilitating negotiations, and managing the award; ensuring the solicitation and procurement or contract adheres to all applicable statutory requirements, rules and policies and that the outcome is in the best interest of the State.

P&CS will manage the contract in coordination with the division contract monitor, be responsible for assessing requested changes and issuing any change orders or amendments, ensure the file is properly documented and all required documentation is located with the file, and ensure all required external reporting requirements are accurately met.

P&CS serves as the Department point of contact to potential vendors for planned and active solicitations.

P&CS is also responsible for assessing and processing requests for payment within five business days of receiving a requisition for payment purposes.

## **02.03 OGC (OGC) Responsibilities**

OGC provides support and guidance to help minimize risk and legal exposure for the Department. OGC reviews to provide clarity and give legal advice on all relevant documents, including two-party contracts, Requests for Offers (RFOs), Requests for Proposals (RFPs), and all solicitations over \$500K that are provided to OGC by P&CS before P&CS posts them to the Electronic State Business Daily (ESBD). OGC assists in other relevant procurement and contracting activities as needed.

## **02.04 Finance Responsibilities**

Finance is responsible for verifying funds are available and meet the requirement for the goods or services being procured, managing the payment process and making payments within the bounds of the Prompt Payment Act, credit card program management, and addressing all other applicable Financial statutory requirements related to procurement and contracting.

## **02.05 Stakeholder Division Responsibilities**



Many procurements and contracts cross division boundaries or impact multiple divisions in some way. Divisions that did not request the procurement or contract, but that are impacted by it in some way are referred to as stakeholder divisions. Stakeholder divisions are responsible for identifying their need to participate in the procurement and contract management process. In those instances where a stakeholder division needs to participate, the stakeholder division will assign the appropriate Subject Matter Experts (SMEs) to participate and ensure the interests of the division are appropriately represented. SMEs may participate in any or all aspects of the procurement cycle as identified in the ACP and are expected to meet the timelines associated with the ACP schedule.

## **02.06 Evaluation Team Responsibilities**

In addition to signing the non-disclosure and conflict of interest agreement, evaluation team members must understand and adhere to the Evaluation Committee Guide and take any other action necessary to ensure the fair and impartial evaluation of responses to a solicitation.

The P&CS Evaluation Committee Guide provides guidelines and best practices for the fair and impartial evaluation of responses to the solicitation. The guide describes the overall evaluation objectives, the responsibilities of DPS staff involved in the evaluation and award process, and the criteria that will form the basis of selecting a contractor.

## **28.03.00 ETHICAL CONSIDERATIONS**

### **03.01 Ethics & Conflict of Interest**

All DPS employees that have knowledge pertaining to a planned or active solicitation must refrain from disclosing or discussing any information related to that solicitation to anyone other than communication with a designated participant in that particular procurement process as authorized by PC&S.

All DPS employees and officials who participate in the state procurement process must adhere to the following ethical standards. Violation of these standards is subject to discipline, up to and including termination.

All DPS personnel involved in procurement or contract management must disclose to the Department any conflict of interest with respect to any contract with a private vendor or bid for the purchase of goods or services. Any person that identifies a conflict of interest should immediately notify the person's chain of command and the assigned P&CS representative.

DPS cannot enter into a contract with a private vendor with whom any of the following Department employees or officials have a financial interest:

1. A member of the Department's governing body;
2. The governing official, executive director, general counsel, chief procurement officer, or procurement director of the Department; or
3. A family member related to an employee or official described above within the second degree by affinity or consanguinity;

A state agency employee or official has a financial interest in a private vendor if the employee or official:

1. Owns or controls, directly or indirectly, a least 1% of the private vendor, including the right to share in profits, proceeds or capital gains, or;
2. Could reasonably foresee that a contract with the private vendor could result in a financial benefit to the employee or official.

A financial interest that is prohibited by this section does not include a retirement plan, a blind trust, insurance coverage or an ownership interest of less than 1% in a corporation.

### **03.02 Department Employees as Department Vendors Prohibited**

Department employees or family members may not have, either directly or indirectly, any financial or other personal interest in a department contract or subcontract of any kind. A contract may not be awarded to an entity that is owned in whole or in part by any DPS employee or immediate family member.

### **03.03 Employment of Former State Officers**

A former Department employee who participated in purchasing or contracting during their employment may not accept employment from a vendor who responded to a DPS procurement in which the employee participated in a procurement or contract negotiations for DPS before the two years after the date that the contract is signed or the procurement is terminated or withdrawn in accordance with [Texas Government Code Section 572.069](#).

### **03.04 Negotiations**

P&CS and OGC employees are the only Department personnel authorized to negotiate agreements with parties outside DPS.

## **28.04.00 CERTAIN PROCUREMENT REQUIREMENTS**

### **04.01 Requisition**

Requestors must submit requisitions in the Centralized Accounting and Payroll Personnel (CAPPS) Financial System to route the request through the appropriate levels of approval. A thoroughly completed PPP-1 must be attached to the CAPPS Requisition if the estimated total value is \$25,000 or more.

### **04.02 Credit Card Purchases Not Related to Travel**

Spot credit card purchases, fleet card purchases, and state credit card purchases not related to travel are restricted to a very narrow category of items and must adhere to the legal requirements for state purchasing. Required processes, forms, and procedures can be accessed [here](#).

### **04.03 Emergency Purchases**

Emergencies occur as the result of unforeseeable circumstances and may require immediate response to avoid an actual or potential threat. If a situation arises in which compliance with normal procurement practices is not possible in order to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state, an emergency purchase may be warranted and should be requested through P&CS. Proper procurement planning for anticipated business need is expected. Pending expiration of funds does not constitute an emergency.

Emergency procurements require an Emergency Decision Memorandum (PPP-21) to be approved by the requesting Division Chief and the P&CS Director. Division Chiefs are responsible for verifying the need is an emergency need, and the P&CS Director is responsible for verifying the rationale and justification provided meets the definition of an emergency procurement as defined in the State Procurement and Contract Management Guide.

If a division believes that they have a purchase which qualifies as an emergency, the division should contact P&CS as soon as possible and must submit an Emergency Decision Memorandum (PPP-21) with their requisition in CAPPS.

P&CS Emergency Contact Information can be found [here](#).

#### **04.04 Proprietary Purchases**

##### Proprietary purchases

Proprietary procurements require a Proprietary Decision Memorandum to be approved by the requesting Division Chief and the P&CS Director. Requestors are responsible for documenting the market research they conducted to determine that only one product or source will meet the unique business need.

The Proprietary Decision Memorandum must include the following information in order to document best value to the State: (1) describe the product or service the agency proposes to purchase, and provide a statement regarding the agency's business need and planned use; (2) explain why the agency specifications for the product or service are written as they are, and why those specifications are necessary to accomplish the agency's goal for the procurement; (3) state the reason that no other competing products or services will satisfy the need of the agency and provide examples of the technical, practical, or operational risks that would occur if competing products or services are selected; and (4) specify whether the purchase is sole source or competitive.

Division Chiefs are responsible for verifying the business need does require the unique feature or specification offered by that particular product or source, and the P&CS Director is responsible for verifying the rationale and justification provided meets the definition of Proprietary procurement as defined in the State Procurement and Contract Management Guide. P&CS staff are responsible for conducting research before issuing the proprietary solicitation or procurement to determine that no other product or source meets the unique requirement.

If a division believes that they have a purchase which qualifies as proprietary, the division must submit a Proprietary Decision Memorandum (PPP-21) with their requisition in CAPPs.

#### **04.05 Internal Repairs**

An internal repair is a repair to state-owned equipment where the extent of the work cannot be determined until the equipment is disassembled. An internal repair must contain labor and may also include parts. Internal repairs are usually the result of an unexpected, basic service outage. If an internal repair qualifies as an emergency, it must be processed as an emergency purchase.

A Voyager card may be used for vehicle repairs in accordance with the Fleet Repair Instructions found [here](#).

If the Voyager card will not cover the repair, then a Purchase Order must be issued prior to repairs being done. The division must submit a requisition to P&CS with the preliminary estimate attached for approval. A business justification should be added to the Header Comments, and the requisition's title should identify the service and associated parts as an "internal repair." It is crucial that no work be done on the unit prior to the Purchase Order being issued. P&CS will review the requisition and evaluate the estimate. Internal repairs with an estimated value over \$5,000 require competitive bidding. If the repair cost is deemed fair for estimated work, P&CS will document the internal repair on the Purchase Order by stating "Disassembly required to determine the extent of the repairs. Estimate to include parts & labor" and issue the Purchase Order. After the Purchase Order is issued, and if the repairs exceed the initial Purchase Order amount, an itemized estimate must be provided to P&CS in writing and a Purchase Order Change Notice must be issued by P&CS prior to finishing work.

This procedure does not apply to the replacement of any parts or accessories or to repairs to any item where the cost of the repairs can be determined prior to disassembly.

#### **04.06 Fleet Repairs/Wreck Damages**

The Voyager card may be used for vehicle repairs in accordance with the Fleet Repair Instructions found [here](#).

Repairs for any vehicle damages, such as wrecked automobiles, exceeding \$5,000 require bids. The Centralized Master Bidders List (CMBL) must be used as a source to identify bidders. If there are no CMBL vendors in the area (e.g. rural areas), then available vendors in the area may be used instead. Repairs between \$5,000 and \$25,000, require P&CS to take informal (telephone or shop estimates) bids. Repairs in excess of \$25,000 require formal written bids that must be obtained by P&CS using a specified bid opening date and time. (NOTE: If a vehicle is totally inoperable due to the extent of the damages, a statement must accompany the requisition. The statement must describe the extent of the damages and must include a statement that the vehicle is inoperable.) No work should begin until a Purchase Order is issued.

Insurance payments for wreck damage may be paid directly to the repair shop by the insurance company, provided the check is made payable to the repair shop only. A copy of the check must be submitted to the DPS Fleet Safety Coordinator.

Additional guidance on obtaining fleet repairs can be found at [Fleet Repair Instructions](#).

#### **04.07 Special Considerations for Non-Competitive Open Market Procurements**

Purchases of goods and services of \$5,000 or less per year that are not available through a state contract, do not qualify as a consulting contract, or are not available through an existing DPS contract may be purchased without first securing bids. All personnel responsible for purchasing should still take informal bids or price surveys to ensure that the vendors are offering the lowest and best prices for the services to be secured and to increase competitive opportunities for Historically Underutilized Businesses (HUBs).

#### **04.08 Membership Purchases**

[Texas Government Code 2113.104](#) requires the administrative head of the agency, or designee to review and approve the use of appropriated money to pay for membership in or dues for a professional organization.

P&CS will submit a list of current, approved memberships to the divisions each year, and each division will establish a process to update and submit the list back to [procurement@dps.texas.gov](mailto:procurement@dps.texas.gov) by June 30 of each year. The list will include all current memberships, licenses, and certifications paid by the Department. P&CS will consolidate these lists and submit them to the Director for approval and publish a listing of approved memberships, licenses and certifications. Employees approved by their chain-of-command for DPS to pay for a membership, license, or certification have the option of placing the fee on a P-card if the organization appears on the currently published list [here](#). Employees seeking memberships, licenses, or certifications that don't appear on the currently published log must follow the CAPPs Financials requisition process to make the purchase.

#### **04.09 Training Purchases**

Some training can be purchased using the credit card. Refer to the Act-60.

### **28.05.00 DEPARTMENT EMPLOYEE CONTACT WITH VENDORS**

#### **05.01 Active Purchase Orders and Contracts**

Employees may communicate with vendors within the bounds of an active purchase order or contract. Employees who are required to have contact with current vendors as a function of their job duties may not discuss or disclose any information that would provide the vendor with an unfair advantage in a future competitive bidding process. This does not limit an employee from having necessary discussions with a vendor regarding a current contract, as long as there is no discussion of potential future enhancement or expansion of the goods or service being provided that is outside the scope of the current contract.

#### **05.02 Outside of Active Purchase Orders and Contracts**

Communications with a vendor outside the bounds of an active purchase order or contract must go through P&CS to ensure procurement laws and rules are being observed. Working with P&CS helps ensure that potential competing vendors cannot challenge the fairness of the process or construe those conversations as giving one vendor an unfair advantage.

Employees outside of P&CS and OGC are prohibited from contacting vendors directly:

1. To obtain quotes and bids;
2. To negotiate pricing or other terms and conditions;
3. To discuss products and services the Department intends to procure without including a member of P&CS in the discussion;
4. During an open procurement or solicitation; and
5. To discuss or get assistance with requirements for a solicitation, planned or active.

P&CS or OGC are the only divisions that are authorized to perform these functions.

Employees are not authorized to get or arrange for demos, testing, or product evaluations without the written approval of the P&CS Director. Failure to follow these guidelines might inadvertently disqualify a vendor from a future award opportunity.

In the event a Department employee wishes to make contact with a vendor prior to engaging in a competitive procurement process for a product or service provided by the vendor, the following is required:

1) The employee must prepare a written request describing the requested contact and why the employee believes it is in the best interest of the Department. The requesting employee must forward the request to [Procurement@dps.texas.gov](mailto:Procurement@dps.texas.gov) for approval. The contact must be approved in writing by a P&CS Manager, P&CS Director, or an IOD Chief or Assistant Chief prior to its occurrence. If the P&CS Manager, P&CS Director, or IOD Chief or Assistant Chief determines that the purpose for the requested contact is unnecessary because the information may be obtained in a different manner consistent with applicable law and procedures, the P&CS Manager, P&CS Director, or IOD Chief will inform the employee in writing and advise how the employee may obtain the information.

2) If the vendor contact will occur at a Department facility, the employee must ensure all vendor representatives complete the facility's [SEC-1](#) security log sheet and that they have an opportunity to review and complete the [OGC-4](#) form for representation before a state agency.

3) The employee must ensure all vendor representatives read and sign the [OGC-5](#) form disclosing that the contact is not being made as part of a competitive procurement process and no Department procurement decisions will be made based on the contact.

4) During the contact, the employee may not discuss or disclose any information that would provide the vendor with an unfair advantage in a future competitive bidding process.

5) The employee must comply with state law and Department policy regarding gifts to state agency employees. See General Manual Chapter 05.50.00 BORROWING MONEY AND ACCEPTING GIFTS.

- a. Any employee responsible for monitoring or managing a contract or purchase order or providing feedback on a vendor's performance is expressly prohibited from accepting a gift of any kind or value from that vendor, its employees, agents, or subcontractors.
- b. Any employee serving as part of the evaluation and selection process for a procurement for which a vendor is or could be foreseen to be a potential bidder or respondent is expressly prohibited from accepting a gift of any kind or value from that vendor, its employees, agents, or subcontractors..
- c. Any employee that could be part of an evaluation and selection process for a procurement within the next six months for which a vendor is or could be foreseen to be a potential bidder or respondent is expressly

prohibited from accepting a gift of any kind or value from that vendor, its employees, agents, or subcontractors.

6) Employees are not prohibited from attending product exhibits or other functions associated with training, conferences, or trade shows that are not designed solely for the purpose of making contact with Department employees, as long as there is no discussion of future potential Department procurements that would provide the vendor with an unfair advantage in a future competitive bidding process.

7) Employees engaging in unauthorized contacts with vendors are subject to disciplinary action, including termination of employment. This section does not apply to incidental or purely personal interactions between employees and individuals who may be potential vendors, if they occur outside the scope of employment and there is no discussion of future potential Department procurements.

#### **28.06.00 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) PROGRAM**

In accordance with statute and administrative rule, the Department will make a good faith effort to use Historically Underutilized Businesses (HUBs). A HUB is defined as a for-profit entity that has its principal place of business in Texas and is at least 51% owned by a minority or service-disabled veteran and actively participates in the control, operations and management of the entity. The Department is committed to assisting and including HUB entities in its procurement opportunities either directly, as a prime contractor, or indirectly, through subcontracting opportunities. DPS encourages the use of HUB entities and promotes full and equal business opportunities for all businesses in state contracting.

P&CS is responsible for providing Department and vendor support to encourage HUB involvement and opportunities, is responsible for ensuring compliance with all HUB related statutory requirements and policies, and for reporting HUB performance to executive leadership and externally as required. P&CS also reviews all Hub Sub-contracting Plan submissions to ensure a good faith effort is made by respondents. P&CS establishes and monitors consistent administration of the application, review, approval, tracking and performance reporting of all HUB activities within DPS.