

# DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS

## Procurement and Contract Management Guide

Ver. 4.07



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## Table of Contents

<b>1. GENERAL OVERVIEW .....</b>	<b>8</b>
1.1 INTRODUCTION .....	8
<b>2. PROCUREMENT &amp; CONTRACT SERVICES BUREAU .....</b>	<b>9</b>
2.1 OVERVIEW .....	9
2.2 MISSION .....	9
2.3 STAFF CONTACT INFORMATION AND ORGANIZATION CHARTS .....	9
2.4 GENERAL CONTACT INFORMATION .....	9
<b>3. ETHICS LAWS AND PROFESSIONAL STANDARDS .....</b>	<b>12</b>
3.1 DPS PROCUREMENT & CONTRACTING POLICIES .....	12
3.2 STATE AND AGENCY ETHICAL STANDARDS FOR OFFICERS AND EMPLOYEES .....	12
3.3 CONFLICT OF INTEREST .....	12
3.4 EMPLOYMENT RESTRICTIONS .....	13
3.5 NEPOTISM .....	14
3.6 SUSPECTED FRAUD, WASTE, OR ABUSE .....	14
3.7 STANDARD OPERATING PROCEDURES .....	14
<b>4. VENDOR COMMUNICATION .....</b>	<b>16</b>
4.1 INTERACTION WITH VENDORS .....	16
4.2 COMMUNICATION .....	16
4.3 FACT GATHERING .....	16
4.4 DRAFTING THE SOLICITATION .....	16
4.5 DURING THE SOLICITATION .....	17
4.6 CURRENT CONTRACT .....	17
4.7 FORUMS .....	18
<b>5. ROLES AND RESPONSIBILITIES .....</b>	<b>19</b>
5.1 CONTRACT MANAGEMENT ROLES .....	19
5.2 P&CS INFRASTRUCTURE OPERATIONS .....	19
5.3 CONTRACT ADMINISTRATION TEAM .....	19
<b>6. PROFESSIONAL CERTIFICATION AND TRAINING .....</b>	<b>26</b>
6.1 OVERVIEW .....	26
6.2 JOB POSTING .....	26
6.3 JOB TITLES .....	26
6.4 ADMINISTRATIVE ASSISTANTS .....	26
6.5 CERTIFIED TEXAS CONTRACT DEVELOPER .....	27
<b>7. PURCHASING AND CONTRACTING STRATEGIES .....</b>	<b>28</b>
7.1 OVERVIEW .....	28
7.2 CONTRACT MANAGEMENT AND OVERSIGHT .....	28
<b>8. PROCUREMENT CYCLE .....</b>	<b>31</b>
<b>9. PROCUREMENT PLANNING .....</b>	<b>32</b>
9.1 OVERVIEW .....	32
9.2 NEEDS ASSESSMENT .....	32
9.3 MARKET RESEARCH .....	33
9.4 HISTORICAL SPENDING ANALYSIS .....	33

9.5	BENCHMARKING .....	33
9.6	COST ESTIMATE .....	33
9.7	REQUEST FOR INFORMATION .....	34
9.8	FUNDING SOURCE .....	34
9.9	ALLOWABLE USE OF APPROPRIATED FUNDS .....	34
9.10	ACQUISITION PLAN.....	35
9.11	RISK ASSESSMENT .....	36
9.12	STANDARD OPERATING PROCEDURES .....	37
<b>10.</b>	<b>PROCUREMENT METHOD DETERMINATION .....</b>	<b>39</b>
10.1	OVERVIEW .....	39
10.2	PROCUREMENT METHODS.....	39
10.3	PROCUREMENT METHOD IDENTIFICATION PROCESS .....	39
10.4	PROCUREMENT METHOD – SPD NON-DELEGATED PURCHASES .....	40
10.5	PROCUREMENT METHOD – SPD DELEGATED PURCHASES .....	44
10.6	PROCUREMENT METHOD - TEXAS MULTIPLE AWARD SCHEDULE (TXMAS) CONTRACTS (OPTIONAL).....	50
10.7	PROCUREMENT METHOD - REVERSE AUCTION PROCEDURE .....	50
10.8	PROCUREMENT METHOD - INFORMATION TECHNOLOGY PROCUREMENTS .....	50
10.9	PROCUREMENT METHOD – LEASE OF SPACE.....	53
10.10	PROCUREMENT METHOD - REQUEST FOR OFFERS.....	54
10.11	PROCUREMENT METHOD - PROFESSIONAL SERVICES .....	54
10.12	PROCUREMENT METHOD – CONSULTING SERVICES .....	54
10.13	PROCUREMENT METHOD - LEGAL SERVICES.....	54
10.14	PROCUREMENT METHOD – INTERAGENCY COOPERATION CONTRACTS (IACS) .....	55
10.15	PROCUREMENT METHOD - INTERLOCAL COOPERATION CONTRACTS .....	55
10.16	PROCUREMENT METHOD - STATE AND FEDERAL SURPLUS PROPERTY PROGRAM .....	55
10.17	PROCUREMENT METHOD - REQUEST FOR QUALIFICATIONS.....	55
10.18	PROCUREMENT METHOD – TEXAS DISASTER ACT OF 1975 .....	56
10.19	SOLICITATION PROCESS.....	56
10.20	PROCUREMENT LEAD TIME.....	57
10.21	INTERNAL CALENDAR OF EVENTS .....	59
10.22	SCOPE OF WORK-SPECIFICATIONS .....	59
10.23	PAYMENT AND PRICING TERMS.....	60
10.24	RESPONSE SUBMISSION REQUIREMENTS .....	60
10.25	HUB SUBCONTRACTING PLAN REQUIREMENTS.....	62
10.26	EVALUATION CRITERIA FOR AWARD .....	62
10.27	SOLICITATION PROCESS – REVIEWS AND APPROVALS.....	64
10.28	SOLICITATION – ADVERTISEMENT.....	67
10.29	SOLICITATION – AGENCY COMMUNICATIONS WITH POTENTIAL RESPONDENTS.....	70
10.30	SOLICITATION – RECEIPT AND CONTROL OF RESPONSES .....	73
10.31	STANDARD OPERATING PROCEDURES .....	75
<b>11.</b>	<b>VENDOR SELECTION.....</b>	<b>79</b>
11.1	OVERVIEW .....	79
11.2	TCI PROGRAM, STATE USE PROGRAM AND TERM CONTRACT PURCHASES .....	79
11.3	ADMINISTRATIVE REVIEW OF RESPONSES .....	79
11.4	EVALUATION- BID TABULATION PROCESS .....	81
11.5	EVALUATION- EVALUATION COMMITTEE PROCESS.....	81
11.6	PREFERENCES .....	86
<b>12.</b>	<b>CONTRACT FORMATION AND AWARD.....</b>	<b>89</b>
12.1	OVERVIEW .....	89
12.2	NEGOTIATIONS.....	89

12.3	CONTRACT FORMATION.....	91
12.4	CONTRACT AWARD .....	95
12.5	REVIEWS AND APPROVALS BY OVERSIGHT AGENCIES .....	96
12.6	PRE-AWARD CONTRACT COMPLIANCE CHECKS.....	96
12.7	CONTRACT & AMENDMENT NOTIFICATIONS.....	102
12.8	DEBRIEFINGS .....	104
12.9	PROTEST AWARD.....	105
12.10	LESSONS LEARNED – INTERNAL.....	105
12.11	STANDARD OPERATING PROCEDURES .....	105
<b>13.</b>	<b>CONTRACT MANAGEMENT.....</b>	<b>107</b>
13.1	CONTRACT MANAGEMENT .....	107
13.2	TRANSITION FROM CONTRACT DEVELOPER TO CONTRACT MANAGER .....	107
13.3	CONTRACT MONITOR RESPONSIBILITIES .....	108
13.4	PLANNING AND RISK ASSESSMENT TOOLS.....	109
13.5	POST AWARD CONTRACTOR CONFERENCE.....	113
13.6	MONITORING METHODS.....	114
13.7	INSPECTION, TESTING AND ACCEPTANCE .....	121
13.8	SHIPPING AND RECEIVING.....	121
13.9	INVOICE REVIEW AND PAYMENT .....	126
13.10	CHANGE CONTROL .....	127
13.11	TYPES OF CONTRACT AMENDMENTS.....	127
13.12	ASSIGNMENT BY CONTACTOR AND CONTRACTOR NAME CHANGES .....	128
13.13	EXTENSION AND RENEWALS .....	129
13.14	FORCE MAJEURE.....	129
13.15	DISPUTE RESOLUTION .....	130
13.16	TERMINATION FOR CAUSE .....	130
13.17	AGENCY REPORTING OF CONTRACTING INFORMATION IN CAPPs.....	132
13.18	CONTRACT CLOSEOUT.....	132
13.19	VENDOR PERFORMANCE REPORTING .....	135
13.20	RECORDS RETENTION .....	136
13.21	POST-PAYMENT AUDITS.....	137
13.22	STANDARD OPERATING PROCEDURES .....	141
<b>14.</b>	<b>SOURCE GUIDES.....</b>	<b>143</b>
<b>15.</b>	<b>ACRONYMS, TERMS, AND DEFINITIONS.....</b>	<b>144</b>
<b>16.</b>	<b>ATTACHMENTS, FORMS, AND STANDARD OPERATING PROCEDURES.....</b>	<b>168</b>
16.1	NOTE.....	168
16.2	1122 PROGRAM.....	168
16.3	OTHER ATTACHMENTS .....	168
16.4	FORMS.....	169
16.5	STANDARD OPERATING PROCEDURES (SOPs).....	170
<b>17.</b>	<b>LINKS .....</b>	<b>171</b>

# REVISION TABLE

Version	Date	Name	Description
1.0	2013/09/16	DPS Guide to the Procurement and Contract Process Ver 1.0	Original
1.01	2013/11/07	DPS Guide to the Procurement and Contract Process Ver 1.01	Revisions to Attachment E
1.02	2013/12/02	DPS Guide to the Procurement and Contract Process Ver 1.02	Revisions to Section 18 and 19
2.00	2014/11/14	DPS Guide to the Procurement and Contract Process Ver 2.0	Major Revision to the entire Guide
3.00	2015/12/01	DPS Procurement and Contract Management Guide	Major Revision to the entire guide to include a title change and a more robust Contract Management section and to address legislative requirements from the 84th session.
3.01	2017/01/11	DPS Procurement and Contract Management Guide Ver 3.01	Revision to multiple sections of the guide – update in preparation of Procurement Plan FY2017.
3.04	2017/12	DPS Procurement and Contract Management Guide Ver 3.04	Revision to multiple sections of the guide – update in preparation of Procurement Plan FY2018.
4.00	2018/11	DPS Procurement and Contract Management Guide Ver. 4.0	Major revision to the entire guide to include new State of Texas Procurement and Contract Management Guide Rev. 1.1
4.01	2018/12	DPS Procurement and Contract Management Guide Ver. 4.01	Performed 508 Accessibility check, corrected Section 16 mislabeled row headings, corrected Section headings, updated Table of Contents, updated footers and cover page with current date.
4.02	2019/01	DPS Procurement and Contract Management Guide Ver. 4.02	Repaired broken Hyperlinks to Section 16.

Version	Date	Name	Description
4.03	2019/02	DPS Procurement and Contract Management Guide Ver. 4.03	Added information concerning former employee restrictions to section 3.4. Added information concerning Internal Repairs section 10.5.4, Added section to 10.23.1 for Email Delivery Responses, USPS Delivery Responses, and Late Responses. Minor text revisions in various locations throughout the document. Added language to section 10.5.4 concerning Membership Fees, Added Executive Contract Review Board vs. Contract Review Board table to section 12.6.2. Section 10.1 revised Approval Matrix adding clarification to chart.
4.04	2019/04	DPS Procurement and Contract Management Guide Ver. 4.04	Added Solicitation After Action Review Form to section 16. Added HUB information to section 2.5 After hours Contacts. Changed Administration Division references to Infrastructure Operations Division throughout the entire document. Added Chief of TDEM signatory authority to table in section 12.3.5. Updated 2.5 After Hours Contacts Table. Revised the entire document for accessibility compliance.
4.05	2019/11	DPS Procurement and Contract Management Guide Ver 4.05	Changes made to comply with legislative changes enacted in 86 <sup>th</sup> Legislature. Revised 10.8.1.3 to include proprietary letters for DIR exemptions. Added coordination of solicitation documents to 10.18. Source Selection Plan was replaced with Evaluation Committee Guide in Section 16.

Version	Date	Name	Description
4.06	2020/11	DPS Procurement and Contract Management Guide Ver 4.06	Change language section 9.7. Added section 11.5.6 Verification of Vendor Assessment. Added language to section 10.4.2. Added Acronyms, Terms and Definitions to section 15. Updated contact information section 2.4.
4.07	2021/08	DPS Procurement and Contract Management Guide Ver 4.07	Updated Section 2.4 with current P&CS Contact information. Updated Section 10.1 approval chart to refer to the Approval Matrix which is now located in Section 16.3. Updated the following sections to comply with changes from 87 <sup>th</sup> Legislative Session: 7.2 Contract Management and Oversight, 10.5.4.4 Emergency Requisitions, 10.6 Procurement Method – Texas Multiple Award Schedule (TXMAS) Contracts (Optional), 10.8.1.1 DIR Cooperative Contracts Program – Overview, 10.28.1 Electronic State Business Daily (ESBD), 10.28.3 Centralized Master Bidders List, 11.5.1 Evaluation Committee, 12.6.10 Vendor Compliance Verifications, 13.9.1 Withholding Payment

# 1. GENERAL OVERVIEW

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## 1.1 INTRODUCTION

In accordance with Tex. Gov't Code § 2261.256, Department of Public Safety (DPS) is required to establish clear levels of purchasing accountability and staff responsibilities related to purchasing and to document contracting policies and practices consistent with the Texas Comptroller of Public Accounts (Comptroller) Texas Procurement and Contract Management Guide (Comptroller's Guide). The DPS Procurement and Contract Management Guide (Guide) documents DPS's global guiding principles for procurement and contracting functions. In an effort to provide consistency and continuity with the Comptroller, The DPS Guide has sections and/or information added from the Comptroller's Guide. This information was added as it pertains to and falls within the guidelines, policies, and practices of this agency.

Procurement and Contract Services (P&CS) has developed this Guide as an overview of the procurement process for all DPS employees who request commodities and services.

The contents of this Guide (including associated processes, forms, and templates) are subject to change. The contents are not intended in any way to grant any entitlement or right to any individual or entity. This Guide supplements, but does not replace, statutory requirements or administrative rules. DPS is independently responsible for developing business procedures in accordance with applicable federal and state laws, regulations, policies, and procedures. DPS staff should coordinate legal questions with P&CS and the DPS Office of General Counsel (OGC). **This Guide is not intended to constitute legal advice.**

The Guide is periodically updated and the latest version can be found on the agency's website and CPA website under [State Agency Contract Management Procedures](#).

Any suggestions should be directed to the DPS P&CS Bureau at (512) 424.5255 or [Procurement@dps.texas.gov](mailto:Procurement@dps.texas.gov).

## 2. PROCUREMENT & CONTRACT SERVICES BUREAU

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### 2.1 OVERVIEW

P&CS is the section within DPS Infrastructure Operations Division (IOD) – Supply Chain & Distribution Services -- responsible for coordinating and managing all procurement and contract activities for the agency. P&CS Staff are available to assist DPS personnel with procurement and contract needs. P&CS is responsible for facilitating the procurement needs for all DPS locations and for all types of purchases. P&CS efforts are focused on purchasing and contracting activities, which obtain the best value for the agency. The [Procurement & Contract Services Overview](#) provides additional information on the types of services handled by each procurement team, the various procurement types and methods, and other general procurement information.

### 2.2 MISSION

The Mission of P&CS is to have highly trained, professional staff to guide, assist, and direct agency staff through the procurement process and approve, record, and process purchases of goods and services for the Agency, at the right time, at the right price, consistent with law, regulations, internal policy, and sound business judgment.

### 2.3 STAFF CONTACT INFORMATION AND ORGANIZATION CHARTS

The most current organization chart for P&CS and contact information for P&CS staff can be located here: [Procurement Organization Chart](#).

### 2.4 GENERAL CONTACT INFORMATION

The general P&CS phone number is 512.424.5255 and is monitored from 7:30 AM to 5:30 PM (Central Time), Monday – Friday.

[Procurement@dps.texas.gov](mailto:Procurement@dps.texas.gov) is the P&CS email account for general correspondence, questions, comments, or concerns. Emails submitted to this email box will be responded to on the same business day if they are received by 3:00 PM. If they are not received by 3:00 PM, then they will be responded to within one full business day. AFTER HOURS CONTACTS

The P&CS managers can be contacted for purchases in emergency situations (after normal business hours) at the following point of contact:

P&CS Teams	Managers	Supervisors	Supported Divisions
1	Whitney Bijou Office: 512-424-2675 Mobile: 512-560-6803	Robin Thompson-Monroe Office: 512-424-5145 Mobile: 512-217-2090	Aircraft Operations Division (AOD), Criminal Investigations Division (CID), Finance (FIN), Human Resources Operations Division (HROD), Texas Rangers Division (RGR), Texas Highway Patrol (THP), Training Operations Division (TOD)
		Vacant Office: Mobile:	Infrastructure Operations Division (IOD) - Facilities
		Emily Hovland Office: 512-424-7347 Mobile: 512-751-1303	Infrastructure Operations Division (IOD): Facilities, Regional Contract Specialists, Communications, Vehicle and Technical Services, Public Safety and Statewide Radio System
3	Alfred Ramos Office: 512-424-2070 Mobile: 512-565-7198	Ashley Lindholm Office: 512-424-5272 Mobile: 512-783-4288	Director's Staff (DIR), Chief Auditors Office (CAO), Driver License Division (DLD), Executive Protection Bureau, Infrastructure Operations Division (IOD): Procurement & Contract Services, Strategy & Implementation Office, General Stores, Reprographics, Inventory & Asset Management, Risk Management, Mail Operations
		Linda Mahan Office: 512-424-7096 Mobile: 737-231-9203	Crime Lab Division (CLD), Crime Records Division (CRD), Intelligence & Counter Terrorism (ICT), Regulatory Services Division (RSD)
			Cyber Security, Information Technology Division (ITD), Office of General Counsel (OGC), Office of Inspector General (OIG)
4	Vacant Office: Mobile:	Judd Harless Office: 512-424-7559 Mobile: 512-914-7470	Quality Management, Contract Management, Training

<b>P&amp;CS Teams</b>	<b>Managers</b>	<b>Supervisors</b>	<b>Supported Divisions</b>
5	Vacant Office: Mobile:	Airy Luangaphay Office: 512-424-5239 Mobile: 512-487-9278	Enterprise Reporting, Business System Support
		Sherice Williams Office: 512-424-7163 Mobile: 512-284-2417	Historically Underutilized Business (HUB) Program
6	D'Anne Woods Office: 512-424-2272 Mobile: 512-915-1599		Enterprise Project Management Office Pilot Project

If you do not receive a response when contacting any of the above numbers, then attempt to contact the P&CS Assistant Director, P&CS Director, or the Assistant Chief (AC) of Supply Chain & Distribution Services listed in the table below.

<b>Senior Management</b>	<b>Contact Information</b>
Norma Barrera, Assistant Director	Office: 512-462-6150 Mobile: 512-705-6487
Vacant, Assistant Director	Office: Mobile:
Heather Kidd, Assistant Director	Office: 512-424-7139 Mobile: 512-565-6148
Michael Parks, Director	Office: 512-424-2205 Mobile: 737-990-9543
Walt Goodson, Assistant Chief	Office: 512-424-5448 Mobile: 512-844-2150

## 3. ETHICS LAWS AND PROFESSIONAL STANDARDS

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### 3.1 DPS PROCUREMENT & CONTRACTING POLICIES

All DPS employees involved in procurement and contracting activities must adhere to Chapter 28 of the Agency's General Manual, [Agency Contracts & Procurements](#).

The process of purchasing in a government setting requires that all participants strictly adhere to the rules, codes, and statutes put in place by the State of Texas. There are also DPS rules that must be strictly followed. No deviation from any of these policies and standards is permitted.

### 3.2 STATE AND AGENCY ETHICAL STANDARDS FOR OFFICERS AND EMPLOYEES

All DPS employees and officials who participate in the state procurement and contracting activities 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 agency 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 their chain of command and the assigned P&CS representative.

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

State personnel must adhere to the highest level of professionalism in performing their official duties. Employees of agencies who perform purchasing functions are required ([34 Texas Administrative Code §20.157](#)) to adhere to the same ethical standards required of the Comptroller of Public Accounts ([CPA](#)) employees.

### 3.3 CONFLICT OF INTEREST

DPS staff members are prohibited under [TEX. GOV'T CODE § 572.051](#) and [TEX. GOV'T CODE § 2155.003](#) from having an interest in or receiving benefits from a contract or bid for a purchase of goods or services. Perception plays a key role in maintaining the highest level of integrity, which includes avoidance of the appearance of impropriety. Employees who participate in any part of the procurement and contract processes are subject to a higher standard of ethics. Employees must adhere to the [State's Ethics Policy](#) which states:

It is the policy of the State of Texas that a state officer or state employee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in

substantial conflict with the proper discharge of the officer's or employee's duties in the public interest.

Under [TEX. GOV'T CODE § 2261.252](#), a state agency employee or official is required to disclose any potential conflict of interest specified by state law or agency policy that is known by the employee or official at any time during the:

Procurement process, from the initial request for bids for the purchase of goods or services from a private vendor until the completed final delivery of the goods or services; or Term of a contract with a private vendor.

Under [TEX. GOV'T CODE § 2261.252](#), DPS may not enter into a contract with a private vendor if any of the following agency employees or officials have a financial interest:

- A member of the agency's governing body;
- The Governing Official, Executive Director, General Counsel, Chief Procurement Officer or Procurement Director of the Agency;
- A family member related to an employee or official described above within the second degree by affinity or consanguinity;
- Having a "financial interest" in this section is defined as a state agency employee or official that:
  - Owns or controls, directly or indirectly, at least 1% in the person, including the right to share in profits, proceeds or capital gains or;
  - Could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.

A financial interest that is prohibited by this section does not include a retirement plan, a blind trust, insurance coverage, or own interest of less than one percent in a corporation.

This section applies only to a contract that exceeds \$25,000 for the purchase of goods or services solicited through a purchase order.

### **3.3.1 REQUIRED FORMS**

All DPS personnel involved in procurement or contract management activities must disclose to the agency any conflict of interest with respect to any contract with a private vendor or bid for the purchase of goods or services. A [CONFLICT OF INTEREST FORM \(PPP-7\)](#) must be signed by any employee who participates in the development of specifications, solicitation documents, evaluation, negotiation, or contract monitoring activities. A violation of this provision is subject to discipline, up to and including termination. Contract Monitors (CM) will be required to sign a Conflict of Interest form upon being assigned to a contract or Major Purchase Order (MPO). P&CS Staff and Purchasing Liaisons will be required to sign a Conflict of Interest form on an annual basis, and are responsible to report immediately to their management if they identify a potential Conflict of Interest at any time during the year.

## **3.4 EMPLOYMENT RESTRICTIONS**

Under [TEX. GOV'T CODE § 572.069](#), state officers and employees of a state agency who participated in a procurement or contract negotiation for DPS may not accept employment

from a vendor before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.

This only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015. ([TEX. GOV'T CODE § 2252.901](#))

Under [TEX. GOV'T CODE § 669.003](#), DPS may not enter into a contract with the executive head of DPS, with a person who at any time during the four years before the date of the contract was the executive of DPS, or with a person who employs a current or former executive head of a state agency affected by this section, unless the governing body: votes, in an open meeting, to approve the contract; and notifies the Legislative Budget Board, no later than the fifth day before the date of the vote, of the terms of the proposed contract.

### **3.5 NEPOTISM**

Under [TEX. GOV'T CODE § 2262.004](#), officers or employees involved in the specification development or an award determination must sign a Nepotism Disclosure Form (Reference Section 16, item 15) before a state agency may award a major contract (defined as a contract with a value of \$1 million or more) for the purchase of goods or services to a business entity. Each DPS staff member working on the contract must disclose in writing to the Executive Director any relationship that the DPS employee has with an employee, a partner, a major stockholder, a paid consultant with the prospective vendor or business entity for contracts valued more than \$25,000; or other owner of the business entity that is within a degree described by Section [TEX. GOV'T CODE § 573.002](#).

[TEX. GOV'T CODE § 2252.908](#) prohibits agencies from entering into certain contracts \$1 million or more, that require an action or vote by the governing body, or are for services that would require a person to register as a lobbyist under Chapter 305 of the Texas Government Code before the contract may be signed with a business entity unless the business entity submits a disclosure of interested parties to the agency at the time the business entity submits the signed contract. Before fully executing a contract valued at \$1 million or more, DPS must obtain a completed and signed copy of [Form 1295 with the certificate of filing number and date](#) from the proposed business entity (vendor) to be submitted with the contract for review by the Contract Review Board (CRB). No later than the 30th day after the date DPS receives a disclosure of interested parties Form 1295 from the business entity, DPS must submit a copy of the disclosure to the Texas Ethics Commission.

### **3.6 SUSPECTED FRAUD, WASTE, OR ABUSE**

In accordance with [TEX. GOV'T CODE 2261.256](#), The agency has developed and utilizes 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.

Reports of fraud, waste and abuse are reported in accordance with state statute and the [Report Fraud, Waste, or Abuse \(FWA\)](#) found in the DPS's [General Manual 01.01.00.00](#).

### **3.7 STANDARD OPERATING PROCEDURES**

The following Standard Operating Procedures (SOPs) relate to information contained in this section of the DPS Procurement and Contract Management Guide. Other SOPs are contained in other sections of the guide. For a link to the DPS SOPs, please see [Section 16.2.3 STANDARD OPERATING PROCEDURES](#).

### **3.7.1 CONFLICT OF INTEREST SOP 15-0011**

This provides instructions for documenting the disclosure of any actual or potential conflict of interest that a state employee may have with regard to solicitations, purchases, or contracts. State officials and employees are responsible for protecting the safety and welfare of the taxpayers' money. All employees are expected to avoid acts that are improper or give the appearance of impropriety. The Conflict of Interest Form (PPP-7) must be signed prior to beginning work on a solicitation or participating in the procurement activities.

### **3.7.2 NEPOTISM DISCLOSURE SOP 15-0012**

This provides instructions to ensure compliance with the nepotism disclosure and documentation requirements. Per statute, DPS purchasing personnel, state officers, and employees that participated in any form of procurement or contract activity, must disclose any relationship with the potential vendor prior to contract award.

## 4. VENDOR COMMUNICATION

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### 4.1 INTERACTION WITH VENDORS

All DPS employees that interact with vendors or that may interact with vendors are required to adhere to Chapter 28 of the [DPS General Manual, Agency Contracts & Procurements](#) and Ethics Laws and Professional Standards in Section 3 of this Guide. If there is any doubt about appropriate communications with vendors, consult with a supervisor, the Chief Ethics Officer, P&CS or OGC.

DPS must be transparent in its interactions with all vendors (and potential vendors). The P&CS team is your best resource in preparing you for a vendor meeting; always inform the team before meeting with a vendor. Recognizing that effective vendor engagement is critical to enhancing competition, identifying commercial item solutions, and realizing savings, DPS is committed to promoting fairness and an impartial process.

### 4.2 COMMUNICATION

Communication between public procurement professionals and vendors is imperative and encouraged. If used effectively, communication with industry representatives is a vital resource for public procurement professionals. Steps must be taken, however, to maintain a fair opportunity to compete for all vendors and avoid any appearance of favoritism. Agency 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. If there is any doubt about appropriate communications with vendors, consult with OGC.

### 4.3 FACT GATHERING

Texas law authorizes the exchange of information between an agency and a vendor related to future solicitations. Vendors are often experts in their respective fields and can offer insight on potential purchases, such as current trends, industry practices, and available products or solutions. The procurement team should develop a plan to obtain any needed vendor input, which may include issuance of a Request for Information (RFI), attendance at industry days, or directly contacting industry leaders or vendors listed under the applicable code on the CMBL. The result of these interactions may lead to increased competition, a more detailed and up-to-date description of technical requirements or statement of work, and ultimately better value for the state. However, contract developers must never tailor specifications to benefit a particular vendor, as this limits competition. Contract developers should take care to avoid the appearance of favoritism toward certain vendors in the fact-gathering process and when possible, agencies should avoid consulting exclusively with the incumbents or a small number of vendors, which could give the appearance of favoritism.

### 4.4 DRAFTING THE SOLICITATION

When all fact gathering is completed and the actual solicitation-drafting process has begun, vendor communication must cease to ensure the integrity of the procurement. Contract

developers may use relevant information gathered from the vendor community when drafting specifications. Finally, if the agency compensates a vendor for its assistance in drafting specifications or scope of work for a solicitation, the vendor is not eligible to bid on the resulting contract.

#### **4.5 DURING THE SOLICITATION**

Once the solicitation is posted, communications between procurement professionals and vendors should follow the procedure outlined in the solicitation. This could include designating specific agency points of contact for receipt of vendor inquiries, a public question and answer process (Q &A process), and pre-bid/offer/proposal conferences. When issuing a solicitation, it is always encouraged that an agency includes a Q&A process, as that will be the only time where the agency can benefit from potential vendors' input on the solicitation and through the addendum process make any necessary corrections to the solicitation. Failure to allow for vendor input during a Q&A process may result in higher costs to the agency if the specifications are unclear.

If any information relevant to the procurement such as evaluation methods or projected ordering volumes is provided to any vendor, that information should be released to the public immediately. This includes information shared at conferences attended by some but not all potential vendors.

#### **4.6 CURRENT CONTRACT**

Requests for vendor meetings from vendors under an active contract are the most common interactions agency staff will encounter. These meetings are an essential element of properly managing and delivering on an awarded contract and may be requested by the vendor or the agency. In addition, meetings may be necessary to introduce personnel, discuss current contract performance, or seek guidance on service adjustments being provided within the scope of the vendor's awarded contract. Interactions should be restricted to the scope of the awarded contract and care should be given to not create the perception of favoritism to any vendor for work outside the scope of the current contract. Agency personnel should use caution to avoid providing the vendor a future unfair competitive advantage by sharing future business requirements, information about systems or internal processes, or protocols outside the scope of the current contract that the vendor may be able to use in the development phase of a future solicitation. Meetings with vendors currently under contract are an expected part of the contractual relationship. The purpose in distinguishing this type of meeting from those meetings discussed below, is to stress that the meeting should be restricted to the scope of the existing contract. Any other type of meeting, such as meetings outside of the scope of the current contract, should be conducted in the same manner as a general vendor meeting with a vendor that is not currently under contract.

Contract Managers who have regular interactions with current contracts may continue to work directly with their assigned contractor, even if those contracts might be pursuing a pending DPS procurement. The Contract Manager must exercise caution to ensure that conversations with current contractors are limited to the current contract, and do not stray into a pending solicitation or possible future contract. Contract Managers should direct

questions to their supervisor, the P&CS Director, the Chief Ethics Officer or the Ethics Advisor.

## **4.7 FORUMS**

### **4.7.1 INTERNAL**

P&CS and HUB staff must interact with the vendor community on a regular basis as part of their program-specific job duties. As public procurement professionals, the P&CS and HUB teams are an experienced resource regarding vendor interactions. Market research events hosted by P&CS and/or the HUB program are posted on [DPS's external website](#) to allow all vendors an opportunity to showcase their products and/or services in an open forum.

### **4.7.2 EXTERNAL**

DPS 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 agency employees, as long as there is no discussion of future potential agency procurements that would provide the vendor with an unfair advantage in a future competitive bidding process. Agency staff attending these events have additional responsibilities, but not limited to:

- Treating all vendors equally and impartially;
- Remaining in compliance with state law and agency policy regarding Borrowing Money and Accepting Gifts and refusing to accept gifts or donations from any vendor. Picking up items and information from vendor booths that are readily available to all conference attendees is acceptable. Accepting meals and drinks not included in the price of the conference and/or accepting items that are not available to all attendees is prohibited;
- Not committing to accept, or plan to accept, products or services;
- Not implying or guaranteeing that a purchase or solicitation may result from the interaction;

If at any point an employee faces an ethical dilemma, the employee should cease all communications with the vendor representative immediately and consult with P&CS for guidance.

DPS staff should be mindful of any vendor communication that may occur while attending an external event such as an expo, conference, or another event outside of the normal day-to-day business setting. Casual communications in such settings could be perceived as inappropriate by the public, other state employees, and other vendors. DPS staff should avoid any situation or communication that would possibly create even the appearance of impropriety.

## 5. ROLES AND RESPONSIBILITIES

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### 5.1 CONTRACT MANAGEMENT ROLES

Per [TEX. GOV'T CODE § 2261.256](#), each state agency must develop and comply with a purchasing accountability and a risk analysis procedure that provides for establishing clear levels of purchasing accountability and staff responsibilities related to purchasing and contract monitoring. Provided below is a high-level description of key differences between the Contract Monitor and the Contract Administrator/Manager.

### 5.2 P&CS INFRASTRUCTURE OPERATIONS

P&CS supports DPS divisions and staff through all aspects of the Procurement Cycle as (described in Section 8 of this Guide) follows:

- Defines and implements rules, policies and procedures that relate to contracting and purchasing, review and oversight of the procurement and contract process throughout the contract life cycle, and the review and approval process of all contracts;
- Facilitates and provides technical assistance on state procurement law and options for DPS contracting;
- Reviews and comments on DPS rules that include any part of the Procurement or Grants cycle;
- Provides training to DPS staff regarding DPS procurement;
- Designates a certified Contract Specialist to manage the procurement process through to contract execution.
- Identifies the appropriate procurement method in accordance with state and federal laws and regulations;
- Bases awards on best-value principles, on best business practices, and on providing value to the State of Texas;
- Processes contract amendments and change requests;
- Requests divisions to provide vendor performance evaluations and enters evaluations into CPA portal;
- Manages required contract reporting;
- In consultation with the OGC and Finance, continuously updates and maintains templates as necessary to maintain compliance with changes in governing legislation and regulations;
- Maintains a written code of standards governing the performance of its employees engaged in the Procurement Cycle; and
- Report, posts and provide the required contract and purchasing notifications.

### 5.3 CONTRACT ADMINISTRATION TEAM

May consist of Contract Specialist/Developer/Purchaser, Contract Manager, Contract Monitor, End-user, Project Manager/Project Lead, Office of General Counsel (OGC), Cost

Estimator, Finance/Budget Analyst, Agency Sponsor, HUB Specialist (If applicable) and any other person representing the agency contract team structure

### **5.3.1 CONTRACT MONITOR RESPONSIBILITIES**

The CM is responsible for participating on both the Evaluation and Negotiation teams as a technical lead, and serving as the liaison between the evaluation team and the Executive Sponsor. The CM is also responsible for the following:

- Composing clear and concise answers to vendor questions and for addendums to the solicitation;
- Working through P&CS to respond to any vendor questions or requests;
- Evaluating the technical and business aspects of proposals in comparison to the advertised solicitation; and
- Responding to recommendations or guidance to address any legal concerns and/or issues.

### **5.3.2 CONTRACT SPECIALIST RESPONSIBILITIES**

The Contract Specialist is responsible for facilitating the evaluation process, and serving as the non-voting Chairperson of the evaluation team. The Contract Specialist is also responsible for the following:

- Advising DPS staff on proper interpretation/application of purchasing policies and regulations;
- Distributing solicitation addendums and updates as needed;
- Coordinating between OGC and the CM to address any legal concerns and/or issues prior to solicitation posting and during contract negotiations;
- Identifying and/or selecting potential vendors;
- Serving as the point of contact for communications between the agency and the vendor prior to contract award or PO/contract issuance;
- Conducting, assisting with, or coordinating evaluation of solicitation responses to determine the lowest and best responses, and preparing or overseeing the preparation of the PO/contract;
- Issuing a PO/contract to awarded vendor and disseminating notices to vendors not selected;
- Monitoring legal and regulatory requirements pertaining to the procurement method;
- Managing, approving, and documenting any changes to the PO or contract;
- Identifying and resolving questions requiring clarification with vendors;
- Maintaining appropriate and auditable P&CS records;
- Documenting significant events;
- Performing vendor reference checks; and
- Submission of Attestation Letter to LBB for competitive procurements that are \$10 million or more and non-competitive procurements that are \$1 million or more.

**NOTE:** The CM or any member on the evaluation / negotiation team are not permitted to contact other vendors or entities to perform reference checks on potential vendors as there are specific guidelines that only certified Purchasers are trained to follow.

### **5.3.3 HUB PROGRAM OFFICE RESPONSIBILITIES**

The HUB Office is responsible for providing direction and consultation to DPS Divisions pertaining to all HUB Program initiatives. In addition to the administration and oversight of:

- Planning: HUB policies and procedures,
- HUB certification and compliance,
- Subcontracting compliance as it relates to solicitations/contracts,
- Outreach: Internal and external HUB outreach events,
- Mentor Protégé Program; and
- HIB Reporting (internal and statutory)

The evaluation and determination for all procurement of \$100,000 or more over the life of the contract (including and renewals) where subcontracting opportunities are probably, and monitoring of all contracts that include a HUB Subcontracts Plan (HSP.)

The HUB Office provides support during the entire procurement cycle.

#### **5.3.3.1 Procurement planning kick-off meetings.**

During development of a new solicitation the HUB Office participates in all procurement planning (kick-off) meetings coordinated by the P&CS Contract Specialist. Topics of discussion during the kick-off meeting shall be:

- background and overview of the procurement;
- roles and responsibilities;
- procurement steps and timeline;
- ethics and Nondisclosure and Procurement Integrity Statement form; and
- resulting contracts and selected contractor

#### **5.3.3.2 Receipt and review of solicitations for subcontracting determination (Pre-solicitation).**

During the initial phase of the procurement (i.e., solicitation, bid, etc.) the P&CS Contract Specialist assigned to the procurement shall send the draft solicitation to the HUB Office. The HUB Office will review the draft solicitation document and determine whether subcontracting opportunities are probable under the resulting contract. The HUB Office will render a determination that either subcontracting opportunities are probable or that subcontracting opportunities are not probable for each solicitation with an estimated value of \$100,000 or more over the life of the resulting contract and including any renewals. The determination is documented and included in the HUB Participation Requirements section of the solicitation.

### **5.3.3.3 Vendor pre-bid conferences.**

DPS provides a vendor pre-bid conference, hosted by the P&CS Contract Specialist to allow vendors the opportunity to receive information on a solicitation and bid/proposal requirements. The HUB Office is responsible for explaining and familiarizing vendor pre-bid conference participants with HUB Program requirements as it relates to the solicitation.

### **5.3.3.4 Receipt of bid responses for HSP evaluation.**

After the closing date, the P&CS Contract Specialist shall provide the HUB Office with a copy of each bid/proposal response that is received for the solicitation for review and evaluation. An HSP must demonstrate that the respondent made a good faith effort to comply with statute, rules and DPS HUB policies and procedures.

### **5.3.3.5 Final determinations and findings for HSP compliance.**

After reviewing the HSP and any additional information obtain through the request for clarification, if necessary, the HUB Office renders a final HSP determination. The HUB Office documents HSP evaluation findings and conclusions on the prescribed form and sends it to the P&CS Contract Specialist.

### **5.3.3.6 HUB Post Award Meetings.**

The P&CS Contract Specialist notifies the HUB Office of final contract award. Upon receipt of notification of final award, the HUB Office will send a formal letter to the awarded vendor requesting their participation in a Post Award Meeting. A Post Award Meeting will be held regardless of whether or not the vendor uses subcontractors. The objective of the meeting is to discuss PAR due dates, notification of changes in the subcontractors and related contractual requirements.

### **5.3.3.7 Progress Assessment Report (PAR).**

The DPS HUB Program Office shall monitor and audit the vendor's PAR to determine if the subcontracting utilization meets or exceeds the Contractor's good faith efforts as specified in the contract. If the vendor is meeting or exceeding its good faith efforts, the HUB Office shall maintain documentation of all audits conducted.

### **5.3.3.8 HSP Change Requests.**

Should the Vendor anticipate changes to the approved HSP during the term of the contract, the vendor must submit a revised HSP and attach formal letter (or e-mail) requesting a change to their original HSP. Vendors requesting changes to the approved HSP during the term of the contract shall submit proposed changes to the P&CS Contract Specialist and the HUB Office for review and approval before any HSP modifications or performance in the awarded contract involved in the additional scope of work can be authorized by the agency, in accordance with Texas Administrative Code Title 34, §20.14 (g) (2).

## **5.3.4 PURCHASE LIAISON RESPONSIBILITIES**

DPS implemented the Purchase Liaison (PL) Program to better serve the Agency by equipping personnel with the knowledge, skill, and ethics to assist in processing high-

volume, low-risk divisional purchases. The goal of the program is to provide Divisions with increased procurement knowledge, reduce purchase processing times, and promote increased productivity and efficiency within the procurement process. The Purchase Liaison is responsible for the following:

- Monitor Open Market Requisitions submitted through the approval workflow for requisitions that fall within the PL purchasing authority;
- Adhere to the Procurement steps, policies and procedures;
- Gather estimates for open market purchases;
- Select a HUB vendor to obtain estimates when possible;
- Ensure that estimates are accurate and valid;
- Attach all appropriate documentation to Purchase Orders
- Follow the Procurement training materials;
- Utilize Procurement methods and templates; and
- Promptly provide clarification to P&CS personnel upon request.

### **5.3.5 P&CS DIRECTOR/ASSISTANT DIRECTOR RESPONSIBILITIES**

Texas Government Code requires the Procurement Director or designee to certify agency compliance of each stage of a procurement process as defined as; contract solicitation development, contract formation and award, and contract management. The P&CS Director/Assistant Director is also responsible for:

- Ensuring all procedures for internal and external reviews and approval are followed;
- Approving the best value standard;
- Resolving issues in obtaining approvals for forms, solicitations, and contracts promptly when escalated;
- Fostering partnership with OGC during the pre-solicitation phase to discuss possible contract structure and vision as a tool to develop a competitive document;
- Reviewing solicitation and contract documents thoroughly to ensure accuracy prior to certifying packet and signing the checklist;
- Reviewing recommended changes from OGC the division does not incorporate into the document to ensure the business need for not incorporating is clearly identified:
- If agree with business reason, submits to Assistant Chief for Supply Chain & Distribution Services and IOD Chief for review and final approval; and
- Approving the recommendation for negotiation.

### **5.3.6 Coordination with OGC the OTHER DIVISION RESPONSIBILITIES**

Other Division responsibilities with consist of the following:

- Responsible for evaluating request and determining if they need to contribute or approve specification;

- Responsible for identifying to what extent and how their division will be impacted by the contract;
- Responsible for reviewing and approving or disapproving if listed in the approval path, and for providing a reason for disapproval;
- Responsible for adhering to all procurement and contracting rules, policies, and procedures;
- Responsible for supporting the Contract Monitor and team;
- Immediately report to the P&CS Director and Assistant Chief – Supply Chain and Distribution Services and of the following:
  - Conflict of Interest;
  - Potential Conflict of Interest;
  - Fraud;
  - Potential fraud;
  - Any incident that is an ethical problem;
  - Any incident that may lead to ethical questions;
  - Failure of a peer, self, contract monitor, or customer to abide by required purchasing and contracting rules, laws or policies.

### **5.3.7 OGC's RESPONSIBILITIES**

The OGC is responsible for reviewing the response of the top Respondent, negotiating any exceptions taken to the boilerplate Terms and Conditions by the top Respondent as part of the negotiation team, and assist with finalizing the award. The OGC is also responsible for:

- Guiding and assisting to help ensure the agency is protected;
- Helping to ensure that contracts the agency enters into are monitorable and measurable;
- Identifying opportunities to improve clarity of responsibility and expectations documented in the contract;
- Determining the structure of the final contract and reviewing the PO language drafted by the Procurement Lead;
- Vetting and recommending for approval all two-party agreements prior to securing the Executive Director or the designee's signatures.

**NOTE:** P&CS and OGC personnel are the only entities authorized to negotiate agreements with parties outside of the agency. Personnel in other divisions may not hold themselves out as having authority to bind the agency. Persons who hold themselves out as authorized to bind the agency are subject to discipline, up to and including, termination.

### **5.3.8 FINANCE DEPARTMENT RESPONSIBILITIES**

The Finance Department's primary responsibility is to ensure the identified funds are available upon contract award. Finance is also responsible for:

- Validating and approving the use of funds identified on requisition;
- Notifying the requesting Division's Budget Analyst if the identified funds have timeline or funding restrictions;

- Reviewing and making decisions on requests for additional funding if more money is required to make an award.

## 6. PROFESSIONAL CERTIFICATION AND TRAINING

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### 6.1 OVERVIEW

In accordance with Tex. Gov't Code § 656.051 and § 656.052, Texas law requires that state agency “public procurement professionals” conducting purchasing, contract development, or contract management activities receive training and/or be certified and comply with continuing education requirements. There are three types of public procurement professionals:

Procurement Role	Description
<b>Purchasing</b>	The receipt and processing of requisitions, development of specifications, development of statement of work, the issuance of purchase orders against existing statewide, cooperative or agency contracts, and the verification of the inspection of merchandise or receipt of services by the agency. The term does not include the development of solicitations and contract awards that must be posted to the Electronic State Business Daily (ESBD) or in the Texas Register.
<b>Contract Development</b>	The term applies to actions taken prior to contract execution, including the receipt and processing of requisitions, assessment of need, development and review of specifications, development and review of scopes of work, identification and selection of procurement methods, identification and preparation of evaluation criteria, preparation and advertising of solicitation documents, tabulation of respondent bids, evaluation of respondent proposals, negotiation of proposals, and the preparation and completion of contract award documents. The term does not include invoice or audit functions.
<b>Contract Management</b>	The term applies to actions taken following contract execution, including the assessment of risk, verification of contractor performance, monitoring compliance with deliverable and reporting requirements, enforcement of contract terms, monitoring and reporting of vendor performance, and ensuring that contract performance and practices are consistent with applicable rules, laws and the State of Texas Procurement and Contract Management Guide.

### 6.2 JOB POSTING

In order to retain their position, each DPS procurement professional must obtain and maintain their certification without lapse. Newly hired DPS procurement professionals must obtain their certification within the timeframe specified on their job posting.

### 6.3 JOB TITLES

A state agency employee must complete the Basic Texas Purchaser Course to engage in purchasing functions on behalf of a state agency if the employee has the job title of “purchaser”; performs purchasing activities as 15% or more of their job activities; or makes a purchase in excess of \$5,000. Reference Section 16, item 36.

### 6.4 ADMINISTRATIVE ASSISTANTS

Purchasers who make minimal, routine purchases, such as administrative assistants, will be required to take a basic purchasing class, but not to maintain certification.

## 6.5 CERTIFIED TEXAS CONTRACT DEVELOPER

A state agency purchaser, who is not already a Certified Texas Contract Developer (CTCD) (Formerly Certified Texas Procurement Manager (CTPM)), must be certified to engage in contract development functions on behalf of a state agency if the employee develops, evaluates, negotiates, or awards a contract posted to the ESBD or in the Texas Register on behalf of DPS. Any procurement professional currently holding a CTPM has the same authority granted to them as CTCD holders. Upon renewal, CTPM holders will automatically receive the CTCD designation.

### 6.5.1 TRAINING AND CERTIFICATION REQUIREMENTS AND PURCHASING AUTHORITY

Purchasing Authority	Course Title	Experience	Certification	Exam
Zero to \$25,000 (Routine purchases)	Basic Texas Purchaser Course	None Required	None	None Required
Routine purchases and contract development	Texas Contract Developer Certification Training	None Required	CTCD Formerly CTPM	80% or >

Job Duty	Course Title	Course Description
P&CS Purchasing and Contract Specialist Staff	On Boarding	This provides initial on the job training for new P&CS staff by familiarizing them with job applications, job duties and location of DPS policies and procedures pertaining to the purchasing functions.
Purchasing Liaison	Purchase Liaison Training	This course provides training on ethics and the procurement process for procuring low-risk purchases. Individuals must attend this training in order to be certified as a Purchase Liaison.
Contract Monitor	Contract Monitor Training	This course will provide students with insight on Contract Monitoring. Individuals must attend this training and be certified as a Contract Monitor in order to serve as a Contract Monitor for agency contracts with a High or Important risk level.

## 7. PURCHASING AND CONTRACTING STRATEGIES

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### 7.1 OVERVIEW

In accordance with General Appropriations Act, House Bill 1, 86th R.S. at Article IX, Section 17.10., the Texas Legislature has directed state agencies to establish process and controls to ensure the cost-effective use of state funds for acquiring goods and services. In addition, agencies are required to ensure proper oversight of the contract process. DPS is committed to ensuring the agency complies with all state procurement requirements and best practices as outlined in laws, rules and regulations.

### 7.2 CONTRACT MANAGEMENT AND OVERSIGHT

Per General Appropriations Act, Senate Bill 1, 87th R.S. at Article IX, Section 17.09,

- (a) It is the intent of the Legislature that all agencies and institutions of higher education establish effective processes and controls to manage contracts and ensure the cost-effective use of state appropriations for contracted goods and services.
- (b) Agencies and institutions should manage contracts consistent with state statute, the General Appropriations Act, and the State of Texas Procurement and Contract Management Guide and ensure proper oversight of contract processes including:
  - 1. Provide adequate time for applicable external reviews by the Quality Assurance Team (QAT) and Contract Advisory Team when establishing procurement timelines;
  - 2. Follow recommendation made by the Contract Advisory Team or adequately explain any deviations from the recommendations and why the deviation is necessary;
  - 3. Ensure proper justification for proprietary purchases and that contracts are established and approved by the Statewide Procurement Division of the Office of the Comptroller;
  - 4. Ensure that contract award decisions are determined based on best value criteria established in solicitation documents to ensure fair and open competition;
  - 5. Ensure that staff involved in contract management or administration duties are adequately trained to perform those duties;
  - 6. Periodically review internal contracting practices and manuals to ensure that they are current and up to date with current regulations and best practices;
  - 7. Ensure that provisions related to service level and pricing mechanisms in existing contract are correctly enforced;
  - 8. Enforce damage provisions for vendor non-performance and collect monetary refunds for improper payments to vendors;
  - 9. Ensure dollar values of performance bonds and insurance are consistent with risk of non-performance; and
  - 10. Ensure that vendor performance is reported to the Vendor Performance Tracking System (VPTS) and that VPTS data is used in selecting vendors for contract awards.
- (c) Agencies shall make a good faith effort to identify and execute savings and efficiencies in their use of contracted goods and services. An agency or institution of higher

education may not use funds appropriated elsewhere in this Act to pay for a contract for goods or services unless it:

1. Seeks competitive bids before renewing or extending a contract that has been in effect more than five fiscal years as of August 31, 2021 and is valued at the lesser of \$10,000,000 or 10 percent of the agency's All Funds budget for the 2022-23 biennium. The following contracts are exempt from the requirements of Subsection (b)(1) of this §17.10:
  - (A) TxSmartBuy, term, and cooperative contracts administered by the Comptroller or Department of Information Resources;
  - (B) Grants;
  - (C) Interagency contracts;
  - (D) Contracts that relate to a construction project as defined by §2166.001, Government Code;
  - (E) Contracts that relate to highway construction or highway engineering;
  - (F) Contracts that relate to developing information resource applications or information resource technologies; and
  - (G) Contracts not required by law to be competitively bid; and
  - (H) Managed care contract in the Medicaid and CHIP program.
2. Conducts a cost-benefit analysis to compare canceling or continuing any major information resource project and related contracts subject to QAT monitoring that is more than 50 percent over budget or over schedule. QAT must approve the cost-benefit analysis for the project to continue. If this requirement is not met, corrective actions in Article IX, Section 9.02, of this Act apply.

(d) An agency or institution may request, with regards to a contract, an additional exemption from the requirements of subsection (c)(1) of this §17.10 by submitting a request to the LBB which outlines the justification for requesting the exemption. The request shall be considered to be approved unless the LBB issues a written disapproval within 30 business days of the date on which the staff of the LBB concludes its review of the proposal to exempt the contract and forwards its review to the Chair of the House Appropriations Committee, Chair of the Senate Finance Committee, Speaker of the House of Representatives, and Lieutenant Governor.

The request shall state that DPS agrees to enhanced oversight of the contract upon LBB approval of the exemption. The LBB shall determine the level of enhanced oversight that is necessary or may choose to waive oversight. Enhanced oversight may include but is not limited to: additional reporting requirements; increased monitoring of the contract; and the formation of an executive steering committee for the project to which the contract relates. For information technology-related contracts, an executive steering committee may include members of QAT and/or its designee(s). Responsibilities of an executive steering committee may include, but are not limited to, review of procurement and contract terms prior to solicitation/execution; and ongoing oversight of the management of the contract. The LBB shall determine whether an

agency or institution has met the requirements of enhanced oversight. If the LBB determines that the requirements have not been met, additional corrective actions may be applied.

- (e) It is the intent of the Legislature that agencies and institutions minimize the use of extensions that extend a contract beyond the base term and any optional extensions provided in a contract. DPS may not use funds appropriated elsewhere in the GAA to pay for an extension to an existing agency contract beyond the base term and optional extensions provided for in that contract unless all of the following conditions are met:
1. The extension is limited in duration and cost to not more than one additional option period, as defined in the contract, to address the immediate operational or service delivery needs. If a contract does not contain a defined option period, the extension is limited to one year.
  2. DPS provides notice of the extension, at least 30 days prior to execution of the extension, by uploading required information to the LBB contracts database on a form prescribed by the LBB. Required information includes, but is not limited to: 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, signed by the executive director.
  3. DPS shall ensure, prior to providing notice pursuant to Subsection (e)(2), that all information and documents specified in Article IX, Section 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 Article IX, Section 7.11.
- (f) DPS shall provide a report to the LBB and Governor that details the steps taken to ensure compliance with state procurement requirements and any other information required by the LBB. The report for activities undertaken in fiscal year 2022 is due not later than September 30, 2022, and a summary report for the 2022-23 biennium is due August 31, 2023.

## 8. PROCUREMENT CYCLE

Common characteristics exist between all public procurements. Following each of the processes outlined below ensures that the procurement is conducted in a transparent and efficient manner.

The Procurement Cycle, summarized below, identifies the five steps performed for every procurement.

### STEP 1 – PROCUREMENT PLANNING

Define the business need and establish the procurement objectives.

### STEP 2 – PROCUREMENT METHOD DETERMINATION

Identify the appropriate Procurement Method and, if applicable, issue a solicitation;

### STEP 3 – VENDOR SELECTION

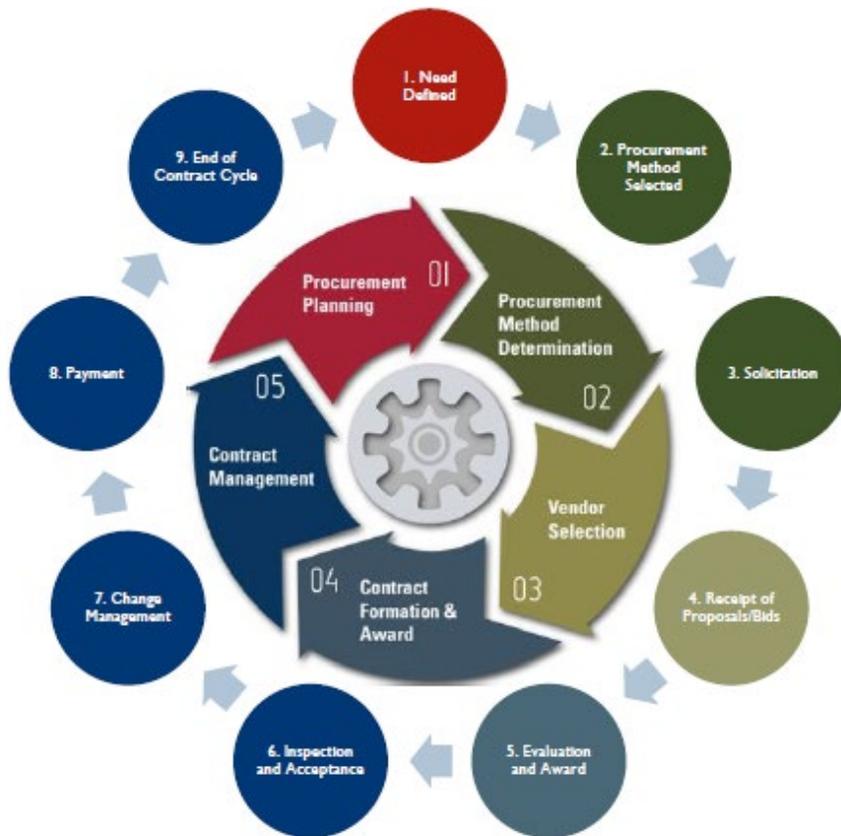
Fairly and objectively select the vendor that provides best value to the State;

### STEP 4 – CONTRACT FORMATION AND AWARD

Ensure that the awarded contract complies with applicable procurement law and contains provisions that achieve the procurement objectives; and

### STEP 5 – CONTRACT MANAGEMENT

Administer and enforce the terms of the contract.



## 9. PROCUREMENT PLANNING

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### 9.1 OVERVIEW

Effective planning should include consideration of the risk, value, term, scope, complexity and/or strategic nature of the contract.

Planning a contract is a process that begins with understanding the major steps involved. The table below provides a brief description of the steps in the contract planning process, the major activities involved and the associated forms, its relationship to the requisition, and the staff responsible in each step.

Planning Steps	Major Activities	Associated Forms	Staff Responsible
1	Determine Need to Contract Identify Source of Funds and estimated dollar amount	Request to Requisition Policy Memo	Division
2	Complete the Risk Assessment	Risk Assessment	P&CS Staff
3	Kickoff Meeting	Kickoff Meeting Agenda Non-Disclosure(s)	P&CS Staff (Purchasing and HUB), Division, Stakeholders (IT, Cyber and EPMO), OGC
4	Project Requirements Develop the Solicitation	Project Requirements Developing the Solicitation Checklist or Developing the Non-Competitive Checklist Cost/Price Worksheet	Division and P&CS Staff

### 9.2 NEEDS ASSESSMENT

- Does the procurement meet the mission of the agency?
- What is the timeframe (beginning and ending dates) during which the goods or services are needed?
- How much or what quantities of the goods or services are needed and how much might those goods or services cost? How much of what is needed is already available under existing contracts?
- How much funding is available to meet the need and what might be an appropriate basis for payment?
- Is this a legislatively mandated purchase for service and/or commodities?
- Does the DPS have the legal authority to acquire and or pay for this service and/or commodities?
- Are there any prerequisite actions to take, approvals to seek, or conditions that too must be met?

### **9.3 MARKET RESEARCH**

Contract developers routinely use market research to obtain information relating to the size of the potential vendor pool, pricing, applicable industry standards, market trends, and determine if the desired item or service is readily available in the commercial marketplace. Market research may include online research, review of industry periodicals and information obtained from professional organizations, attendance at trade shows, discussions with other customers, and consultations with industry representatives.

### **9.4 HISTORICAL SPENDING ANALYSIS**

Historical spending analysis is a tool used to optimize an agency's buying power. Studying purchasing data may reveal opportunities for cost savings, which may be available by consolidating purchases or diversity, and areas for improvement of administrative efficiencies.

### **9.5 BENCHMARKING**

Contract developers use benchmarking to compare a particular item, service, or process with other entities or an established industry standard. The objective of benchmarking is to obtain a "measure" that can then be used to identify opportunities for improvement. For example, for a product that the DPS is using under an expiring contract, benchmarking for the subsequent procurement would include an analysis of the product capabilities currently available in the market and the associated price per standard unit. This practice helps to ensure that the DPS is not procuring an outmoded replacement product for the same or similar price as a product with far more advanced capabilities.

### **9.6 COST ESTIMATE**

Prior to initiating a procurement, the DPS staff person initiating the procurement may need to prepare a cost estimate, unless an exemption applies. Exemptions for preparing cost estimates include:

- The requirements will be met through an interagency contract;
- The contract is sole source; and
- Statute mandates the contract.

An initial determination regarding the funding source is also required. Funding for a procurement is dependent upon available federal and/or state appropriations and items procured or contracts awarded under applicable federal and state laws and regulations, which govern the use of funds.

DPS staff uses Information gathered for the cost estimate to complete the Needs Assessment and Cost Estimate Form, as well as to complete the Acquisition Plan and Acquisition Schedule, should one be required.

DPS staff may develop a cost estimate from the following:

- A vendor's advertised price list;
- Developed through online research;
- May be prepared using standardized estimation methods;

- Based on historical spend;
- The cost estimate must be developed in good faith, as it will be used not only in the selection of the appropriate procurement method, but also for compliance with statutory requirements.

**NOTE:** If obtaining a cost estimate from a vendor, you will need to inform the vendor that you are requesting a budgetary estimate only. The request is not for an actual purchase and you should not mention that you would buy the goods later.

DPS staff should consult with their assigned budget analyst for assistance in determining funding availability. P&CS staff is available to answer questions regarding procurement cost estimate development.

## **9.7 REQUEST FOR INFORMATION**

An RFI is a formal research method used to gather information directly from the industry about a particular type of product or service. It is important to note that an RFI is not a procurement opportunity: a contract cannot be developed from a response to an RFI. One of the benefits of the RFI process is that information is obtained in real-time directly from the vendor community regarding applicable industry standards, best practices, potential performance measures, cost structures or pricing methodologies, and feedback on innovative items.

DPS may choose to use information received from RFI responses to develop specifications for a solicitation. Information should not be provided during the RFI process that would give a vendor an advantage in a later procurement or could be construed as preliminary negotiations. If RFI respondents are requested to deliver oral presentations, the same staff should attend all presentations and the respondents should be offered the same amount of time to conduct their presentations. RFI activities should be concluded prior to commencement of drafting solicitation specifications.

## **9.8 FUNDING SOURCE**

As part of the procurement planning activities, the funding source that will be used to pay the vendor should be identified early in the process. Sources of funding include: General Revenue, General Revenue-Dedicated accounts, Federal Funds, and Other Funds.

Identifying the funding source will assist in ensuring that the procurement complies with any laws, special regulations, restrictions or limitations applicable to the source of funding. Information regarding funds and accounts may be found in the [Texas Comptroller Manual of Accounts](#).

In addition, if grant funds are to be used, the use of the grant funds must also comply with any applicable grant requirements or special conditions imposed by the underlying grant award that will fund the procurement.

## **9.9 ALLOWABLE USE OF APPROPRIATED FUNDS**

Steps must be taken to ensure that the procurement is not prohibited by law, including the [General Appropriations Act \(GAA\)](#).

DPS may not use appropriated funds for the following services and/or commodities unless the procurement falls within a statutorily authorized exemption:

- Alcoholic beverages Tex. Gov't Code § 2113.0012 and § 2113.101;
- An audit of the financial records or accounts of the agency Tex. Gov't Code § 2113.102;
- Postage or a post office box from an entity other than the U.S. postal service Tex. Gov't Code § 2113.103;
- Membership in or dues for professional organizations Tex. Gov't Code § 2113.104;
- Live or artificial indoor plants -Tex. Gov't Code § 2113.105;
- 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.

A state agency may not use appropriated funds to purchase meals, food or beverages for employees or volunteers unless it has specific authority for such purchases. Authority for food purchases with appropriated funds is as follows:

- Law Enforcement Training as outlined in [TX. Code Sec. 411.0132](#);
  - Sec. 411.0132. USE OF FUNDS TO SUPPORT PEACE OFFICER TRAINING. The department, subject to director approval, may use appropriated funds to purchase food and beverages for training functions required of peace officers of the department;
- Disaster situations as outlined in [TX. Code Sec. 418.052](#);
  - Sec. 418.052. USE OF FUNDS TO SUPPORT CERTAIN PERSONS. The division may use appropriated funds to purchase food and beverages for a person who is;
    - activated to provide services in response to an emergency situation, an incident, or a disaster;
    - Unable to leave or required to remain at the person's assignment area due to the emergency situation, incident, or disaster;
- An agency may use appropriated funds to [purchase water](#) and ice for outdoor employees working in hazardous heat conditions.

[Restricted Expenditures](#). Additionally, there may be certain restrictions based on the funding sources.

Although state law imposes many of these requirements on a resulting contract, the end-user should be aware of them during the planning phase in order to make a determination as to whether to proceed with the procurement.

DPS P&CS staff should seek guidance from the P&CS Director, who may consult with OGC, to determine if an exception exists when there is a need to purchase a generally prohibited item.

## **9.10 ACQUISITION PLAN**

P&CS will determine whether an Acquisition Plan is needed and will work with the end user. The Acquisition Plan will be required for “major contracts” and may be required for other solicitations. The objective of the Acquisition Plan is to ensure that the procurement is solicited, negotiated, executed, and managed in a way that delivers best value to the State. Accordingly, the Acquisition Plan tracks all of the procurement activities that take place throughout the Procurement Cycle. The Acquisition Plan identifies:

- the procurement team (including the Contract Developer, Contract Manager, and end user),
- the team’s roles and responsibilities,
- the schedule of events (Acquisition Schedule),
- the activities necessary to ensure that the contract requirements are satisfied,
- the goods and services arrive in a timely manner, and
- the financial interests of the agency are protected.

To aid in the development of an Acquisition Plan, a procurement value threshold chart is located in Section 16 of this Guide. A Centralized Accounting and Payroll/Personnel System (CAPPS) requisition will be required to initiate the procurement process. The Needs Assessment and Cost Estimate help determine the necessity, nature, scope and cost of the acquisition.

In addition, the DPS procurement file checklist serves as a tool used for documenting compliance with applicable procurement laws, rules, and agency practices. Prior to contract award, the Acquisition Plan should be updated to address significant changes to the overall procurement effort, including changes to any identified assumptions that may impact the procurement scope or constraints to the procurement process.

After contract award, the Acquisition Plan is used during the transition from Contract Developer to Contract Manager. A well-drafted Acquisition Plan will assist the Contract Manager in managing the contract throughout its term.

## **9.11 RISK ASSESSMENT**

When planning for a contract, the Contract Administrator (P&CS Staff) working with the assigned business unit staff should conduct a preliminary risk assessment to:

- Define risks associated with the potential contract; and
- Determine the level, type, and amount of the following required to plan and implement the contract:
  - Management;
  - Oversight; and
  - Resources.

When a new procurement is conducted and there is a history of contracting for the same or similar goods or services, the risks that apply to the new procurement may be similar to those that applied to the procurement for which there is a history.

The Contract Administrator and assigned business unit staff evaluate the risk level associated with the contract that will be awarded. The risk level varies by:

- Contract type;
- Contract dollar value;
- Source of funds;
- Payment method;
- Contract term;
- Complexity of services and goods to be procured;
- Degree of expected competition;
- Historical performance of contractor; and
- Other attributes identified by program, purchasing, or management staff.

High profile contracts, such as contracts to address new legislative mandates or to achieve new program initiatives are considered high risk and may require:

- Additional time;
- Additional staff; or
- More experienced staff to procure, manage, and monitor the contract.

Contract risk is also assessed prior to submitting to CRB, at time of award, and prior to renewal. The Contract Manager must consider the risk level when evaluating and determining the appropriate initial term and possible renewal periods for a contract.

The Risk Assessment is completed in the Planning stage but should be reviewed yearly to add language in the amendment if needed.

## **9.12 STANDARD OPERATING PROCEDURES**

The following Standard Operating Procedures relate to information contained in this section of the DPS Procurement and Contract Management Guide. Other SOPs are contained in other sections of the guide. For a link to the DPS SOPs, please see [Section 16.2.3 STANDARD OPERATING PROCEDURES](#).

### **9.12.1 REQUEST FOR INFORMATION SOLICITATION SOP 15-0019**

This provides instructions for the RFI process. An RFI is a general invitation to contractors requesting information for a potential future solicitation. A RFI is initiated through the submission of a PPP-1. Use an RFI if the RFI is closed at least ten months prior to any communication or market research being conducted, because of approved vendor contact. The P&CS Director must approve any exception. Purchasers use the RFI as a research and information gathering tool for preparation of a solicitation and assist in determining what product or services are potentially available in the market-place to meet the agency's need and to determine the capability of vendors in terms of offerings and strengths.

### **9.12.2 INITIAL RISK ASSESSMENT OF PURCHASE REQUEST SOP 15-0021**

This provides instructions and standardizes the communication between P&CS and the Contract Monitor. P&CS Purchasers/Contract Administrators will send a standardized response to the Contract Monitor upon completing the risk assessment tool upon the assignment of a requisition. The point of contact listed on the requisition will default as the Contract Monitor to be listed on the contract or Purchase Order unless reassigned by the requesting division's Assistant Chief.

### **9.12.3 ACQUISITION PLANS SOP 15-0022**

This provides instructions for developing acquisition plans that the Purchaser provides to the Contract Monitor within three business days. The Acquisition Plan is a tool to help purchasers and managers keep procurements on track and provide customers with a timeline of when the procurement milestones are scheduled.

### **9.12.4 BEST VALUE (FAIR/REASONABLE PRICES) SOP 15-0023**

This provides instructions applicable to determining best value of purchases in accordance with state statute, the Statute of Texas Procurement and Contract Management Guide. Evaluation of a vendor's past performance is a mandatory comparative evaluation factor for award in all competitive solicitation. The P&CS Director is required to review each contract that is authorized to use the best value standard.

## 10. PROCUREMENT METHOD DETERMINATION

### 10.1 OVERVIEW

Depending on the procurement method selected, a solicitation may not be required if the selected procurement method does not require issuance of a solicitation (e.g., Term Contracts), then the Contract Developer will proceed to the Vendor Selection step of the Procurement Cycle. For purchases made using informal bidding, refer - to Competitive Bidding (Invitation for Bids (IFB), Informal Bidding) for the applicable solicitation process.

There are certain advantages and disadvantages to every procurement method and it is necessary to consider them in the context of what is being procured. An IFB, for example, would not usually be an appropriate procurement method for procuring technical services, as the primary characteristics of an IFB are the lowest price and meeting specifications with no opportunity for negotiation. Likewise, a Request for Qualifications (RFQ) would not be a suitable procurement method for procuring goods, as the essential feature of an RFQ is that price is not a factor until after vendor selection. When drafting the solicitation, the Contract Developer must be careful to ensure that the solicitation aligns with the applicable procurement method. RFI- See Section 9.7. The Approval Matrix is located in Section 16.3 Other Forms. The Matrix identifies the internal and external approvals required for all stages of the procurement process.


### 10.2 PROCUREMENT METHODS

When identifying the appropriate procurement method, including relevant exclusions and exemptions, DPS purchasing staff need to know the following for each purchase:



The purchase process begins with submission of a purchase requisition via CAPPS for a commodity or services with any necessary background information or the Needs Assessment and Cost Estimate. The system routes the requisition for required approvals. DPS staff or the end-user is responsible for obtaining the required approvals. DPS purchasing staff will determine the appropriate procurement method.

### 10.3 PROCUREMENT METHOD IDENTIFICATION PROCESS

The table below outlines the process for selecting the appropriate Procurement Method. DPS purchasing staff will follow the applicable statutes, rules and procedures found in the Guide.

STEPS	Can you purchase the commodity or service under the following STEP?	Follow the acquisition procedures for the following below, as applicable:
1	Disaster by the Governor sec. 10.17	<a href="#">Texas Disaster Act of 1975</a>
2	DPS Surplus Property	<a href="#">DPS Surplus Property Program</a>
3	State or Federal Surplus Property Sec. 10.15	<a href="#">State</a> and <a href="#">Federal Surplus Property</a> Programs
4	DPS General Stores	<a href="#">DPS General Stores</a> <a href="#">Catalog</a>
5	Professional Services, Consulting Services, or Legal Services Sec. 10.10, 10.11, 10.12	<a href="#">Professional Services, Consulting Services, or Legal Services</a>
6	Texas Correctional Industries (TCI) Program sec. 10.4.2	<a href="#">TCI Purchases</a>
7	State Use Program (WorkQuest) sec. 10.4.3	<a href="#">State Use Program</a>
8	Information Technology via Texas Department of Information Resources (NIGP Class/Item “**”) sec. 10.8	<a href="#">Information Technology Purchases</a>
9	State Agency or Local Government	<a href="#">Interagency Cooperation Contracts</a> (IAC) or <a href="#">Interlocal Cooperation Contracts</a>
10	Statewide Procurement Division (SPD) Term Contracts sec. 10.4.4 and 10.4.5	<a href="#">Term Contracts</a>
11	Printing Services or Equipment, or Mail and Messenger Services sec. 10.4.11, 10.4.10	<a href="#">Reprographics</a> and <a href="#">Mail and Messenger Services</a>
12	Used equipment or Supplies sec. 10.4.12	Used Equipment
13	SPD Delegated Purchases sec. 10.5	SPD Delegated Purchases, <a href="#">SPD TXMAS Contracts</a> (optional), Contract Established by Another State Agency, Federal Government Purchases, Interstate Compacts & Cooperative Agreements
14	Open Market	Is the purchase for goods valued at over \$50,000 or services valued at over \$100,000? If yes, follow the acquisition procedures for SPD Administered Agency-Specific Procurements. If no, consult SPD or the DPS P&CS Director for the appropriate procurement method.

## 10.4 PROCUREMENT METHOD – SPD NON-DELEGATED PURCHASES

### 10.4.1 OVERVIEW

For procurements and procurement methods within SPD’s purview, DPS is required to comply with SPD’s rules and procedures. SPD Non-Delegated Purchases include the following:

- Prison Made Goods governed by Chapter 497 of the Texas Government Code,
- The State Use Program authorized by Chapter 122 of the Texas Human Resources Code.

These set aside programs do not require competitive procurement.

State agency purchasers should order contract items where available from the following sources in the order listed.

## **10.4.2 TEXAS CORRECTIONAL INDUSTRIES (TCI) PURCHASES**

The Prison Made Goods Act requires that DPS purchase goods made by and services offered by TCI. Competitive bidding requirements do not apply. TCI offers most goods through Texas SmartBuy. Goods not available through Texas SmartBuy may be found in the TCI Catalog published on the TCI website. Only in certain circumstances may DPS decline to procure a good or service from TCI.

### **10.4.2.1 PRINTING**

The Contract Developer/Purchaser ensures procurements for printing comply with the printing services and in-house copy centers procedures. The [DPS Reprographics](#) Department performs procurement in-house. For other competitively procured printing purchases, including those solicited using CPA's state print shop request form, TCI must have the final opportunity to meet or beat the lowest price. Bids for printing must include a bid or no bid response (in lieu of the waiver) from TCI.

### **10.4.2.2 TCI WAIVER PROCESS**

TCI must grant a waiver if an agency desires to procure a product or service offered in the TCI catalog from a source other than TCI. The TCI waiver request form can be found in the [procurement forms library](#). The waiver request can be based on substantial differences in specifications, which include the inability for TCI to provide deliverables on the requested delivery date, price differences, or precise specifications required by DPS that cannot be met by TCI. DPS may not evade the intent of the Prison Made Goods Act by requesting a product that varies slightly from standards for products established under Section 497.027 of Texas Government Code, if TCI produces a similar product that is in compliance with established standards and is reasonably suited to the actual need of DPS.

## **10.4.3 STATE USE PROGRAM (WorkQuest)**

Texas Workforce Commission (TWC) oversees the Purchasing from People with Disabilities Program, commonly referred to as the State Use Program. State agencies, including DPS, must purchase products and services offered through WorkQuest that meet the applicable specifications and that are available within the time specified. Competitive bidding is not required for purchases from WorkQuest. Only in certain circumstances may a state agency decline to purchase products and services through the State Use Program.

Any time the quality of a WorkQuest product or service is deemed unacceptable or failed to meet agency specifications, this information should be reported to WorkQuest and a vendor performance report must be filed with SPD.

DPS is not required to purchase commodities and services using the State Use Program under the following circumstances:

1. A WorkQuest-provided or -produced product or service does not meet the reasonable requirements of the agency; or
2. The requisitions made cannot be reasonably complied with using products or services produced by persons with disabilities.

For commodities and services offered through the State Use Program, agencies are not required to use WorkQuest provided commodities or services if they do not meet the DPS's specifications as to quantity, quality, delivery time, or life cycle costs.

Price is not a factor used in the comparison of other sources to WorkQuest-provided products or services. If a WorkQuest-offered product or service is obtained from another source, the agency must document which of the four authorized exceptions to the State Use Program is being utilized for the purchase:



#### **10.4.4 TERM CONTRACTS**

DPS is encouraged to use term contracts, Texas SmartBuy and cooperative contracts whenever possible. SPD establishes term contracts for the purchase or lease of goods and services used in large quantities by several agencies.

#### **10.4.5 MANAGED TERM CONTRACTS**

Managed term contracts are a type of term contract that requires manual processing and typically have different pricing structures or require a quote. These purchases cannot be made through Texas SmartBuy; DPS issues a PO directly to the awarded vendor.

#### **10.4.6 TRAVEL SERVICES CONTRACTS**

The [State Travel Management Program \(STMP\)](#) at the Comptroller's office ensures that state agencies use taxpayer dollars more efficiently by providing discounted travel services through vendor airline, car rental, hotel and travel agency contracts. DPS employees are required to visit the [DPS Travel Program](#) for additional requirements.

#### **10.4.7 EMERGENCY CONTINGENCY CONTRACTS**

Texas contracts used for contingency purposes as an emergency resource, under the provisions of Texas Government Code 418.043(2) to support the Texas Division of Emergency Management (TDEM) Hurricane Preparedness Program or any other situation that requires mass emergency evacuation of Texas citizens.

#### **10.4.8 SPD-ADMINISTERED AGENCY-SPECIFIC PROCUREMENTS**

For procurements not delegated to the agencies under the SPD Review and Delegation Process. SPD will establish and administer an agency-specific procurement. DPS initiates the process by submitting delegation request to SPD either as an Open Market Requisition (OMR) or via the Procurement Oversight & Delegation portal.

#### **10.4.9 PROPRIETARY PURCHASES**

Proprietary purchases preclude competition because an attribute of the purchase limits consideration to only one product or supplier. Proprietary purchases, regardless of whether they are sole source or competitive, are subject to ESBD posting requirements

as well as requirements applicable to SPD delegation, CAT reviews, and QAT reviews. Whenever applicable, DPS publishes proprietary purchase notices on Texas SmartBuy for a minimum of 14 days. For proprietary purchase solicitations, the Contract Developer/Purchaser ensures the required specific statements are included in the solicitation.

The DPS Contract Developer/Purchaser must document the file with a Proprietary Purchase Justification, which must be signed by the DPS Deputy Executive Director or designee.

#### **10.4.10 MAIL AND MESSENGER SERVICES CONTRACTS**

Visit DPS's [Mail and Messenger Services Program](#) for more information.

#### **10.4.11 PRINTING SERVICES AND IN-HOUSE COPY CENTERS**

DPS must utilize the DPS print shop or SPD-approved State Print Shops. The State Print Shops provide design, digital, and traditional offset printing, binding, fulfillment, mailing, and other print-related services to agencies. For more information, visit the agency's website at [Reprographics](#) and [Mail and Messenger Services](#).

#### **10.4.12 USED EQUIPMENT**

##### **10.4.12.1 PURCHASE OF USED EQUIPMENT**

Generally, the SPD Guide recommends that a state agency procure new equipment. However, in certain circumstances, agencies may purchase or trade used equipment.

##### **10.4.12.2 TRADE-IN OF USED EQUIPMENT THROUGH SOLICITATION**

If an agency determines that a trade-in will provide the greater cost savings, the procurement file must contain an estimated approximate value for that determination and the solicitation must include the following:

##### **1. Requirements and Clauses:**

- The acceptance of the trade-in amount is at the State's option;
- Release of trade-in equipment will not be allowed until final delivery and acceptance of the new equipment;
- Deadline for pickup of the equipment by awarded respondent "where is, as is."

##### **2. Equipment Description:**

- Age of equipment;
- Condition of equipment;
- Make (Manufacturer/Brand);
- Model Number; and
- Serial Number (if applicable).

#### **10.4.13 CONTRACT ESTABLISHED BY ANOTHER STATE AGENCY**

When a contract created by another state agency fulfills an unmet need, the SPD director may either (1) Endorse the contract of the other agency as an SPD contract and make it generally available for agency use or (2) Authorize the use of the contract of the other agency on a case-by-case basis.

#### **10.4.14 FEDERAL GOVERNMENT PURCHASES AND INTERSTATE COMPACTS & COOPERATIVE AGREEMENTS**

SPD or the governing body of an institution of higher education may negotiate purchases of goods of any kind needed by a state agency or the institution of higher education with the appropriate agency of the federal government as long as the price of goods that are purchased from the federal government does not exceed the fair market value of the goods.

#### **10.4.15 1122 PROGRAM**

The agency can use 1122 Program purchases to save time, money, and to provide the agency with critical equipment in a timely manner. The agency can identify Items as [1122 Program](#) candidates when they use them in support of one or more of the following activities:

- Counter – Drug;
- Homeland Security;
- Emergency Response (Emergency Management/First Respondents).

The agency must submit a written justification, in the form of a Letter of Intent, with the requisition in CAPPs for 1122 purchase requests. The Letter of Intent must be addressed from the requesting Division’s Chief or an authorized designee.

The purchase order file should contain the following:

- Governor’s letter;
- Letter of Intent;
- DOC 9 and statement.

*Section 1122 of the fiscal year 1994 National Defense Authorization Act established the authority for State and local governments to purchase law enforcement equipment through Federal procurement channels, provided the state or local government uses the equipment to perform counter-drug activities.*

### **10.5 PROCUREMENT METHOD – SPD DELEGATED PURCHASES**

#### **10.5.1 OVERVIEW**

The SPD has the authority to regulate state agency purchasing. SPD has retained authority over some purchases, but has delegated purchasing authority for other purchases.

SPD may delegate authority to purchase:

- Commodities that cost more than \$50,000 and are not on state contract; and

- Services valued at more than \$100,000 and are not on state contract.

### 10.5.2 DETERMINING CONTRACT VALUE

For SPD reporting, review, and delegation requirements, contract value is defined as “the estimated dollar amount that an agency may be obligated to pay pursuant to the contract and all executed and proposed amendments, extensions and renewals of the contract.

Contract value, therefore, is not limited to just the cost for the initial term; it is determined by the total value of the contract over a contract’s term as well as any modifications, renewals, or extensions of the contract.

EXAMPLE: A contract with a one-year initial term and three optional one-year renewal periods, costing \$4 million annually, would have a contract value of \$16 million and would be subject to CAT review.

### 10.5.3 SUMMARY OF MINIMUM REQUIREMENTS FOR DELEGATED PURCHASES

MINIMUM REQUIREMENTS FOR SPD DELEGATED PURCHASES								
Contract Value	Purchases of Goods	Purchases of Services	Direct Publication Purchases	Perishable Goods Purchases	Distributor Purchases	Fuel, Oil and Grease Purchases	Internal Repair	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 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	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 L	Formal Competitive Solicitation PCC M	Formal Competitive Solicitation PCC P	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation 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 L	Formal Competitive Solicitation PCC M	Formal Competitive Solicitation PCC P	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC T
Over \$100,00.00	Non-delegated PCC S	Non-delegated PCC S	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

### 10.5.4 SPD DELEGATION BY RULE

#### 10.5.4.1 OVERVIEW

By rule, SPD delegates its purchasing authority to agencies for the following types of procurements:

- One-time purchases of goods that do not exceed \$50,000;
- Purchases of services that do not exceed \$100,000;
- Direct publications;
  - **Direct Publication Declaration** The following statement should be placed on POs for the Direct Publication purchases: “Direct Publication - Not available from any other source ”;
  - **Direct Publication Purchases ≤ \$25,000** No competitive bidding is required if the total value of the direct publication contract is \$25,000 or less.

- Purchases of perishable goods;
- Distributor purchases;
- Fuel, oil, and grease purchases;
- Internal repair purchases;
  - Absent circumstances that would dictate otherwise, informal competitive bidding is required for internal repairs with contract value between \$10,000 and \$25,000.
  - Circumstances to consider that would warrant a non-competitive process include an emergency or a situation where, by the time a necessary repair is diagnosed, it would be best value for the same vendor to perform the repair that diagnosed the issue.
- Emergency purchases.

For procedures applicable to proprietary purchases, refer to [Section 10.4.9 Proprietary Purchases](#).

#### **10.5.4.2 MEMBERSHIP FEES**

Per Texas Government Code, Sec 2113.104, a state agency may not use appropriated money to pay for membership in or dues for a professional organization unless the administrative head of the agency, or that person's designee, first reviews and approves the expenditure. Pre-approved designated agency employees, approved by the DPS director would be permitted to use their Payment Card (P-card) to pay for memberships. Only the pre-determined employees would be allowed to make these purchases using their P-card annually for selected memberships. All other membership requests require submission of a requisition to P&CS. An agency may not pay for a membership (including legal bar dues) with a Spot Purchase Order (SPO), or a P-card. DPS must retain documentation in the procurement file showing the proper public purpose served by paying the membership fee, and showing how the payment relates to the agency's statutory duties.

#### **10.5.4.3 EMERGENCY**

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

**NOTE:** Emergency purchases discussed in this section are different from agency purchases conducted under a Declaration of Disaster by the Governor. SPD authority does not extend to purchases made under the Texas Disaster Act of 1975. Refer to [Section 10.17 Procurement Method – Texas Disaster Act of 1975](#).

SPD has delegated to all agencies the authority to make emergency procurements. Notwithstanding this delegation, emergency procurements are subject to SPD's rules and procedures. Upon request, SPD will assist in advising agencies on the proper procedures for emergency purchases, but SPD will not certify the existence of an emergency.

The decision to declare an emergency purchase is the sole responsibility of the agency. If an emergency exists, a written determination of the basis for the emergency and for the selection of a particular vendor shall be included in the procurement file. For an emergency purchase of goods or services exceeding \$25,000, an agency must send to SPD a full written explanation of the emergency along with other documentation required by SPD. The agency must provide the notification to SPD as soon as reasonably practical, given the nature of the emergency.

Notwithstanding the immediate nature of an emergency, all procurements conducted as emergencies should be made as competitive as possible under the circumstances. The agency should make a reasonable attempt to obtain at least three informal bids. Emergency procurements over \$25,000 must be posted to the ESBD; however, the minimum time for posting of the solicitation does not apply to the extent necessary to address the emergency. In addition, emergency procurements are subject to CAT and QAT reviews; expedited reviews are available upon request to these oversight teams. Emergency purchases of goods or services should not exceed the scope or duration of the emergency.

#### **10.5.4.4 EMERGENCY REQUISITIONS**

The Contract Monitor must prepare a written justification of the basis for the emergency in the form of an Emergency Purchase Justification Decision Memorandum (DM) when an emergency occurs. The justification will be from the requesting division's Division Chief to the Director of P&CS. The Contract Monitor will prepare and submit the Requisition in CAPPs and must attach the DM in CAPPs in addition to submitting it via email as outlined below.

Emergency purchase under \$10,000 during normal business hours. There are no emergency purchases under \$10,000, only expedited purchases. Bids are not required on purchases under \$10,000, so for such situations follow the same steps for composition and submission of a Requisition.

Emergency purchase request over \$10,000 during normal business hours. The Contract Monitor must:

- Prepare a Requisition with the specification for the requirement clearly defined;
- Prepare the Emergency Justification DM and send it to the Division's Division Chief for approval and submission to the P&CS Director. This decision will be made in the normal course of assessing the Requisition and through any communications with the requesting party. All questions on the DM must be clearly answered. General statements of loss or nominal damage are not

acceptable, so be specific and detailed. The purchase order cannot be issued until the DM is received and approved by the P&CS Director or his or her designee;

- Attach the DM to the Requisition in CAPPs and submit the Requisition for approvals;
- **NOTE:** A phone call to each person in the approval path is recommended to expedite the approval process. Call P&CS and speak with the P&CS Director or the appropriate Branch Manager to let them know what the situation is and that the Requisition is on the way;
- Submit the Emergency Justification DM to the P&CS Director or his or her designee by emailing it to [Procurement@dps.texas.gov](mailto:Procurement@dps.texas.gov) and carbon copy/ CC the P&CS Director or his or her designee.

#### **10.5.4.5 EMERGENCY PURCHASE REQUEST AFTER HOURS**

If the Contract Monitor determines that a purchase of goods or services must be handled as an emergency after normal business hours, the Contract Monitor must contact the P&CS Director or Branch Manager to explain the emergency. If they concur, they will place the PO with a vendor to supply the requested goods or services. Emergency contact information is located in Section 2.5 of this Guide.

An example of the Emergency Purchase Justification DM – PPP-21 is in [Section 16.2.2 FORMS](#).

#### **10.5.4.6 EXEMPT PURCHASES**

State agencies also have delegated authority to make exempt purchases. These are purchases of certain commodities and services that are exempt by specific statute from CPA purchasing authority, exempt from competitive bidding, or may be required by statute to be purchased through another specific purchasing method. If not exempt by the General Appropriations Act, Texas Government Code Chapter 2151, or other statute, the purchase must be competitively bid, or the purchase should satisfy the requirements of a proprietary purchase justification that is retained within the procurement file. Exempt purchases are subject to the Comptroller's post-payment audit process to verify whether the purchases are exempt and that the DPS used the correct document types and Comptroller Object Codes.

Direct questions regarding exempt purchases to the P&CS Director, who may consult with OGC.

#### **10.5.5 SPD REVIEW AND DELEGATION PROCESS**

DPS seeking a delegation of SPD's purchase authority for a procurement that is not addressed by SPD rule must submit a procurement specific delegation request to SPD as either an OMR for goods via email or through the Procurement Oversight & Delegation portal for services, as applicable.



### **10.5.6 COMPETITIVE BIDDING (IFB'S, INFORMAL BIDDING)**

Competitive bidding may be accomplished by an IFB or informal bidding.

Unlike the competitive sealed method or Request for Proposal (RFP) described below, the competitive bidding method does not permit negotiations. If there is only one qualified bidder, then the Contract Developer may negotiate with the sole bidder, including price, provided the negotiation does not result in a material change to the advertised specifications.

### **10.5.7 COMPETITIVE SEALED REQUEST FOR PROPOSALS**

An RFP is a written solicitation document for purchases acquired by means of the competitive sealed proposals procurement method. Generally, an RFP is recommended when factors other than price are to be considered, negotiations are desired, requirements cannot be described by detailed specifications included in a PO, or the respondent is expected to provide innovative ideas.

This solicitation type must be used when an IFB is not practicable or advantageous. One of the key differences between an IFB and an RFP is that negotiations are allowed in an RFP and are not allowed in an IFB.

### **10.5.8 BEST VALUE**

Texas law mandates that contract awards may only be made to responsive vendors providing best value to the State. The best value standard may vary depending on the procurement method. DPS procurement staff ensures that the appropriate best value standard is used as the basis for the contract award. DPS is required to purchase commodities and services that provide the best value for the State. For a purchase made through competitive bidding, DPS must specify in the solicitation the factors other than price that will be considered in determining which offers the best value for the State, the purchase price and whether the commodities or services meet specifications are the most important considerations. However, DPS may consider other relevant factors, such as:

- Installation costs;
- Life cycle costs;
- The quality and reliability of the goods and services;
- The delivery terms;
- Indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the

- vendor's experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance agreements and support;
- The cost of any employee training associated with a purchase; the effect of a purchase on agency productivity;
- The vendor's anticipated economic impact to the state or a subdivision of the State, including potential tax revenue and employment; and
- Other factors relevant to determining the best value for the State in the context of a particular purchase.

## **10.6 PROCUREMENT METHOD - TEXAS MULTIPLE AWARD SCHEDULE (TXMAS) CONTRACTS (OPTIONAL)**

The SPD developed Texas Multiple Award Schedule (TXMAS) contracts awarded by the federal government or other governmental entities. DPS may utilize these contracts without obtaining delegated authority to make purchases that exceed \$50,000 for goods and exceed \$100,000 for services. For purchases that exceed \$25,000, DPS is required to post the award notice on the ESBD.

Under certain circumstances, DPS may negotiate a lower price for the goods or services offered on a TXMAS contract. A "best value" purchase is made by following the TXMAS purchasing procedures. DPS follows the SPD's procedure whether the purchase is entered through the Texas SmartBuy online ordering system, offline or includes incidental, off-schedule items.

The Comptroller is authorized to collect rebates from purchases made under these contracts. When a rebate is obtained the Comptroller will notify DPS of the percentage used to calculate the rebate. At that time if federal funds were used in whole or in part to acquire the goods or services, DPS is required to notify the appropriate federal funding agency of the rebated amount.

## **10.7 PROCUREMENT METHOD - REVERSE AUCTION PROCEDURE**

DPS may purchase goods or services using the reverse auction procedure. This procedure, not commonly used in Texas state agency procurement, may be conducted in only either of two (2) ways identified in statute. DPS currently does not utilize this method.

## **10.8 PROCUREMENT METHOD - INFORMATION TECHNOLOGY PROCUREMENTS**

DPS is required to use contracts established by DIR to obtain Automated Information Systems (AIS) unless the procurement is subject to an exclusion or exemption. AIS type products and services are associated with computers (automation) or telecommunications systems.

### [DIR INFORMATION AND COMMUNICATIONS TECHNOLOGY COOPERATIVE CONTRACTS](#)

DIR has statewide procurement authority similar to SPD. However, DIR's authority relates to information technology. Much like SPD, DIR establishes and manages master contracts. DIR has established the following types of master contracts:

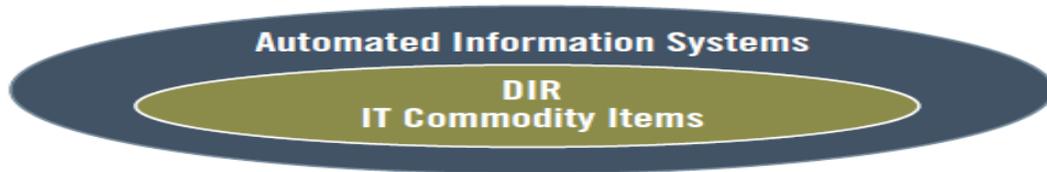
- Cooperative Contracts for Information Technology (IT) commodity items;

- Texas Multiple Award Schedule contracts for IT commodity items;
- Texas.gov contract;
- Data Center Services contracts; and
- Telecommunication Services contracts.

**NOTE:** The five master contracts established by DIR are briefly summarized below. The DPS Contract Developer/Purchaser may contact DIR for guidance on applicable procedures and best practices to use in buying IT commodity items under DIR contracts.

IT commodity items are a subset of AIS. IT commodity items refer to commercial software, hardware, or technology services, other than telecommunications services, that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more agencies. The term includes managed services, through which an agency transfers its personal computer equipment and service responsibilities to a private vendor to manage.

The correlation between AIS and DIR IT commodity items is illustrated below:



DPS must use its best judgment to determine the monetary value of the anticipated contract. Statute provides further guidance on this determination.

### **10.8.1 DIR COOPERATIVE CONTRACTS PROGRAM**

#### **10.8.1.1 OVERVIEW**

DPS is required to use DIR contracts for particular Information Technology commodity items. DIR offers the following categories of contracts through DIR’s [Cooperative Contracts Program](#):

- Hardware;
- Software;
- Technology-based training;
- Managed services;
- [IT Staff Augmentation Contracts \(ITSAC\)](#); and
- [Deliverables-Based IT Services \(DBITS\)](#).

DIR establishes and maintains a catalog of active contracts on the DIR website that contain IT commodity items available for purchase by DPS. DPS may negotiate even deeper discounts based on individual purchase volumes by issuing pricing requests to multiple DIR vendors in order to drive price competition for the final purchase award.

Monetary thresholds and competitive requirements for purchasing an IT commodity item under a DIR contract are as follows:

\$ thresholds	Competitive Requirements
\$50,000 or less	DIR vendor may receive a direct award.
\$50,000.01 to \$1 million	Request for pricing to at least three vendors or resellers included in the category to which the contract relates.
More than \$1 million but no more than \$10 million	Request for pricing to at least six vendors included in the category to which the contract relates or all vendors in the category if the category has fewer than six vendors.
More than \$5 million but no more than \$10 million	Purchase may be conducted using a the RFO purchasing method designated by the comptroller under Section 2157.006(a)(2) Government Code.
Exceeds \$10 million.	DPS may not enter into a contract to purchase a commodity item through the DIR Cooperative Contracts Program if the value of the contract exceeds \$10 million. DPS must make purchases over \$10 million through the Open Market process.

Note: DIR periodically schedules “bulk” purchase events to support IT replacement. The coordinated bulk purchase effort focuses on software, seat management services, and computers, laptops, and tablets. DIR facilitates the process, which is not subject to the \$10 million cap, by serving as the sole point of contact between the agencies and the vendors. DIR works with the agencies to develop standard configurations and conducts the negotiations. Agencies participating in the event obtain competitive pricing beyond the discounts already available to DIR customers through the cooperative contracts.

#### **10.8.1.2 DIR REVIEW AND SIGNATURE APPROVAL OF CERTAIN DIR SOWS**

For purchases that will exceed \$50,000, DPS is required to prepare and submit to DIR certain [DIR Statement of Work’s \(SOW\)](#). A contract for an IT commodity item is not valid and money may not be paid to the contractor under the terms of the DIR SOW unless DIR first signs the DIR SOW.

DIR’s rules identify more information on the DIR SOW process and requirements.

#### **10.8.1.3 EXEMPTIONS AND EXCLUSIONS**

An exemption or waiver from the requirement to use a DIR contract to purchase an IT commodity item is available in very limited circumstances through [DIR Exemption](#), LBB Approval; or DIR certification of unavailability. P&CS submits the exemption or waiver request on behalf of DPS. If DPS is requesting an exemption using a proprietary purchase justification, DIR requires the signed proprietary letter as proof of the justification.

### **10.8.2 DIR TEXAS MULTIPLE AWARD SCHEDULE – (TXMAS) CONTRACTS**

DPS may utilize [TXMAS contracts](#) developed by DIR for the purchase of IT commodity items. For orders that exceed \$25,000, DPS posts the award notice on the ESBD. The

monetary thresholds associated with the DIR Cooperative Contracts Program apply to procurements under DIR TXMAS contracts.

**10.8.3 TEXAS.GOV SERVICES**

Texas.gov is the official e-government web portal for the State of Texas and allows citizens to access government services online. [Texas.gov Services](#) include payment processing, custom application development, operational and infrastructure support, customer service, marketing, and analytic reporting. DPS is eligible to participate.

**10.8.4 DIR DATA CENTER SERVICES**

DIR provides consolidated data services to public entities, including DPS. The monetary threshold requirements and SOW review and signature process associated with the DIR Cooperative Contracts Program apply to all procurements made as a pass-through expense in the [Data Center Services Program](#); however, these requirements do not apply to contracts procured through the Data Center Services Program that are signed by the contracted vendors.

**10.8.5 TELECOMMUNICATION SERVICES**

DPS is required to use the Capitol Complex Telephone System (CCTS) for landline services. DPS is also required to use the Texas Agency Network (TEX-AN) for telephone, internet, data, and video services. If DIR offers a [telecommunications service](#), DPS must purchase the service through DIR or must request and be granted a waiver before procuring the service through another source.

<u>Capitol Complex Telephone system (CCTS)</u>	<u>TEX-AN</u>	<u>OTHER TELECOM SERVICES</u>
Telephone service within the capitol complex is provided by DIR’s Capitol Complex Telephone System	Telephone service (other than CCTS), data circuits, Internet and video services are available to Texas cities, state and local government agencies, local school districts, and institutions of higher education statewide through TEX-AN.	Other contract services negotiated by DIR Telecom are available to all government agencies:  Wireless Conferencing Managed Services

**10.9 PROCUREMENT METHOD – LEASE OF SPACE**

The lease of space by state agencies is delegated to the Texas Facilities Commission (TFC). TFC maintains properties throughout the state for long-term and short-term use. DPS must use state-owned or state-occupied facilities for meetings, conferences, and administration of group examinations, and may not use appropriated money to lease private facilities for these purposes unless state facilities are not:

- Available when needed.
- Adequate to accommodate the meeting, conference or examination.
- An economically favorable alternative to other facilities.

The DPS Facilities Department, within the Infrastructure Operations Division, coordinates with TFC to make the determination if state-owned space is available or if space will need to be secured. When no space is available, TFC will determine if it is in the best interest of the state for TFC to procure the space or to delegate the procurement back to DPS.

## **10.10 PROCUREMENT METHOD - REQUEST FOR OFFERS**

The Request for Offers (RFO) procurement method is intended as the designated, primary purchasing method for procuring AIS other than under DIR's IT commodity program. However, agencies may choose to use the RFO procurement method or any other procurement method authorized by Title 10, Subtitle D of the Texas Government Code that will obtain the best value. When using these other methods to procure such AIS, the procuring entity must follow the guidelines published by SPD.

- The RFO method is available for use by agencies to procure AIS items in the following circumstances;
- The agency has obtained an exemption from DIR;
- The agency has obtained express prior approval from LBB for the expenditure necessary for the purchase;
- DIR has certified in writing that the IT commodity item is not available for purchase under an existing DIR contract; or
- The agency is otherwise exempt from the requirements of Section 2157.068 of the Texas Government Code.

## **10.11 PROCUREMENT METHOD - PROFESSIONAL SERVICES**

DPS may procure professional services under Chapter 2254, Subchapter A, of the Texas Government Code.

There is no delegation of authority required from SPD to acquire professional services. The procurement of professional services is subject to ESDD posting requirements as well as requirements applicable to CAT reviews.

Purchasing of Audit Services requires delegation of authority from the State Auditor Office. The agency must request delegation by submitting the scope of the proposed audit to SAO for review and comment.

## **10.12 PROCUREMENT METHOD – CONSULTING SERVICES**

State statute delegates acquisition of consulting services to DPS; SPD delegation of authority and does not require a delegation of authority from SPD. The procurement of consulting services is subject to ESDD posting requirements as well as requirements applicable to CAT reviews. There are numerous statutory requirements that must be fulfilled prior to entering into a consulting services contract or amendment or extension. Notifications must be provided to oversight entities, or published, and a finding by the Governor's office may be required. Texas Gov't Chapter 2254 and the Guide provide more information.

The Contract Developer/Purchaser must carefully review the statutory requirements and ensure strict adherence to them. A consulting services contract or renewal, amendment, or extension is void if DPS fails to follow particular requirements.

A Consultant Finding of Fact Request form must be used to submit a request to the Governor's office. The form is available on the Governor's [website](#).

## **10.13 PROCUREMENT METHOD - LEGAL SERVICES**

In accordance with Tex. Gov't Code § 402.021, 402.0212(a), the Office of Attorney General (OAG) provides legal services to state agencies, including DPS. For any other contract for legal services between an attorney and DPS, DPS follows the OAG procedures. Agencies must solicit these contracts, unless the OAG indicates otherwise.

If applicable, DPS will also seek the required finding from the LBB regarding the availability of appropriated funds available to pay the estimated amounts required under a contract providing only for the payment of hourly fees.

DPS may not expend funds for payment of legal fees or expenses under a contingent fee contract for legal services without receiving prior approval from the Legislative Budget Board.

#### **10.14 PROCUREMENT METHOD – INTERAGENCY COOPERATION CONTRACTS (IACS)**

An interagency contract is a written understanding between two or more agencies as authorized by Chapter 771 of the Texas Government Code. Intergovernmental or inter-entity agreements are also encouraged in the federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

DPS may agree or contract with another agency for the provision of necessary and authorized services, including technical services, and materials and equipment. Competitive bidding requirements do not apply to Interagency Contracts. Certain statutory requirements must be met when entering into an IAC.

IAC's should be for a fixed term to obligate DPS and other agency to review and assess whether the contract is needed and if any changes in contract scope or pricing will be required before entering into a subsequent agreement.

#### **10.15 PROCUREMENT METHOD - INTERLOCAL COOPERATION CONTRACTS**

An Interlocal contract is a written understanding authorized by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. Intergovernmental or inter-entity agreements are also encouraged in the federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

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. Agencies must meet certain statutory requirements when entering into a contract.

#### **10.16 PROCUREMENT METHOD - STATE AND FEDERAL SURPLUS PROPERTY PROGRAM**

TFC administers the [Federal and State Surplus Property](#) programs. The programs have different laws, rules, and procedures

#### **10.17 PROCUREMENT METHOD - REQUEST FOR QUALIFICATIONS**

A RFQ is generally used for professional services wherein the respondents are evaluated based solely on their qualifications and skills. This solicitation method is more like an

application process, where it is very clear what is expected from the vendor. The agency negotiates price after the agency selects its preferred respondent based on how well the respondents met the published qualifications.

**10.18 PROCUREMENT METHOD – TEXAS DISASTER ACT OF 1975**

If applicable, DPS may make purchases under a disaster declaration. Under [Texas Gov't Code Chapter 418](#), the Governor may by executive order or proclamation declare a state of disaster and suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of an agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.

A purchase made under a disaster must clearly relate to the disaster, conform to the directives of the disaster declaration, and occur within the timeframe specified in the disaster declaration.

The procurement file contains a copy of the disaster declaration, documentation to support the purchase, receipt of goods or services, and approval of the payment.

**10.19 SOLICITATION PROCESS**

The solicitation process involves the preparation and coordination of the solicitation documents. The procurement lead within P&CS will prepare the documents and is responsible for the coordination between the requesting division, stakeholder divisions and the Office of General Counsel as applicable. Each division is responsible for reviewing and approving the prepared documents. Upon completion of the OGC review, OGC will affix a stamp or signature of the document to demonstrate their review is complete. OGC will attach written advice to the file and return to P&CS. Any recommendations submitted by OGC must be incorporated into the documents unless a business reason is identified for not making the recommended changes. In that event, the P&CS director must review, and if agrees with the business reason, submit to the Assistance Chief for Supply Chain & Distribution Services, IOD and the Chief of IOD for review and final approval.

**10.19.1 COMPARISON OF COMPETITIVE PROCUREMENT METHODS**

Procurement Method	Use When	Advantages	Disadvantages
Invitation for Bids	Products and services are standardized or uniform	Award process is simpler.  In determining best value, price and whether the goods or services meet specifications are the principal considerations.	Defined specifications may be difficult to develop.  Does not encourage innovative solutions.  Negotiations are not allowed if there is more than one responsive bidder.
Request for Proposals  Request for Offers	When negotiations are desired.  Vendor is expected to provide innovative ideas or solutions.	Allows for customized proposals suggesting different approaches to the same business need.  Allows for negotiations.	Lead time for procurement is much greater.  Evaluations tend to be more complex.

Procurement Method	Use When	Advantages	Disadvantages
		Considerations in addition to price are used to determine best value.	
<b>Request for Qualifications</b> (This method is usually required by statute, e.g., Professional Services)	Selection is made solely on the skills and qualifications of the vendor.  Price is not a factor until after a vendor is selected.	Emphasizes the competency and experience of the vendors	Vendor is selected before price is negotiated.  Two-step process.

## 10.20 PROCUREMENT LEAD TIME

As part of the solicitation planning process, it is best practice to use the table below or similar tool to document the procurement lead time. The chart below is a guideline for documenting procurement lead time in simple procurements with minimal vendor negotiation required.

The first step the Contract Developer conducts is development of the procurement lead time. Procurement lead time is the interval between a decision to purchase a product or service to when the contract is awarded. The SPD suggests a minimal lead time of 180 days from start to completion, allowing variances depending on the specific requirements and the complexity of the procurement.

Examples of tasks that may impact the lead time include, but are not limited to, the following:

- For solicitations exceeding \$20 million, a Notice of Intent to Procure must be posted to the ESBD at least 2 months prior to advertising the solicitation. The notice will include a description of the goods or services to be procured and applicable NIGP class and item codes.
- The actual preparation of the solicitation document can affect lead time. Coordination and collaboration between team members and with other DPS staff, as well as structured planning and thorough research can shorten this period. On the other hand, inadequate planning and research, along with lack of communication among team members, each with subject matter expertise, may delay preparation of the solicitation document.
- The time required for the Contract Developer to finalize the solicitation document can vary depending on how well the end users write the statement of work or specifications. The Contract Developer is responsible for ensuring the solicitation documents are complete, allow for competition, and follow all applicable statutes, rules, and procedures.
- A 30 day solicitation publication period is recommended for RFPs, while RFOs may necessitate a longer posting time. Posting times should be considered on a case-by-case basis, keeping the statutorily mandated minimum time periods in mind. A particularly complex or unusual statement of work may result in many vendor questions, in which case, an extended solicitation period may be warranted. Evaluation of proposals may take more or less time, depending on the size of the evaluation committee and the complexity of the procurement. Likewise, the number of proposals to be evaluated impacts the evaluation period. The evaluation period

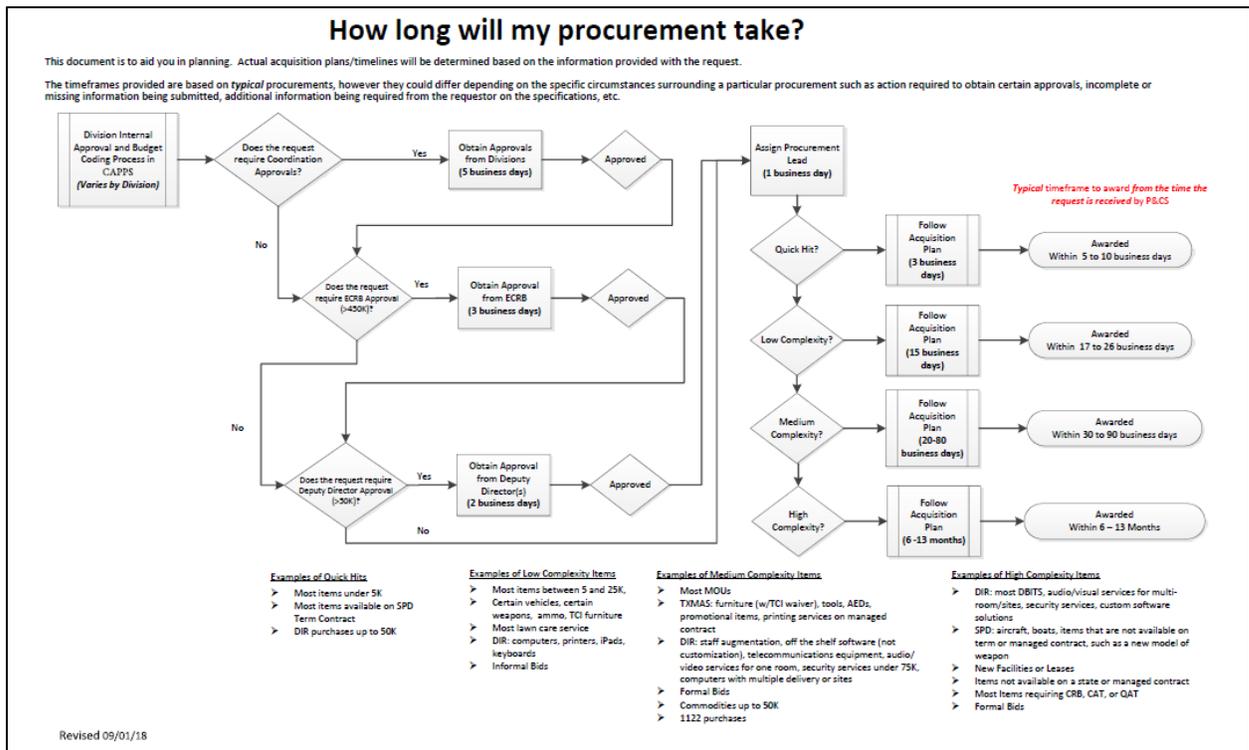
could also be extended if there are presentations, discussions, or best and final offers.

- Contract negotiation and contract formation timeframes may vary depending on the complexity of the procurement and the skillset of DPS’s negotiation team. Personnel unavailability may also be a factor as delays may occur due to inclement weather events, national and local holidays, illness, scheduled vacations, and the like.
- The actual process of award may be extended if CRB approval is required. This timeframe may also differ significantly between a PO and a formal executed contract. Depending on the signature requirements of DPS and the contractor, the contract execution lead time may need to be adjusted.

SPD has provided the chart below as a guideline for documenting procurement lead time in simple procurements with minimal vendor negotiation required.

**10.20.1 PROCUREMENT LEAD TIME (TEMPLATE)**

Task	Number of Days to Complete	Due Date
Decision Made to Procure	----	April 10 <sup>th</sup>
Post Notice of Intent to Procure > \$20M	----	May 9 <sup>th</sup>
Drafting Solicitation	45 days	May 25 <sup>th</sup>
CAT Review ≥ \$5M	30 days	June 24 <sup>th</sup>
QAT Review for MIRP contract ≥ \$10M SPD Delegation Review: Services > \$100K SPD Delegation Review: Goods > \$50K		
Finalize Solicitation for Issuance	15 days	July 9 <sup>th</sup>
Solicitation Advertised	---	July 9 <sup>th</sup>
Submission of Questions	4-5 days	July 13 <sup>th</sup>
Release of Official Response to Questions	2-3 days	July 15 <sup>th</sup>
Response Deadline	14 days	July 23 <sup>th</sup>
HSP Evaluation	3 days	July 26 <sup>th</sup>
Evaluation of Responses	14 days	August 9 <sup>th</sup>
Contract Negotiation (if allowed) and Formation	10 days	August 19 <sup>th</sup>
Contract Execution (all signatures obtained)	12 days	August 31 <sup>st</sup>
Performance Begins	Contract Effective Date	September 1 <sup>st</sup>



## 10.21 INTERNAL CALENDAR OF EVENTS

The Contract Developer also develops an internal calendar of events for the procurement. The internal calendar of events differs from the procurement lead time calendar in that it also includes the internal dates of activities or events occurring pre- and post- solicitation.

The internal calendar of events may include routine activities such as standard interdepartmental workflow timelines and fiscal year end deadlines and procurement-specific events such as statutorily mandated project commencement dates and the onboarding of a successor contractor prior to cessation of services by the incumbent contractor.

The internal calendar of events must be included in the Acquisition Plan and Acquisition Schedule or may be included in another procurement monitoring tool. The Contract Developer uses the internal calendar as a gauge to keep the procurement on schedule. In developing the internal calendar of events, the Contract Developer allows sufficient time for oversight reviews, such as SPD Delegation, CAT review, and QAT review (if necessary), and meaningful evaluation and negotiations. The procurement value threshold chart assists in developing the internal calendar.

Below is an example of an internal calendar of events, beginning with pre-solicitation milestones, continuing to encompass the solicitation calendar of events, and ending with post-solicitation milestones. See the [Acquisition Plan and Acquisition Schedule– MS Project in Section 16.2.2 Other Attachments](#)

## 10.22 SCOPE OF WORK-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. The most common types of specifications used in government procurements are performance-based, design-based, or mixed (i.e., a comingling of both performance- and design-based specifications). See the [Acquisition Plan and Acquisition Schedule – MS Project in Section 16.3 Other Attachments](#)

## **10.23 PAYMENT AND PRICING TERMS**

### **10.23.1 REIMBURSEMENT METHODOLOGIES**

Payments should be structured to fairly compensate the contractor and encourage timely and complete performance of work. The following table provides a summary of the three most common reimbursement methodologies.

The solicitation must contain all information required for vendors to respond to the DPS's procurement opportunity. The content of a solicitation will vary depending on what is being procured, the complexity of the transaction, and the identified risks associated with the procurement. Care must be taken to identify all of DPS's requirements in the solicitation, because DPS will not be able to hold a vendor accountable for performance of a requirement that is not specified in the solicitation or resulting contract and DPS may not add requirements to a contract that are outside the scope of the solicitation. Contract Developers must not only ensure that the solicitation contains all of DPS's requirements but also that those requirements are presented in an organized manner. There is not a mandated statewide solicitation template. However, DPS has developed its own solicitation templates.

Solicitations, regardless of organizational structure, usually include the following components:

- Introduction;
- Minimum Vendor Qualifications;
- Statement of work;
- Payment and Pricing Terms;
- Contract Term;
- Terms and Conditions;
- Response Submission Requirements;
- Evaluation Criteria for Award;
- Vendor Agreement Form.

More information and detailed explanations are in the Solicitation Development Guide, as well as drafting and style tips.

## **10.24 RESPONSE SUBMISSION REQUIREMENTS**

### **10.24.1 RESPONSE CONTENT, FORMAT, AND DELIVERY INSTRUCTIONS**

The solicitation must clearly indicate the submission requirements such as the response content, format, and delivery instructions that include the following:

- The due date and time;

- Delivery address;
- Acceptable delivery method (e.g., email, fax, USPS);
- Container labeling (e.g., name and address of respondent, solicitation number);
- Required number copies of the response; and
- Format of response (e.g., electronic file type, bound, tabbed, paginated, size of paper, page number limitations).

If the solicitation requires the vendors to utilize agency-specific templates in their responses, the templates must be appropriately referenced and, as applicable, attached as exhibits or appendices to the solicitation. All costs associated with the preparation of the response must be borne by the respondent.

**10.24.1.1 EMAIL DELIVERY OF RESPONSES**

In the event DPS authorizes bidders to submit their responses via email, the bidder must respond to the email address identified in the solicitation on or before the time and date specified. Bidder must indicate the bid number in the subject line of the email. DPS will not be responsible for any delays associated with this method of delivery.

**10.24.1.2 HAND DELIVERED RESPONSES**

All bidders and courier delivery service personnel will be required to check in at the security desk at the address mentioned in the solicitation. Therefore, it is advised that bidders allow extra time for building security check-in if hand-delivering responses or using a courier delivery services. DPS will not be responsible for delays associated with building security compliance.

**10.24.1.3 UNITED STATES POSTAL SERVICE DELIVERY OF RESPONSES**

Delivery of responses via United States Postal Service is acceptable. DPS will not be responsible for any delays associated with this method of delivery.

**10.24.1.4 LATE SUBMISSIONS**

Responses must be received by DPS on or before the time and date indicated in the solicitation. No late responses will be accepted for evaluation. Responses must be hand-delivered, or mailed to the submittal address listed in the solicitation or, when allowed in the solicitation, emailed per the email delivery instructions outlined in the solicitation.

The clock in the DPS Procurement and Contract Services Bureau Office at 5805 North Lamar, Building A, Austin, Texas 78752, is the official time for determining compliance with the deadline. The Procurement and Contract Services Bureau will date and time stamp all responses when received and will not consider responses received at the designated location after the specified date and time.

**10.24.1.5 EXECUTION OF BID/OFFER/PROPOSAL**

An execution of bid/offer/proposal document must be included in the solicitation as it holds the respondent accountable for performing any duties submitted in the response. Although it is not required to be part of the execution of

bid/offer/proposal, it is common for agencies to include the list of statutory preferences.

## **10.25 HUB SUBCONTRACTING PLAN REQUIREMENTS**

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

DPS HUB GOAL	CATEGORIES
11.2 %	Heavy Construction Other Than Building Contracts;
21.1%	All Building Construction, Including General Contractors And Operative Builders' Contracts;
32.9%	All Special Trade Construction Contracts
23.7%	Professional Services Contracts;
26.0 %	All Other Services Contracts
21.1 %	Commodities Contracts

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

For any procurement with an estimated contract value of \$100,000 or more, including all renewals and amendments, DPS must determine whether subcontracting opportunities are probable under the contract. Subcontracting opportunities can be realized through expenditures on materials, supplies, equipment, and services. If sub-contracting opportunities are probable, the agency must state this determination in the solicitation and require a HUB Subcontracting Plan (HSP) to be submitted with the response. If an HSP is required by the solicitation, the completed HSP must be submitted by the response due date and time in order for the response to be considered responsive. The agency must disqualify a response containing an incomplete or missing HSP. Once accepted by the agency, the HSP will become a part of the contract. Vendors must amend their HSPs if there is any change in their planned subcontracting during the performance of the contract.

Agencies are not permitted to make HUB subcontracting or HUB certification status of a vendor a scoring criteria that is assigned weight in the agency solicitation.

## **10.26 EVALUATION CRITERIA FOR AWARD**

The primary objective for every acquisition is to obtain best value for the State. To ensure fairness in DPS' evaluation of the responses, the solicitation must notify the potential respondents of the basis for contract award. The solicitation must identify the evaluation criteria and the relative weight assigned to each criterion. Absent thoughtful design of the evaluation criteria and associated weights, the procurement will fail because the basis of the award will not correctly identify the response that offers best value to the State.

The evaluation criteria must reflect the essential qualities or performance requirements necessary to achieve the objectives of the contract. The weight assigned to each evaluation criterion must correlate to its importance. The Contract Developer must ensure not only

that the evaluation criteria and the associated weights are clearly stated, but also that information submitted in the response directly relates to the criteria. The Contract Developer should be careful to ensure that the respondents and the evaluation committee have no opportunity to be confused about which portion of the response applies to each criterion.

Evaluation Criteria	Solicitation Requirement	Submission Requirement
Respondent Qualifications	Specified professional license or certification.	Copy of current license or certificate applicable to specified profession or trade.
Respondent Experience	Specified number of projects of similar size and scope.	Detailed information regarding project size, dollar amount and scope of project for each individual project and any additional information necessary to evaluate vendor experience.
Financial Capability	Financially capable of handling a project of this size and scope.	Copy of latest financial statements, including balance sheets, Dunn and Bradstreet report, etc.

Purchase price and evidence that the goods or services meet specifications are the most important considerations when goods and services are procured through competitive bidding. As a matter of practice, SPD encourages the use of other evaluation factors in addition to price and meeting specifications. It is common for there to be at least three evaluation criteria, which broadly address the following:

- The respondent’s proposed scope of work;
- The respondent’s past performance and experience; and
- The respondent’s proposed price.

Examples of additional and more detailed evaluation criteria may be found in the best value standards found in statute [TEX. GOV’T CODE § 2155.074\(b\)](#).

It is best practice for agencies to include a general description of the evaluation process in the solicitation. The agency should also finalize, prior to solicitation issuance, the evaluation scoring matrix, including any objective criteria, and the composition of the evaluation committee.

The agency should carefully consider the scoring method used to assess the price criterion. Typically, agencies evaluate the price criterion based on either “reasonableness” or objective criteria. A reasonableness assessment of a proposed price considers various factors such as the appropriateness of the cost metric chosen by the respondent and the impact of any identified assumptions or constraints on the proposed price. In contrast, an assessment of proposed price based on objective criteria relies on a mathematical formula, rather than independent judgement, to calculate the score.

The scoring method used for the price criterion should be reviewed for each solicitation to ensure it is appropriate for the products and services to be procured. For instance, objective criteria are not suitable for consulting services procurements because state law requires that price is evaluated on the reasonableness of the proposed fee for the services. Exclusive reliance on objective criteria for pricing may also not be suitable for highly complex procurements.

There are several mathematical formulas that may be considered for the evaluation process and the Contract Developer must ensure that any formula used is appropriate for the procurement.

There are several schools of thought about how much information is to be provided to the respondents regarding the evaluation criteria. At a minimum, the solicitation must identify the criteria and their corresponding weight. Some agencies prefer to provide detailed information in the solicitation as to how each base criterion is broken down into smaller units or sub criteria or they include a copy of the evaluation scoring sheets as an attachment to the solicitation. Either approach is acceptable. Sample evaluation criteria and scoring strategies are located in Appendix 12 of the SPD State of Texas Procurement and Management Guide.

Failure to adhere to the published evaluation criteria during the evaluation process may result in a protest. Evaluation criteria that were not included in the solicitation may not be used to rank or select responses. For example, if respondents are to receive additional points for possessing a national accreditation, the solicitation must state this criterion so that all the respondents are notified there is an opportunity to achieve a higher score by submitting the appropriate documentation in its response. Likewise, if the solicitation does not request national accreditation information, respondents who fail to demonstrate the accreditation cannot be penalized.

## **10.27 SOLICITATION PROCESS – REVIEWS AND APPROVALS**

### **10.27.1 CAT – REVIEW OF SOLICITATIONS WITH A VALUE OF \$5 MILLION OR MORE**

Prior to posting to the ESBID or publishing in the Texas Register DPS must submit solicitation documents for contracts that have a value of \$5 million or greater to the CAT for review regardless of procurement method. For CAT submissions, the contract value means the estimated dollar amount that an agency may be obligated to pay over the life of the contract including all executed and proposed amendments, extensions and renewals. Agencies should not artificially split the procurement to avoid the \$5 million threshold for CAT review.

Solicitation documents include the solicitation (e.g., IFB, RFP, and RFO) as well as any other documents that supplement the solicitation (e.g., Proprietary Purchase Justification) or are incorporated by reference. The solicitation documents and a completed form are submitted to CAT through the Procurement Oversight & Delegation Portal maintained by SPD and located on the CPA website.

Requests for assistance relating to the Procurement Oversight & Delegation web application may be submitted to [spd.oversight@cpa.texas.gov](mailto:spd.oversight@cpa.texas.gov).

As a general guideline, grant agreements where the recipients eligible for award are governmental entities or non-profit business entities are not subject to a CAT review. CAT will review grants when the recipients eligible for award are for-profit business entities because these contracts provide public funds to entities that could profit from the award. RFAs based solely on federal funding are not subject to CAT review.

When Procurement Oversight & Delegation receives the solicitation documents, the agency will receive an acknowledgement e-mail that provides a web link to monitor status. CAT processes requests for reviews in the order received; CAT reviews may take up to 30 days to complete. Contract developers should send requests for expedited CAT reviews to [spd.oversight@cpa.texas.gov](mailto:spd.oversight@cpa.texas.gov). Even if the review period exceeds 30 days, the agency does not have the authority to issue the solicitation until it receives a letter from CAT. Publishing a solicitation without receiving a letter from CAT may result in an audit finding CAT's review period begins when it receives all information needed to conduct its review. Agencies should submit their solicitation documents after internal agency approvals have been obtained. In addition, CAT recommends that agencies incorporate a 30-day period for CAT review into the procurement schedule to avoid potential delays to the agency's solicitation, evaluation, and award process.

Requests for expedited CAT reviews can be made in the POD portal during the cAT submission process. Designate the solicitation as low-risk and select one of the three options for the request to expedite: 1) Template Solicitation, 2) Risk Analysis, or 3) Reduced Monitoring (if DPS is reported by the SAO as requiring reduced monitoring). When requesting an expedited CAT review, attach supporting documents such as a previously reviewed template solicitation or the risk analysis and conclusions document.

Agencies identified by the SAO as requiring additional monitoring may not designate a solicitation as low-risk and request an expedited review even if the solicitation would otherwise qualify. Additionally, the submitted documents for review must include the needs assessment, acquisition plan, risk assessment and the full solicitation package.

Prior to posting or publishing the solicitation following CAT review, an agency is required to either comply with CAT recommendation(s); or submit to CAT a written explanation regarding why the recommendation is not applicable to the procurement under review.

The agency's responses to the CAT recommendation must be kept within the procurement file.

#### **10.27.1.1 SUBSTANTIAL CHANGES TO CAT SUBMISSION**

If the initial solicitation documents submitted for CAT review change substantially, the agency is required to resubmit the solicitation documents for additional CAT review. Changes to the solicitation documents for a major contract are considered substantial when:

- The solicitation change caused the estimated value for the original term of the contract, not including renewal periods, to increase by 25% or more; or

- There are significant revisions, deletions and/or additions to the specifications, scope of work, set(s) of deliverables, performance measures, payment methodology, or other elements of the solicitation.

#### **10.27.2 QAT – REVIEW OF MAJOR INFORMATION RESOURCES PROJECTS**

Procurements, regardless of the procurement method chosen by the agency, associated with a major information resources project are subject to QAT oversight. A “Major Information Resources Project” is any information resources technology project that is:

- Specifically designated as such by the Legislature in the General Appropriations Act;
- A Information Resource Technology Project for a state agency designated for additional monitoring under Section 2261.258(a)(1) of the Texas Government Code if the development costs for the project exceed \$5 million; or
- Identified in an agency’s biennial operating plan whose development costs exceed \$5 million and that
- Requires one or more years to reach operation status;
- Involves more than one state agency; or
- Substantially alters the work methods of state agency personnel or the delivery of services to clients.

An agency is required to notify QAT when it advertises any solicitation of a major information resources project regardless of the solicitation method (e.g., RFP, IFB, RFO). This notification is required to include the requisition number for each solicitation advertised.

QAT requires the filing of certain Texas Project Delivery Framework Documents before a major information resources project can proceed. After QAT approves the project to proceed and before the agency spends more than ten percent of allocated funds or issues a solicitation for the project, it is required to file a Project Plan with the QAT; if the major information resources project involves a procurement, an Acquisition Plan must also be filed. For a major information resource project with a value of at least \$10 million, DPS must:

- submit the proposed contract terms to the QAT before beginning negotiations;
- submit the final negotiated unsigned contract to QAT for review;
- comply with the QAT recommendation;
- submit to QAT a written explanation regarding why a recommendation was not applicable to the contract reviewed;
- notify QAT within ten business days when the contract is awarded;
- notify the governor, lieutenant governor, speaker of the house of representative, presiding officer of the standing committee of each hour of the legislature with primary jurisdiction over appropriations, and the QAT before amending a contract if:
  1. the total value of the amended contract exceeds or will exceed the initial value by ten percent or more; and

- 2. the amendment requires the contractor to provide consultative services, technical expertise or other assistance in defining project scope or deliverables.
- provide a justification for an amendment as described above to the QAT.

The QAT is required to perform the following for all DPS major information resource project:

- develop policies and procedures for the development, implementation and return on investment.
- Review the business case prepared for the major information resource project.
- Review and provide recommendations on the final negotiated terms of the contract with a value of at least \$10 million.

An amendment to a major information resources project or contract associated with any phase of the development of a major information resources project with an initial value over \$5 million must be reported to QAT prior to execution when:

- the expected value subsequent to an amendment exceeds the initial value by ten percent or more;
- the expected value of an element in the project or contract subsequent to an amendment exceeds the total value of the same element of the project or contract by ten percent or more; or
- The amendment requires the vendor to provide consultative services, technical expertise, or other assistance in defining project scope or deliverables.

Information regarding the steps involved in initiating, monitoring, completing, and submitting deliverables to the QAT for a major information resources project is available on the [Project Delivery Framework](#) page located on DIR Website.

## 10.28 SOLICITATION – ADVERTISEMENT

### 10.28.1 ELECTRONIC STATE BUSINESS DAILY (ESBD)

The ESBD, managed by SPD, is the State’s online directory listing procurement opportunities Agencies are required to post procurements with a contract value of more than \$25,000 to the ESBD, regardless of the source of funds to be used for the contract.

The contract value for posting to the ESBD means “the estimated dollar amount that an agency may be obligated to pay during the life of the contract and all executed and proposed amendments, extensions and renewals”.

Contract value estimated to be greater than \$25,000	Minimum Posting Time for Advertisement
Entire solicitation package (including all parts, exhibits and attachments posted to the ESBD.	14 calendar days

Contract value estimated to be greater than \$25,000	Minimum Posting Time for Advertisement
<p>If not posting the entire solicitation package to the ESBD, then notice must be posted that includes all information necessary to make a successful bid, proposal, or other applicable expression of interest for the procurement contract, including at a minimum the following information:</p> <ol style="list-style-type: none"> <li>1. a brief description of the goods or services to be procured and any applicable state product or service codes for the goods and services;</li> <li>2. the last date on which bids, proposals, or other applicable expressions of interest will be accepted;</li> <li>3. the estimated quantity of goods or services to be procured;</li> <li>4. if applicable, the previous price paid by the agency for the same or similar goods or services;</li> <li>5. the estimated date on which the goods or services to be procured will be needed; and</li> <li>6. the name, business mailing address, and business telephone number of the agency employee a person may contact to inquire about all necessary information related to making a bid or proposal or other applicable expression of interest for the procurement contract.</li> </ol>	<p>21 calendar days</p>

While a 14-day posting may satisfy the statutory minimum period for posting on the ESBD, it is best practice to advertise a solicitation for 30 days or longer. When determining the appropriate solicitation posting period, the Contract Developer should consider what timeframe affords interested eligible vendors the opportunity to submit quality proposals. Publishing solicitations for time periods that are not commercially reasonable may have the effect of artificially limiting the vendor pool.

In addition, for a procurement in an amount that exceeds \$20 million, DPS is required to notify interested parties at least two months before the date the solicitation for the procurement is issued.

It is best practice for Contract Developers to schedule realistic procurement timelines that take into account holidays, the complexity of the procurement, and the fulfillment of any statutory requirements. For example, Contract Developers should consider advertising the solicitation where subcontracting opportunities are probable for longer than the statutorily mandated minimum ESBD posting period to allow sufficient time for all interested eligible vendors to comply with the HUB Subcontracting Plan requirements. One of the Good Faith Effort requirements is for the respondent to allow at least seven working days for HUBs to respond. The seven working day computation excludes weekends, holidays, agency closures, and the date the respondent routed the solicitation to the HUBs.

For solicitations requiring delegated authority, the Contract Developer must obtain a letter of delegation from SPD prior to posting to the ESBD. The Contract Developer must include proof of the ESBD posting and documentation from SPD authorizing the delegated purchasing authority in the procurement file. A contract award is void if an agency violates the applicable statutorily required minimum time for posting on the ESBD.

#### **10.28.1.1 COMPUTATION OF TIME**

In computing the period of days, the first day is excluded and the last day is included. In addition, if the last day of any period is a Saturday, Sunday, or legal holiday, the period must be extended to include the next day that is not a Saturday, Sunday or legal holiday.

#### **10.28.2 TEXAS REGISTER**

The Texas Register, maintained by the Secretary of State (SOS), records agency rulemakings, governor's appointments, attorney general opinions, and requests for proposals. The Texas Register is published every Friday and is available to the public online on the SOS website. For procurement methods where publication in the Texas Register is required. A copy of the Texas Register notice must be placed in the procurement file. Texas Register posting requirements are in addition to ESBD posting requirements.

#### **10.28.3 CENTRALIZED MASTER BIDDERS LIST**

The [Centralized Master Bidders List \(CMBL\)](#), maintained by SPD, is an online directory of vendors registered to receive bidding opportunities from State of Texas purchasing entities. Agencies, colleges, universities and local governments use the CMBL to find vendors for products and services. The CMBL may also be used to gather information for noncompetitive procurement processes and for vendor performance data. SPD does not endorse, recommend, or attest to the capabilities of any business or individual listed on the [CMBL](#).

Agencies must use the CMBL to select bidders for competitive bids or proposals and to the fullest extent possible for purchases exempt from SPD's purchasing authority. For purchases between \$10,000 and \$25,000, the agency must solicit from a minimum of three active vendors on the CMBL including two current Texas-certified HUBs. For procurements exceeding \$25,000, an agency must use the CMBL to solicit from each eligible vendor on the list that serves the agency's geographic region. A copy of the bid list (with date) must be placed in the procurement file.

If agencies are required to use the CMBL, they must send a copy of the solicitation to all vendors on the CMBL bid list for the advertised commodity code(s). There may be several hundred vendors associated with a particular commodity code. The vendor is requested to return a completed form to the agency via email, fax, or mail if the vendor desires to receive a hard copy of the solicitation.

When the solicitation is mailed by the agency, it is only mailed to the vendors who responded to the announcement with a request for a hard copy of the solicitation.

As part of the registration process, vendors provide their contact information and identify the goods and services they offer by NIGP Class/Item codes. The annual registration fee for the CMBL is currently \$70. For more information regarding CMBL registration, visit the [CMBL Program](#). A vendor does not have to register on the CMBL to conduct business with the state agencies.

#### **10.28.3.1 SUPPLEMENTING THE CMBL**

An agency may supplement the CMBL with State of Texas certified HUBs at any time if the agency determines that it may enhance competition or increase the number of HUBs that submit bids. In addition, an agency may solicit from vendors that are not on the CMBL by obtaining approval from its agency head or designee to add non-CMBL vendors to the final bid list to increase competition. The non-CMBL vendors may be added to the final bid list for specific solicitations to increase competition where the requirement to solicit only CMBL vendors is not adequate.

Documentation regarding the additions to the CMBL bid list, including the written approval from the agency head or designee of the supplemented CMBL bid list, must be maintained in the DPS's Procurement Plan.

#### **10.28.3.2 REMOVAL FROM THE CMBL**

The CPA may remove or suspend a vendor from the CMBL for one or more of the following reasons:

- Failure to pay or unnecessarily delaying payment of damages assessed by SPD;
- Failure to remit the annual CMBL registration fee; or
- Any factor set forth in Sections 2155.070 or 2155.077 of the Texas Government Code.

### **10.29 SOLICITATION – AGENCY COMMUNICATIONS WITH POTENTIAL RESPONDENTS**

#### **10.29.1 PRE-BID/OFFER/PROPOSAL CONFERENCES**

DPS may choose to hold a pre-bid/offer/proposal conference. A pre-bid/offer/proposal conference occurs after solicitation issuance and before the solicitation submission deadline. A conference provides a forum for potential respondents to pose questions about the solicitation in a face-to-face setting or by conference call or web conference. It also provides an opportunity for vendors to develop subcontracting relationships and lets the agency determine gauge industry interest in the procurement.

DPS may conduct pre-bid/offer/proposal conferences that are mandatory or non-mandatory for prospective respondents. DPS should carefully consider the use of a mandatory conference and confer with legal counsel as this may limit competition. Depending on the location of vendor candidates, out-of-town or out-of-state vendors may be discouraged from participating in the procurement because of the travel time and expense associated with the conference. Alternatively, eligible vendors that wish to participate in the procurement may be administratively eliminated from the vendor pool simply because their companies' representatives arrived late or were otherwise

unable to attend. In either event, the agency's goal of encouraging competition among all eligible candidates in the vendor pool.

Conferences should be mandatory only if an on-site visit is required to have a full understanding of the procurement or if the solicitation is so complex that agency staff believes attendance is critical for potential respondents to fully understand the procurement. Accordingly, mandatory pre-bid/offer/proposal conferences are required when the agency determines that disqualification is appropriate for any response from a vendor that did not receive certain information pertaining to the solicitation at an agency-designated time and location.

If a pre-bid/offer/proposal conference is held, the solicitation must indicate the date, time, and location of the conference and whether respondents' attendance is mandatory or voluntary. If the conference is mandatory, the following statement must be included in the solicitation: "Failure to attend the pre-bid/offer/proposal conference will result in disqualification of the response."

A pre-bid/offer/proposal conference is usually held no earlier than 10 days after the solicitation issuance to allow sufficient time for respondents to receive and review the solicitation prior to the conference. If a mandatory conference is required, the Contract Developer should consider multiple conference dates if it is expected that there will be a high number of conference attendees. All conference attendees must be documented on a sign-in sheet which is the official record used by the agency to verify respondent attendance. For mandatory conferences, the sign-in sheet will be collected at the beginning of the conference.

The Contract Developer should conduct the conference in coordination with the program staff. Conference attendees should be advised that the verbal responses provided by the agency during the conference are not binding until confirmed by the agency in writing. All changes to the solicitation must be in writing and published through an addendum to the solicitation. ESBD posting requirements apply.

#### **10.29.2 QUESTION AND ANSWER PERIOD**

It is best practice for all solicitations to include a formal process for potential respondents to submit questions to the agency to clarify their understanding of the solicitation. If questions are permitted by the agency, the solicitation must specify the due date when questions must be submitted to the agency as well as the anticipated release date of the agency's answers.

The benefit of a Question and Answer (Q&A) period is that it provides the first indication to an agency of possible ambiguities, errors, or lack of critical information in the solicitation. If there are major deficiencies to the solicitation discovered at this stage, it is advisable to cancel the solicitation and issue a revised solicitation at a future date.

Written questions submitted to the agency as directed in the solicitation must be compiled, verbatim (with any spelling and grammatical errors) into a Q&A document. Every question received, even similar questions submitted by different vendors, must be accounted for in the Q&A document. The name of the entity submitting the question and identifying information should be omitted from the agency's published answers.

The Contract Developer has discretion for organization of the questions (e.g., chronological by receipt, by topic).

The Q&A document is published with each question being listed with its corresponding response. The Contract Developer will compose answers to each question and consult with agency subject matter experts as needed. If two or more similar questions are submitted (i.e., redundant questions), the Contract Developer should be mindful not to provide two inconsistent answers. In this situation, it is best practice to either provide the exact same answer to both questions or answer the first question and then include across reference to the first answer when responding to the second question.

Once the Q&A document is finalized, the agency will publish it with the solicitation documents on the ESD and/or in the *Texas Register* as applicable. Any answer that would result in a material change to the solicitation must be identified in a solicitation addendum.

### **10.29.3 SOLICITATION ADDENDA**

A written addendum identifying the addition or correction to a solicitation must be issued by the agency in the same manner as the solicitation (e.g., ESD, *Texas Register*) if a change to the solicitation occurs before the response due date. A solicitation addendum is used to clarify an ambiguous provision, correct an error or oversight, extend the response due date, or alter a public opening date. Rather than using a Q&A document, a solicitation addendum may also be used to answer questions by respondents even though the answers do not result in a modification or change to the solicitation. For addenda other than just an extension to the response due date, it is best practice to require that the responses include an acknowledgement of each addendum to the solicitation.

Respondents must be given a reasonable time to respond to a solicitation addendum. The Contract Developer, therefore, must consider the period of time remaining until the solicitation closing date prior to issuing an addendum. Depending on the content of the addendum, the Contract Developer may determine that the response due date should be extended. If an addendum results in substantial changes to the original solicitation, it is recommended that the response due date be extended and the revised solicitation to be issued for at least 14 calendar days following the addendum date.

Each addendum is numbered. If more than one addendum is issued, each subsequent addendum is sequentially numbered. Each addendum to the original solicitation must be posted to the ESD no later than the next business day following its release to the public.

### **10.29.4 COMMUNICATION WITH AGENCY PERSONNEL**

All communication with potential respondents should be made only through P&CS staff or other designated staff. To maintain a level playing field among all potential respondents, program staff or other non-purchasing personnel should not have contact with potential respondents outside of pre-bid/offer/proposal conferences. Refer to the Vendor Communications section of this Guide. The solicitation should provide the agency's designated point of contact and identify the acceptable forms of

communication to the agency such as telephone, or email. If a potential respondent contacts program staff or other non-purchasing personnel, staff should politely decline to discuss the procurement and forward the inquiry to the assigned Contract Developer.

## **10.30 SOLICITATION – RECEIPT AND CONTROL OF RESPONSES**

### **10.30.1 RECEIPT**

Responses must be received on or before the due date and time designated in the solicitation. The terms “response opening date” and “solicitation closing date” both describe the deadline for receipt of responses. A response will be considered timely only if it is received on or before the published due date and time and in conformance with the delivery instructions specified in the solicitation.

To ensure fairness to all respondents, no submitted responses should be opened or reviewed before the due date and time has passed; an agency may confirm that a sealed submission, faxed document, or email(s) have been received.

Upon receipt by DPS, the sealed response must be marked with a date and time stamp directly on the envelope, when possible, or on the express delivery label, and the response must remain sealed and kept in a secure place to prevent misplacement, loss, or tampering, until after the published response due date and time.

#### **10.30.1.1 DELIVERY BY EMAIL, FAX, OR OTHER ELECTRONIC SYSTEM**

When allowed by the solicitation, the agency must treat responses received by email, fax, or any other electronic system as sealed response documents and must keep them secure until after the response due date and time. A copy of the email received with the response documents attached must reflect the date and time of receipt. If the respondent sends multiple emails, a copy of each email must be included in the procurement file, along with a fax receipt notice. If the faxed document(s) do not have a date/time stamp, one must be affixed manually immediately upon receipt.

#### **10.30.1.2 RESPONSES OPENED IN ERROR OR TO CONFIRM IDENTIFICATION**

Despite instructions contained in the solicitation, a respondent will occasionally submit a sealed response without properly identifying the solicitation on the packet. Agency staff may open a sealed response solely for the purpose of identification so that the response can be properly marked as received. If agency staff open a sealed packet for the purpose of identification or inadvertently open a response, the packet must be resealed, dated, and signed by the person who opened the packet. Packets inadvertently opened by agency staff should be marked with “Open in Error” or “Opened to Determine Content.”

### **10.30.2 LATE RESPONSES**

The responses must be received by the due date and time established in the solicitation. If receipt of a response occurs after this published date and time, it is considered a late response. The agency does not open late responses and notifies the respondent that the response was rejected because it was not timely received. The agency will either return

the unopened response to the respondent at the respondent's expense or dispose of the response according to the arrangements specified in the solicitation.

The only exception to the prohibition against accepting a late response is if an agency's written internal policy permits the acceptance of a late response due to extenuating circumstances. DPS will post an addendum on the ESBD website due to the agency's main office is closed due to inclement weather events.

### **10.30.3 WITHDRAWAL OF RESPONSE**

A respondent may withdraw its response at any time prior to the closing date and time for the solicitation. The respondent's request to withdraw its response must be made in writing on company letterhead or by completing a form prescribed by the agency. The preferred practice is for the respondent to submit the withdrawal of response in person and provide appropriate identification (e.g., corporate identification card, photo identification card to match the authorized contact person listed in the response) so that the agency can verify that the withdrawal request is legitimate. If the respondent's request to withdraw the response is submitted by mail, email, or fax, then a determination must be made by the agency as to whether additional documentation is necessary in order to comply with the request.

### **10.30.4 CANCELLATION OF SOLICITATION**

DPS may cancel a solicitation at any time. If a solicitation is cancelled, the agency must provide notice of the cancellation in the same manner as the issuance of the solicitation. For example, the agency will post a notice of the cancellation to the ESBD if the original solicitation was posted to the ESBD. Cancellation notices must contain, at a minimum, the following information: agency name, business address, and contact name, requisition number or solicitation number, and reason for the cancellation. Unless other delivery or disposition arrangements are specified in the solicitation, all responses should be returned unopened with a notification letter from the agency of the solicitation cancellation

### **10.30.5 PUBLIC OPENING OPTION**

DPS has discretion whether to conduct a public opening on the closing date of the solicitation. Public openings do not usually occur for purchases of \$25,000 or less. If DPS elects to open responses received in public, the solicitation must clearly state the time and place of the public opening. A change to the public opening date and time must be published through an addendum to the solicitation. ESBD posting requirements apply.

A public opening gives members of the public an opportunity to hear, at a minimum, the verbal recitation of the following:

- The solicitation number; and
- The name of each respondent.

If bids received in response to an IFB are to be evaluated solely on objective criteria, then the public opening will normally include the following additional information: price or amount for each item number and model number (if different from the specified

model). Agency staff will not discuss whether a product or model meets the written specifications.

The sealed responses may be opened and read in any order – such as alphabetical, by respondent name, in order of receipt, or by lot.

The procurement file must contain the attendance log with each attendee's name, signature, and if representing an organization or entity, the name of the entity and attendee's title.

### **10.30.6 INTERNAL PROCEDURES**

DPS must have documented internal procedures outlining the responsibilities and steps for the receipt and control of responses. Such procedures include, but are not limited to, the following:

- Identifying the official timepiece that will be used for determining timely receipt of responses, such as mail room clock, time stamp machine, or email server time stamp;
- Specifying the marking process that will be used to document the date and time each response was received by mail, hand delivery service, fax, or email;
- Maintaining a log of responses received which contains the following information: solicitation number, due date and time, respondent name, date and time response received, and delivery method and, if applicable, tracking number (i.e., email, fax, hand delivery, USPS or other delivery service);
- Securing responses until published response due date and time;
- Outlining the processes to be followed after inadvertent opening of responses received hard copy, email, or fax; and
- Designating agency staff responsible for each task.

## **10.31 STANDARD OPERATING PROCEDURES**

The following Standard Operating Procedures relate to information contained in this section of the DPS Procurement and Contract Management Guide. Other SOPs are contained in other sections of the guide. For a link to the DPS SOPs, please see [Section 16.2.3 STANDARD OPERATING PROCEDURES](#).

### **10.31.1 REVENUE GENERATING CONTRACT SOP 15-0007**

This provides instructions for processing revenue-generating contracts. In a revenue-generating contract, DPS is the performing agency and the other entity receives the performance. These contracts require coordination between OGC and Grants/Finance.

### **10.31.2 HOW TO SUBMIT AN OPEN MARKET REQUEST AND REQUESTING DELEGATION FROM SPD SOP 15-0009**

This provides instructions regarding submitting a request for Delegated Procurement from the Statewide Procurement Division (SPD) at the Comptroller's Office. In accordance with Texas statute and CPA policy, one-time purchases of commodities

valued at \$50,000 and above and services estimated total cost of \$100,000 and above must be requested for delegation from the SPD.

### **10.31.3 ADVERTISING SOLICITATIONS AND RECEIPT OF BIDS SOP 15-0024**

This provides instructions for advertising solicitations and receipt of Bids/Offers/Proposals. P&CS will advertise solicitations through either the informal or formal bid process, reflecting the appropriate terms and conditions, with the best value factors clearly defined, and provide pre-bid notification to the vendor community.

### **10.31.4 DEVELOPING SPECIFICATIONS & GUIDELINES FOR USING REFERENCE BRANDS SOP 15-0025**

This provides instructions regarding Selection of Items for Development of Texas Uniform Standards and Specifications in accordance with Texas statute and the Comptroller's Texas Administrative Code (TAC).

### **10.31.5 HOW TO PROCURE TRAINING SERVICES SOP 15-0039**

This provides a standardized formal process for instructions in obtaining Training Services. A SPO or a P-card may be used to pay for training services that is available to all agencies and organizations with a private vendor within established spot purchase limits. Requestors must submit a requisition in CAPPs for all training services that exceed the P-card/SPO threshold. A receiving Report is required for training services.

### **10.31.6 PROCESSING REQUEST FOR MEMBERSHIPS SOP 15-0040**

This provides instructions for processing Requests for Memberships. With the exception of memberships that are pre-determined/preapproved by the DPA Director, requestors must submit a requisition in CAPPs for all membership requests. A SPO, and a P-card may not be used to pay for membership (including legal bar dues). A Receiving Report is not required for a membership.

### **10.31.7 NON-IT QUICK HITS SOP 15-0041**

This provides instructions for processing Non-IT Commodities and Services Quick Hits, which are purchase requests processed within five business days. Quick Hits are purchases made under WorkQuest program, TCI, Term Contracts, or Managed Contracts.

### **10.31.8 EMERGENCY SOP 15-0047**

This provides instructions that apply to emergency purchases. Emergency purchases occur as the result of unforeseeable circumstances and may require immediate response to avoid an actual or potential threat. Emergency purchases are not exempt from ECRB and CRB approval. Emergency purchases that meet CRB criteria will be presented to CRB after the award for information purposes only.

### **10.31.9 PROPRIETARY SOP 15-0049**

This provides instructions regarding proprietary purchases. Proprietary purchases pertain to products that are exclusive to one vendor or manufacturer and do not permit an equivalent product to be supplied.

#### **10.31.10 DIR ICT COOPERATIVE CONTRACT SOP 15-0065**

This provides instructions that apply to purchasing of Information Technology products and services through the DIR ICT cooperative contracts. DPS is required to purchase IT products and services through DIR contracts unless DIR grants a blanket exemption or a one-time exemption.

#### **10.31.11 IT STATEMENT OF WORK (DELIVERABLES-BASED IT SERVICES (DBITS) AND MANAGED SERVICES SOP 15-0067**

This provides instructions for procuring services through DIR contract for Deliverables-Based Information Technology Services (DBITS). DPS is required to procure IT services from DIR unless DIR grants an exemption.

#### **10.31.12 IT STAFF AUGMENTATION CONTRACTS (ITSAC) SOP 15-0070**

This provides instructions for procuring temporary IT personnel. DPS is required to procure IT staffing services through DIR Information Technology Staff Augmentation Contract (ITSAC) or through Workquest.

#### **10.31.13 IT QUICK HIT PURCHASE SOP 15-0072**

This procedure applies to the Automated Information Systems (AIS) purchases under DIR procurement authority. This provides instruction for processing IT purchases values at \$50,000 or less within three business days.

#### **10.31.14 IT STATEMENT OF WORK (ITSOW) SOP 15-0073**

This provides instructions for procuring services through DIR contract for Information Technology Services. This applies to purchases of \$50,000 or more for the following cooperative contracts: software commodity, maintenance services, seat management services, managed services, cloud services, technology training, information security commodity and information security services.

#### **10.31.15 DIR EXEMPTIONS SOP 15-0080**

This provides instructions for submitting and updating DIR Exemption requests for technology-related commodities and services that are not available through a DIR contract. Blanket exemptions granted by DIR must be reviewed prior to requesting an exemption.

#### **10.31.16 REIMBURSEMENT RATES SOP 15-0088**

This provides instructions for evaluating payment rates for reimbursement contract biennially or upon contract renewal. Cost-reimbursement contracts are only suitable when uncertainties involved in contract performance do not permit estimation of costs with sufficient accuracy to use any fixed-price contract. These must have a maximum threshold that the contractor cannot exceed without prior permission and must contain information about how the costs are determined, reported and verified.

#### **10.31.17 ESTIMATES SOP 15-0091**

This provides instructions for obtaining estimates for products or services of \$25,000 or less when there is no existing contract in place. This process will serve to expedite the

procurements of \$25,000 or less and may be followed for products and/or services for which there is not an existing state or DPS contract in place.

**10.31.18 TOWER/LAND LEASES WITH ESTIMATED COSTS SOP 15-0092**

This provides instructions for processing agreements for tower/land leases with an estimated cost. The procedure also documents communication and escalation protocols for discussing agreements with internal customer and the Lessor.

**10.31.19 TOWER/LAND LEASES WITH ZERO COST SOP 15-0093**

This provides instructions for processing zero-dollar contract agreements for tower/land leases. The procedure also documents a communication and escalation protocol for discussing agreements with internal customers.

# 11. VENDOR SELECTION

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## 11.1 OVERVIEW

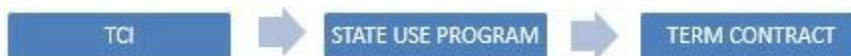
DPS conducts evaluations in a fair and impartial manner consistent with Texas law and in accordance with either the evaluation procedure published in the solicitation, or, for informal bidding situations, by DPS procedure. The evaluation methods are informal evaluation, bid tabulation or evaluation committee, depending on the procurement method utilized.

Texas law requires that contract awards may only be made to responsive vendors providing the best value to the State. The best value standard varies depending on the procurement method. The Contract Developer ensures that the appropriate evaluation method is used for the type of procurement and that the best value standard is used as the basis for the contract award.

Contract Developers should direct questions regarding the proper evaluation process to the P&CS Director or OGC.

## 11.2 TCI PROGRAM, STATE USE PROGRAM AND TERM CONTRACT PURCHASES

DPS purchases using the following procurement methods have been determined to be best value to the State by statute or SPD rule:



Accordingly, DPS does not conduct an evaluation process when selecting a vendor for these purchases.

## 11.3 ADMINISTRATIVE REVIEW OF RESPONSES

### 11.3.1 MINIMUM QUALIFICATION REVIEW

Upon receipt of bids in the informal bid process, the Contract Developer/Purchaser may consult with the DPS staff to evaluate bids submitted, to determine the selection of a vendor and to document the decision. The Contract Developer/Purchaser makes the required pre-award compliance checks. The DPS purchaser follows requirements for purchase or contract reporting.

The Contract Developer is responsible for determining whether competitive bid or solicitation responses meet minimum qualifications or responsive to the solicitation. Only responses that are responsive to the solicitation and meet minimum qualifications are evaluated.

Following opening and recording the responses, a minimum qualification review includes an examination of each response to verify that the minimum vendor qualifications are satisfied and that the respondent submitted and signed all required

forms and documents, as required by the published solicitation. Consultation with the P&CS Director and Division Chief, who may, in turn, consult with OGC, may be necessary to determine whether a response is responsive to the solicitation requirements. DPS's checklist documents the results of the minimum qualification review.

#### **11.3.1.1 UNSIGNED RESPONSE**

A response without a signature is not responsive to the solicitation and will be disqualified. Unsigned responses will not be evaluated; these responses will be kept with the procurement file and not be returned to the respondent.

#### **11.3.1.2 "RESPONSIVE" RESPONSE**

A response is "responsive" if it conforms in all material respects to the solicitation requirements (e.g., timely submission, signed response, completed forms, anything else identified in the solicitation). The Contract Developer makes an initial determination as to whether a response is responsive. The initial determination of responsiveness is subject to change during the course of the evaluation process.

DPS reserves the right in the solicitation to waive minor technicalities if it is in the best interest of the state to do so.

#### **11.3.1.3 HUB SUBCONTRACTING PLAN (HSP)**

Respondents must submit a current HSP with its response to be responsive. The HSP will be submitted to the HUB office to determine if the HSP demonstrates that the respondent made a good faith effort to comply with statute, rules and DPS HUB policies and procedures. The HUB Office documents the HSP evaluation findings and conclusions and notifies the P&CS Contract Specialist.

#### **11.3.1.4 TECHNICAL ASSISTANCE IN SPECIFICATION PREPARATION**

A respondent or contract participant may provide free technical assistance to an agency. However, DPS may not accept a response or award a contract to a vendor that received compensation from DPS to participate in the preparation of the specifications or solicitation forming the basis of the proposal or contract.

If a single response is received, the Contract Developer must investigate why DPS received only one response by:

- Reviewing the solicitation for any restrictive specifications; and
- Contacting several potential respondents to inquire why they chose not to submit a response.
- Depending on the determination, the Contract Developer will recommend:
  - Re-advertising the solicitation;
  - Preparing a Proprietary Purchase Justification; or
  - Tabulate the bid (only if objective criteria are used for informal bidding or an IFB) or direct the evaluation committee to evaluate the response.

## 11.4 EVALUATION- BID TABULATION PROCESS

### 11.4.1 INFORMAL EVALUATION: INFORMAL BIDS ONLY

Upon receipt of bids in the informal bid process, the Contract Developer/Purchaser may consult with the DPS staff to evaluate bids submitted, to determine the selection of a vendor and to document the decision. The Contract Developer/Purchaser makes the required pre-award compliance checks. The DPS purchaser follows requirements for purchase or contract reporting.

If the sole evaluation criterion for IFB responses is objective criteria, the Contract Developer may conduct the evaluation. Generally, the Contract Developer must tabulate bids when opened, but there are times when this is not practical. It is recommended that the bid tabulation be prepared within a maximum of three business days from the bid due date.

The P&CS Director or his/her designee confirms the bid tabulation prepared by the Contract Developer.

The Contract Developer must conduct a due diligence inquiry as to actual and potential conflicts of interest related to the submitted bids and gathers the Conflict of Interest Disclosure Statement or Disclosure Statement for Purchasing Personnel. The Contract Developer must promptly report any actual or potential conflicts of interest in accordance with DPS's Ethics Policy. See Ethics and Professional Standards of this Handbook or the DPS Ethics Policy for more information. REFERENCE SECTION 3

## 11.5 EVALUATION- EVALUATION COMMITTEE PROCESS

### 11.5.1 EVALUATION COMMITTEE

Evaluation committee selection occurs prior to receipt of the solicitation responses. The end user or DPS Division Director recommends evaluation team members, consisting of subject matter experts and stakeholders, to the Contract Developer. The Contract Developer ensures the committee has diverse expertise and knowledge of the desired product or service. The evaluation committee members may include participants in the procurement planning activities. The committee may consist of both scoring and non-scoring members. For procurements in an amount that exceeds \$20 million, the procurement file must include the qualifications and reason for selecting of each evaluator. **Supervisors and their subordinates should not participate together on an evaluation team in order to avoid any undue influence on the evaluation outcome.**

The Contract Developer serves as the committee chair. Depending on the procurement, the Contract Manager may participate as a scoring or non-scoring member. If there are both scoring and non-scoring evaluation committee members (technical advisors), this should be noted in the file.

The size of an evaluation committee is usually limited to three to five scoring members. To avoid potential individual bias, the committee should not have fewer than three scoring members. Coordination and management of the evaluation process becomes more difficult as the size of the committee increases.

Each evaluation committee member must independently assess the content of each response using only the evaluation criteria and weights published in the solicitation. Accordingly, the evaluation committee members must fully understand the solicitation, be able to critically read and evaluate the responses, and document their decisions in a clear and concise manner. Committee members must always keep in mind that any notes or comments required or made by the committee member are subject to a public information request and release to the public.

### **11.5.2 NON-DISCLOSURE AGREEMENTS AND CONFLICT OF INTEREST DISCLOSURES**

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. The Contract Developer conducts a due diligence inquiry as to actual and potential conflicts of interest related to the submitted bids and gathers the Conflict of Interest Disclosure Statement or Disclosure Statement for Purchasing Personnel. The Contract Developer will provide the names of the respondents and proposed subcontractors to the committee members and any assigned technical advisors prior to providing access to the responses.

Any actual or potential conflicts of interest must be reported promptly in accordance with DPS's Ethics policy. Please see [Section 3 Ethics Laws and Professional Standards](#).

### **11.5.3 EVALUATION OF RESPONSES**

#### **11.5.3.1 OVERVIEW**

After the administrative review is complete but prior to evaluating the responses, the Contract Developer will schedule a meeting with the evaluation committee and any authorized non-evaluator subject-matter experts to provide, at a minimum, the following:

- Overview of the evaluation process;
- Evaluator responsibilities;
- Explanation of the numbering system used to identify evaluation committee members and track responses;
- Critical dates and deadlines;
- Scoring matrix, including evaluation factors or criteria;
- Relative weights and importance of criteria against which responses will be measured
- Additional evaluation committee meetings; and
- How to handle questions that come up during the evaluation process.

The [Evaluation Committee Guide](#) will be the document used in the evaluation process. It provides guidelines for the fair and impartial evaluation of responses to the solicitation. The plan describes the overall evaluation objectives, the organization and responsibilities of the parties involved in the evaluation and award process, and the factors and criteria that will form the basis of the selection of a contractor.

The committee members are instructed as to their responsibilities including the critical nature of confidentiality and the integrity of the evaluation process, including responses and information about the evaluation process. Evaluation committee members are also provided with the necessary documentation to conduct their evaluation.

Evaluators should also refrain from engaging in technical leveling, technical transfusion, or other improper activities. The evaluation committee may not commence any discussions until each committee member has signed a non-disclosure statement and a preliminary assessment regarding actual and potential conflicts of interest has been conducted. An evaluation team member will not receive responses until the Contract Developer has received a signed non-disclosure statement from the evaluation team member. REFERENCE SECTION 3.

In the event one or more committee members' evaluations differ significantly from the majority, the committee chair will schedule a meeting with the entire committee to discuss the outliers to ensure the evaluation criteria were clear to all scoring members and that information was not overlooked or misunderstood. If after this discussion, a committee member determines that there was a misunderstanding of the criteria, the requirement, or information overlooked that was included in the response, the evaluator may provide a revised scoring matrix.

#### **11.5.3.2 SCORING MATRIX**

The scoring matrix is a standardized form used by all of the evaluation committee members to record the scores for each response based on the evaluation criteria and weights published in the solicitation and, if applicable, unpublished sub-criteria. The scoring matrix is designed to objectively identify offers that most closely meet the DPS's needs. The scoring matrix must be quantitative and based on objective and measurable information requested in the solicitation.

**The scoring matrix should be finalized prior to publishing the solicitation.** However, if time does not permit the scoring matrix to be finalized prior to publication of the solicitation, the scoring matrix must be completed prior to the receipt of responses.

#### **11.5.3.3 TECHNICAL ADVISORS**

Depending on the procurement, the evaluation committee may seek assistance from technical experts within DPS to gain a better understanding of certain aspects of the responses. Technical advisors are generally used when a particular area of subject matter expertise is not within the skill set of the evaluation committee members. For instance, an employee from DPS's Finance Department may serve as a technical advisor during the evaluation committee's review of the financial capability documentation submitted by the respondents. Similarly, for an IT procurement, an employee from DPS's IT security business unit may serve as a technical advisor during the evaluation committee's review of the various data safeguard standards proposed by the respondents.

Technical advisors to the evaluation committee comply with the same non-disclosure and conflict of interest restrictions applicable to the evaluation

committee. Accordingly, the technical advisors should not discuss the solicitation with anyone, even evaluation committee members, outside the committee meetings. **The Contract Developer coordinates all communication between the evaluation committee and authorizes technical advisors to ensure the integrity of the evaluation process.**

#### **11.5.3.4 PRICE COMPONENT**

The price component of the response is usually assessed by using either a “reasonableness” standard or objective criteria. For a price criterion assessed using a reasonableness standard, the evaluation committee conducts the evaluation. If the price criterion is to be evaluated using only a mathematical formula, such as for an IFB, then it may be scored by the Contract Developer. Unless prohibited by statute or DPS policy, the evaluation committee scores the entire response, including the price component, to facilitate a more comprehensive evaluation of the response (e.g., ensure that the proposed pricing aligns with the proposed products and services).

#### **11.5.3.5 REFERENCE CHECK**

If required by the solicitation, respondents may submit customer references with their responses. The Contract Developer may conduct the reference checks or authorize a subcommittee of the evaluation committee to conduct reference check activities. All information obtained during the reference checks is documented in writing and filed in the official procurement file.

A script or format of questions is developed prior to the solicitation closing date. The script or format of questions must be used when conducting reference checks so that the results are consistent and fair to all respondents.

Events following solicitation issuance may shorten the procurement timeline such that reference check activities cannot be conducted in a timely manner. When the solicitation requires the submission of references or references are considered as part of the evaluation criteria, a decision must be made as to whether to verify customer references before the solicitation closing date. DPS may use a statement in the solicitation document in lieu of checking references for all respondents as follows:

DPS reserves the right to check references prior to award. Any negative responses received may be grounds for disqualification of the proposal.

If reference checks are included in the solicitation but will not be conducted, this determination must be documented and placed in the procurement file.

#### **11.5.3.6 CLARIFICATION OF RESPONSES**

Clarifying questions may be asked of a respondent in order to resolve conflicting information, apparent ambiguities, or minor clerical errors within the response. If a clarification to the response is necessary, only the Contract Developer will contact the applicable respondent and distribute to the evaluation committee the written

clarifications received by the respondent. The HUB Coordinator can ask for clarification concerning the HSP.

Clarifications may not be used to “cure” deficiencies in the response or to revise the response; they may only be used to understand the information provided in the response.

#### **11.5.3.7 COMPETITIVE RANGE DETERMINATION**

Following initial scoring, the Contract Developer determines the competitive range.

The scores are reviewed to identify a “natural break” that will determine the competitive range. The table below illustrates an example of how to determine competitive range from a maximum score of 100.

<b>Scenario 1 Evaluation Scores</b>	<b>Scenario 2 Evaluation Scores</b>	<b>Scenario 3 Evaluation Scores</b>
97	97	97
93	93	96
90	82	90
89	81	89
88	79	88
65	68	86

- In scenario 1, the top five respondents are in the competitive range.
- In scenario 2, the competitive range could include the top two respondents or the top five respondents.
- In scenario 3, there is a six-point difference between the second and third score, with the remaining scores close behind.

Therefore, the only natural break is between the second and third scores. If more than two contracts will be awarded, the best option would be to include all six respondents in the competitive range.

The Contract Developer must document the rationale for the competitive range determination in the procurement file.

#### **11.5.3.8 ORAL PRESENTATIONS**

If included and permitted by the solicitation, DPS may elect, after reviewing the responses, to conduct oral presentations. Oral presentations provide an opportunity for respondents to highlight the strengths and unique aspects of their responses and to provide answers to clarification questions DPS may have regarding the responses.

Oral presentations may be scheduled for all respondents or may be limited to the top ranked vendors in the competitive range. Respondents will be notified of the time and place for the oral presentations, as outlined in the solicitation.

To ensure fairness, the time allowed and the agenda format will be the same for all presenters. Presentation order is determined in an impartial manner.

Following the oral presentation, written questions are submitted to the respondent to document in writing the verbal clarifications provided by the respondent during the presentation. The answers to these clarification questions should be signed by an authorized representative of the respondent.

Following all oral presentations, the evaluation committee will complete another scoring matrix using the evaluation criteria and weights published in the solicitation.

#### **11.5.4 BEST AND FINAL OFFERS**

After any oral presentations or demonstrations are completed, discussions may be held with respondents. If discussions are held, respondents must be given equal opportunity to discuss and submit revisions to proposals. Revisions of proposals are normally accomplished by formally requesting Best and Final Offers (BAFOs) at the conclusion of discussions with a deadline set for receipt of BAFOs and including instructions as to exactly what should be submitted in response to the BAFO. After consideration of all BAFO responses, DPS may choose to down select to a smaller number of respondents with which to commence negotiations.

#### **11.5.5 EVALUATION COMMITTEE RECOMMENDATION**

Once the evaluation process is completed, the committee chair (who may be the Contract Developer) will prepare, sign and date the master scoring matrix, and proceed with a recommendation to either:

- Award the contract to the highest ranked respondent without discussion;
- Tentatively award the contract to the highest ranked respondent subject to successful completion of negotiations; or
- Cancel the solicitation.

If the solicitation allows, the recommendation may be to award a contract award to more than one respondent, provided, however, that the awarded respondents are the highest ranked in the evaluation.

The master score sheet is distributed to each committee member to verify the accuracy of the scoring. Particular care should be taken to ensure that the raw data is accurately transcribed into the mathematical formulas and that the mathematical formulas are properly loaded into electronic spreadsheets/workbooks when such electronic aids are used.

The master scoring matrix, as well as the scoring matrix of each evaluator, is retained in the official file.

### **11.6 PREFERENCES**

#### **11.6.1 OVERVIEW**

Statutes establish preferences. With the exception of the reciprocal preference, a vendor must claim the applicable preference(s) in its response by marking the appropriate preference on the preference form included in the solicitation. If the appropriate box is not marked on the preference form, a preference will not be granted unless other documents included in the response sufficiently demonstrate that the

bidder may receive the preference and is requesting the preference. Upon DPS request, the vendor must provide adequate documentation to support a claimed preference.

Any price adjustment that results from application of a preference occurs only during the evaluation process. The application of a preference does not alter the price to be paid by the agency under an awarded contract.

**11.6.2 RECIPROCAL PREFERENCE LAW**

Texas law requires that responses from nonresidents from a state that grants resident bidder preferences for that state’s purchases must be reciprocated in the same manner when competing against a bidder residing in Texas. In other words, the State of Texas will respond in kind to resident bidder preferences made by other states. Under the Texas reciprocal preference law, DPS may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder as identified in statute. Reciprocity and resident bidder preferences do not apply when evaluating responses that involve the use of federal funds. The reciprocity preference is only applied during the evaluation process and only in situations where the out-of-state bidder is from a state that has a residency preference. SPD maintains a Summary of Other State Bidder Preference Laws on the CPA website.

**11.6.3 RESOLVING TIE BIDS**

A tie occurs when two or more responses receive the same score after evaluation. P&CS will review the preferences identified by respondents and determine the awardee based on the verified preferences or tiebreaking activity, if needed. Priority of the claimed preference is given in the sequence listed below:



Same Price	Same Preferences.	The award for any tied item is determined by drawing lots, tossing a coin, or drawing names with two witnesses to oversee the tiebreaking activity.
Same Price	Different Preferences.	If two bidders propose the same price, but the preferences checked are different, the award is based on the priority for goods and/or for services

**11.6.4 EXAMPLES OF USING PREFERENCES TO BREAK A TIE FOR GOODS AND SERVICES.**

**EXAMPLE 1:** Bidder A receives the award - Priority is given to the Texas-produced product over the U.S.-produced product.

Product	Bidder A	Bidder B
Texas Agricultural Product		
Texas Product	X	
Texas Bidder		
U.S. Product		X

**EXAMPLE 2:** Bidder B receives the award - Because both bidders show preference to Texas agricultural and Texas products, priority is given to the Texas bidder.

Product	Bidder A	Bidder B
Texas Agricultural Product	X	X
Texas Product	X	X
Texas Bidder		X
U.S. Product		

**EXAMPLE 3:** The award is made by drawing lots, tossing a coin, or drawing a name.

Product	Bidder A	Bidder B
Texas Agricultural Product		
Texas Product		
Texas Bidder	X	X
U.S. Product		

## 12. CONTRACT FORMATION AND AWARD

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### 12.1 OVERVIEW

This step of the procurement process is to enter into a legally enforceable contract that not only meets the DPS's business need but is also compliant with Texas procurement law. The contract between DPS and the selected vendor may be in the form of either a PO or formal signed agreement. If a formal signed agreement is used, the PO documents the encumbrance of funds by DPS for the transaction.

For many procurements, the Contract Formation and Award phase is a relatively quick process. For example, a contract to acquire a good or service from SPD Term Contracts may be awarded by PO immediately following the selection of the vendor. In contrast, the Contract Formation and Award phase may take longer for procurements where the parties desire to enter into a formal written agreement following the negotiation of terms and conditions.

### 12.2 NEGOTIATIONS

#### 12.2.1 OVERVIEW

DPS may negotiate terms and conditions during the procurement process. Not all procurement methods, however, allow for negotiation. Prior to commencing negotiations, the Contract Developer must verify that negotiations may occur under the applicable procurement method.

Negotiations may occur for the following:

- Purchases using competitive sealed proposals;
- Purchases using requests for offers;
- Purchases under DIR cooperative contracts;
- Purchases of consulting services;
- Purchases of professional services;
- TXMAS purchases;
- State Use Program purchases (when procuring services, not goods);
- Sole source and competitive proprietary purchases; and
- Emergency purchases when there is insufficient time to solicit bids.

The IFB procurement method prohibits negotiation, except when the agency receives only one qualified bid. This exception is the only circumstance for DPS to negotiate contract terms, including price. In an IFB, the negotiation may not result in a material change to the advertised specifications.

Negotiations involving public sector entities (e.g., state government) are different from those between private sector entities. For example, negotiations with an agency must not materially alter requirements of the published solicitation. DPS must take care to avoid inadvertently changing the advertised procurement objectives. If the procurement objectives are changed through the negotiation process, an uneven playing field occurs

when respondents could have bid differently had they been aware of the changed procurement objectives. An uneven playing field also results when the composition of the eligible vendor pool would have been different (e.g., the vendor pool may have been larger) if the changed objectives had been incorporated into the original solicitation.

If it appears that the procurement objectives may have been changed, OGC should be consulted before proceeding further.

### **12.2.2 NEGOTIATION TEAM**

DPS employees with effective negotiation and communication skills are assigned to the negotiation team. For complex procurements involving high-dollar or high-risk projects, negotiations may be conducted by an experienced team of DPS employees.

A lead negotiator is designated to establish an organized and controlled negotiating environment to support an efficient, coordinated, and unified team effort.

Team members are selected, or excluded, based on their leadership style, negotiation skills and subject matter expertise, to ensure the right people are present during negotiations. The negotiation team should include DPS personnel who have or have been delegated decision-making authority appropriate for the procurement.

### **12.2.3 PREPARATION**

To develop an effective negotiation strategy, the negotiation team must be prepared by becoming familiar with the documentation submitted by the vendor and be well-versed in the project business requirements, constraints, and any applicable overarching DPS objectives. The negotiation strategy should suit the particular facts and circumstances of each procurement. Formal planning activities may include, but are not limited to, the following:

- Identifying contract terms that are crucial to the agreement (i.e., terms upon which DPS is either unable or unwilling to compromise, as well as contract terms that DPS is willing to compromise or relinquish);
- Understanding and prioritizing the acceptable trade-offs between the various negotiation goals;
- Establishing the DPS's settlement range on the items to be negotiated; and
- Anticipating the vendor's negotiation positions.

### **12.2.4 TECHNICAL LEVELING, TECHNICAL TRANSFUSION, AND OTHER IMPROPER ACTIVITIES**

Care must be taken not to engage in technical leveling and/or technical transfusion activities. Technical leveling is helping a respondent to bring its response up to the level of other responses through successive rounds of discussion, usually by pointing out weaknesses in the response. Technical transfusion, which state law prohibits, is the disclosure of technical information or approaches by one respondent to other competitors in the course of discussion. Prohibited auctioneering techniques include:

- disclosure of competing respondents' cost/prices (even if the disclosure is made without identifying the vendor by name); and

- advising a respondent of its price standing relative to other respondents.

## **12.3 CONTRACT FORMATION**

### **12.3.1 OVERVIEW**

When negotiations are complete, a contract documenting the parties' negotiation and the terms and conditions of the performance must be finalized. Texas courts define a contract as a promise or a set of promises to which the law attaches legal obligation. The law regards the performance of these promises as a duty and provides a remedy for the breach of this duty. Contracts that deviate substantially from requirements defined in the solicitation are open to challenge from unsuccessful respondents. Awarding a different project from the one solicited undercuts competition and the contract could be considered void due to a violation of ESBD posting requirements.

### **12.3.2 APPROACH TO CONTRACT FORMATION**

Fundamentally, the purpose of a written contract is to serve as a reference document that records the terms of an agreement to prevent misunderstanding or conflict, and creates a legal, binding and enforceable obligation. Clarity of the terms and completeness of the issues are paramount. The DPS staff assigned to drafting the contract must be familiar with subject matter and concerns of the parties thoroughly enough to anticipate potential areas of disagreement and specifically address them in the contract.

Thoroughness and precision are necessary to determine the scope of a contract because contract law does not allow parties to add terms not part of the original contract without the consent of both parties. This rigidity in contract law is mostly seen as an advantage to both parties. However, this advantage may become a liability if DPS does not include all necessary language in the contract when executed.

Creating a contract for DPS is an exercise in balancing potential conflicting interests. The primary concern must always be the benefit of the contract to the State as a whole, or more specifically, the taxpayers of the State.

Care should be taken not to include unnecessarily harsh provisions in the contract; while such provisions may be legal, they usually have negative future consequences that outweigh the initial gains. Contractors who feel they have been aggrieved by the State are less likely to provide good service and are more apt to engage in legal action. In addition, these contractors may decide to not pursue future State contracts, thus limiting future competition.

**Individuals drafting a contract must ensure they are using the latest approved template for the type of contract developed. The latest approved template contains up to date legal references and requirements and other modifications and improvements that a prior or existing contract will not.** Prior to final internal routing requirements, the individual drafting the contract should thoroughly review the contract to ensure it is in harmony with the solicitation and negotiations and encompasses all the required elements.

The draft contract undergoes several reviews within DPS, including OGC. Modifications requested to required or essential contract clauses must be pointed out during the review process or fully vetted during the drafting process. Many of these are requirements stemming directly from statutory law for which DPS has no authority to negotiate or violate.

### 12.3.3 LEGAL ELEMENTS OF A CONTRACT

The following image depicts the essential elements necessary to form a binding contract:



### 12.3.4 CONTRACT TERMS

The following Essential Provisions are provisions from the Guide that DPS includes in a contract:

1. Terms Necessary for the Formation of a Legally Binding Contract. The necessary elements of a contract are offer, acceptance, legal purpose, consideration, certainty of subject matter, and competent parties. Accordingly, each contract must include terms which address the following:
  - Statement of work;
  - Financial provisions (e.g., price and payment terms);
  - Contract period (term) and termination provisions; and
  - Identification of the contracting parties.

By their nature, these terms are transaction-specific; therefore, the text will vary for each contract.

2. Required Contract Clauses. The most common statutorily required contract clauses are compiled on the SPD's list of Texas Required Contract Clauses. For each required contract clause, the compendium provides both standard and alternate text that serves as a safe harbor for compliance with the applicable statute.
3. Liability Clauses. DPS is required to include provisions in all contracts for liquidated damages or another form of liability for damages caused by the contractor. Each contract file for goods or services must contain a written explanation of the decision to include or not include a damage provision. The file also must include a written justification for any provisions in the contract that limits the liability of a contractor for damages. The written justification must be amended if an extension or contract amendment modifies any damages clause.

P&CS staff must seek assistance from OGC prior to modifying the standard or alternate text specified for the Texas Required Contract Clauses as slight variations may result in DPS's noncompliance with applicable statutes and rules.

SPD makes it clear that while statute does not mandate that these Recommended Clauses should appear in every contract, they also should not be treated as “optional.” Rather, they are provisions that are typically included in most contracts. Recommended Clauses include, but are not limited to, the following:

- Administrative provisions;
- Provisions that allocate risk and specify remedies;
- Provisions that relate to the identification and safeguarding of confidential information; and
- Provisions that relate to rights and ownership of work product and intellectual property.

The determination as to the appropriateness of a particular contract term is dependent on the characteristics of the transaction. The list of Recommended Contract Clauses located in Appendix 23 of the State of Texas Procurement and Contract Management Guide comprises “sample” text because it is expected that the wording of the Recommended Clauses included in each contract will vary due to the unique contracting needs of individual state agencies. For example, certain federal programs may require the inclusion of specific contract clauses. The DPS subject matter expert and OGC should identify these clauses. No clause should be added to a contract without undergoing OGC review. Note that this does not cover provisions that apply only in certain circumstances (such as iron/steel in construction contracts).

It is common practice for a contracting entity to utilize its respective standard terms and conditions, often referred to as “boilerplate,” in order to provide uniformity across the transactions. When drafting a contract, care should be taken not to automatically adopt terms and conditions, even boilerplate, from another contract without a thorough and independent review of how those terms and conditions relate to the current purchase and determine whether they are applicable.

P&CS will work with OGC to ensure that contract terms suit the particular purchase. OGC reviews the terms and clauses of contracts and recommends additional terms to include or revisions to be made. P&CS will review the recommendations along with division staff to determine if recommended revisions will be included. P&CS will refer questions regarding legal terms and clauses to OGC.

### **12.3.5 AUTHORITY TO CONTRACT**

Only persons having actual authority to act on behalf of DPS can bind DPS in a contract. The powers of all state officers are set by law. All persons dealing with state officers must know the limits of their authority and determine if the contemplated contract is within their statutory authority.

***No other DPS staff may execute a contract absent express authority.***

A threshold issue in government contracting is whether an agency has statutory authority to contract. One should not presume or rely on the implied authority of an officer or agency of the state to contract. Only persons having actual authority to act on behalf of the State can bind the State in a contract.

An authorized employee’s signature on a contract will reflect a representation that the contract has been properly submitted, reviewed, and approved in accordance with all DPS policies and procedures, and that the contract is in the best interest of the state.

No other employee may sign a contract binding the agency without a delegation of authority to do so as set out in this policy. All contracts that require signatures or otherwise bind the agency must be reviewed by P&CS in IOD and OGC.

DPS authorizes the following individuals to sign contracts on its behalf:

TITLE	DIVISIONS	CONTRACTS
Executive Director	All	All contracts \$1 million and over and Agency membership fees
Deputy Director	Law Enforcement Operations	contracts with a total estimated value of less than \$1 million
Deputy Director	Homeland Security Operations	contracts with a total estimated value of less than \$1 million
Deputy Director	Law Enforcement Services	contracts with a total estimated value of less than \$1 million
Division Chief	All Divisions	Interagency Contracts and Zero Dollar Boilerplate Contracts

The signature routing process depends on the award and signature thresholds. The Contract Developer is responsible for ensuring the contract is routed through the appropriate process.

**12.3.6 BINDING SIGNATURES**

Original signatures pose the least risk for forgery or unauthorized signatures. However, contracts are valid if signed by an individual authorized to obligate that party, whether that individual’s signature is hand-made or represented electronically or digitally as those terms are defined by the CPA in 34 Texas Administrative Code § 20.3. Due to time and expense considerations, DPS accepts alternatives that meet the CPA’s requirements to original signatures in instances in which the potential risk for forgery or unauthorized signatures has been determined to be minimal.

**12.3.7 FORM OF THE CONTRACT**

**12.3.7.1 OVERVIEW**

Evidence of an agreement or contract can be documented in different formats including, but not limited to, a “four-corner contract” or a PO. Each of these forms of contract has advantages and disadvantages. Determining the most appropriate format should follow an assessment of the risks involving contract construction or interpretation. The contract delivers an offer in a form requested by DPS, and DPS indicates acceptance of the offer. The documents that comprise the offer and acceptance are the evidence of the agreement.

**12.3.7.2 FOUR-CORNER CONTRACT**

In a “four-corner” contract, the provisions are contained within the four-corners of a single document. An authorized representative of the parties must sign this type of contract. Contract management is sometimes easier when all of the provisions

regarding the duties, obligations and responsibilities of each party is logically organized within one document. On the other hand, “four-corner” contracts require more time to plan and prepare.

**An alternative to the “four-corner” contract is a layered approach in which the solicitation, response, and other documents are incorporated by reference into or attached to a top-level document such as a formally signed agreement or PO.** The top-level document should be carefully drafted to incorporate all documents that are part of the agreement and address an order of preference and any conflicts between them. All final terms and conditions that vary from either the solicitation or the vendor’s offer should be specifically identified.

### **12.3.7.3 PURCHASE ORDER (PO)**

Depending on the transaction, the PO will be either the contract or an associated contract document issued to encumber funds for a “four-corner” contract. The PO will generally refer to or incorporate either an existing contract or an offer made by a vendor. For example, DPS may issue a PO against an existing DIR schedule contract to purchase laptop computers. A PO can also be used to accept or counter a vendor’s quote for a purchase made under delegated authority. The terms and conditions of the incorporated contract or offer must be carefully reviewed to ensure they meet DPS’s needs. DPS may include its own terms and conditions on a PO to supplement the existing contract or to address unacceptable terms proposed by the vendor.

## **12.4 CONTRACT AWARD**

### **12.4.1 OVERVIEW**

Once the contract has been drafted and just prior to execution, DPS determines whether review by an oversight agency is required and, if applicable, obtains the requisite approval(s) prior to contract award. To ensure compliance with applicable procurement law, pre-award due diligence checks should also be conducted. Pre-award contract compliance checks include confirmation that certain internal reviews and approvals have been performed, required disclosure statements have been completed, and verification that the award to the selected vendor is not prohibited by law.

### **12.4.2 VENDOR ASSESSMENT**

Before the award of a contract to a vendor, the P&CS Director must review the process and all documents used to assess each vendor who responded to the solicitation. The P&CS Director must certify in writing that each vendor’s response was assessed using the evaluation criteria published in the solicitation or written evaluation criteria established by DPS and the calculation of scoring was accurate. A change in scoring of a vendor that occurs following the initial assessment must be justified in writing and reviewed and certified by the P&CS Director. The P&CS Director may delegate the certification authority to personnel within the procurement office, as described by the Comptroller’s Office.

## **12.5 REVIEWS AND APPROVALS BY OVERSIGHT AGENCIES**

### **12.5.1 QAT – MAJOR INFORMATION RESOURCE PROJECT**

A contract for development of a major information technology project with an expected value of at least \$10 million is not valid unless DPS:

- provides a copy of the final version of the contract including all appendices and attachments, signed by the contractor but not the state agency, to QAT; and
- obtains prior written approval of the contract from QAT.

Information regarding the steps involved in initiating, monitoring, completing, and submitting deliverables to the QAT for a major information resources project is available on the Project Delivery Framework page located on the DIR website. The P&CS Director can facilitate interaction with QAT on behalf of DPS.

### **12.5.2 DIR – STATEMENTS OF WORK**

DPS prepares and submits to DIR certain DIR SOW for contracts that exceed \$50,000. A DIR SOW executed by DPS under a contract for an IT commodity item is not valid and money may not be paid to the contractor under the terms of the DIR SOW unless DIR first signs the DIR SOW.

## **12.6 PRE-AWARD CONTRACT COMPLIANCE CHECKS**

### **12.6.1 AGENCY VERIFICATION OF BEST VALUE STANDARDS**

The DPS Contract Developer or P&CS Director must:

- Approve each DPS contract for which DPS is required to purchase goods or services using the best value standard;
- Ensure that, for each contract, DPS documents the best value standard used for the contract;
- Acknowledge in writing that DPS complied with DPS’s Handbook and the Guide in the purchase; and
- Ensure that DPS evaluates the contractor’s performance based on:
  - Information prepared by DPS 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 online vendor performance tracking system.

If a contract is awarded to a vendor who did not receive the highest score in the assessment process, a written justification detailing the reasons for making the award is required for the procurement file.

### **12.6.2 AGENCY VERIFICATION OF COMPLETE PROCUREMENT FILE**

Prior to contract award, DPS contract manager or procurement director must:

- Review the contents of the contract file to ensure all documents required by state law and DPS rules are complete and present including a copy of the contract and checklist, and
- Certify in writing for inclusion in the contract file that the required review under the previous item was completed.

### **12.6.3 AGENCY VERIFICATION OF VENDOR ASSESSMENT PROCESS**

For procurements subject to Texas government code 2261, the procurement director, prior to contract award, must review the process and all documents used by DPS to assess each vendor who responded to the solicitation. The procurement director must certify in writing that:

- DPS assessed each vendor's response to the solicitation using the evaluation criteria published in the solicitation, and
- The final calculation of scoring of responses was accurate.

In addition, DPS must justify in writing any change in the scoring of a vendor that occurs following the initial assessment and scoring of responses. The written justification must be reviewed by the procurement director. The procurement director must certify in writing that the change in scoring was appropriate. The written certification or justification must be placed in the procurement file.

If DPS awards a contract to a vendor who did not receive the highest score in the assessment process, DPS must state in writing in the contract file the reasons for making the award.

### **12.6.4 AGENCY VERIFICATION OF VTPS REPORTING COMPLIANCE**

If the value of the contract exceeds \$5 million, DPS may not extend the contract until the agency reports to the VPTS the results of each review of the vendor's performance conducted at least once a year during the contract term and at each key milestone identified for the contract.

### **12.6.5 AGENCY VERIFICATION OF CONTRACT EXTENSION COMPLIANCE**

DPS must minimize the use of extensions that extend contracts beyond the base term and any optional extensions provided in a contract. DPS may not use funds appropriated elsewhere in the GAA to pay for an extension to an existing agency contract beyond the base term and optional extensions provided in the contract unless all of the following conditions are met:

- The extension is limited in duration and cost to not more than one additional option period, as defined in the contract, to address the immediate operational or service delivery needs. If a contract does not contain a defined option period, the extension is limited to one year.

- DPS provides notice to the extension, at least 30 days prior to execution of the extension, by uploading required information to the LBB contracts database on a form prescribed by the LBB.

**12.6.6 AGENCY SIGNATURE- ALL CONTRACTS**

DPS has established internal procedures for required approvals and thresholds for contractual transactions. The Contract Developer is responsible for ensuring the contract routes to the correct DPS staff member with the signature authority to execute the contract.

**Executive Contract Review Board vs. Contract Review Board Approval**

Composition of the Executive Contract Review Board	Composition of the Contract Review Board
<ol style="list-style-type: none"> <li>1. Chief of Infrastructure Operations Division, Chair</li> <li>2. Representative from the Office of Finance</li> <li>3. Representative from the Office of General Counsel</li> </ol>	<ol style="list-style-type: none"> <li>1. Chief of Infrastructure Operations Division, Chair (non-voting)</li> <li>2. Representative from the Office of Finance</li> <li>3. Representative from the Office of General Counsel</li> <li>4. Representative from Information Technology</li> <li>5. Representative from one law enforcement division (rotating member)</li> <li>6. Representative from one services division (rotating member)</li> <li>7. Member of the Public Safety Commission, as designated by the commission</li> </ol>
Items Requiring Review by the Executive Contract Review Board	Items Requiring Review by the Contract Review Board
<ol style="list-style-type: none"> <li>1. Any new request to procure goods or services valued at \$500,000 or more</li> <li>2. Any request to renew goods or services valued at \$500,000 or more</li> <li>3. Any new request to enter into an agreement with an associated dollar amount of \$500,000 or more               <ul style="list-style-type: none"> <li>○ Pass-Through</li> <li>○ Funds Generating</li> <li>○ Self-Funded</li> </ul> </li> <li>4. All requests relating to staff augmentation services of any value.</li> </ol>	<ol style="list-style-type: none"> <li>1. New contracts valued at \$1 million or more, including all available renewal options</li> <li>2. Contract amendments (excluding available, previously-reviewed renewal options) valued at \$100,000 or more that increase the value of the original contracts by 25 percent or more</li> <li>3. Contract amendments (excluding available, previously reviewed renewal options) valued at \$500,000 or more</li> <li>4. Staff Augmentation</li> <li>5. Donations</li> </ol>

Composition of the Executive Contract Review Board	Composition of the Contract Review Board
5. All change requests that increase a purchase by 10% or greater or any change.	6. ECRB Identified Procurement as needing CRB 7. Contracts valued at \$1 million or more with no CRB approval record

**12.6.7 AGENCY SIGNATURE – CONTRACTS WITH A VALUE OF \$1 MILLION OR MORE**

DPS may enter into a contract for the purchase of goods or services that has a value of \$1 million or more only if the governing body of DPS (CRB) approves the contract and the approved contract is signed by the presiding officer of DPS. In accordance with the statutory authority, signature authority has been delegated to the DPS Executive Director.

**12.6.8 AGENCY VERIFICATION-CONTRACTS WITH A VALUE OF \$5 MILLION OR MORE**

A contract for the purchase of goods or services that has a value of \$5 million or more must have the P&CS Director verify in writing that the solicitation and purchasing methods and contractor selection process complies with state law and DPS policy.

Furthermore, the P&CS Director must submit information on any potential issue that may arise in the solicitation, purchasing, or contractor selection process to the CRB.

**12.6.9 AGENCY REVIEW OF REQUIRED DISCLOSURES**

DISCLOSURES
<p><b>State Auditor’s Office (SAO) Nepotism Disclosure Statement for Purchasing Personnel</b></p> <p>For contracts that are valued at \$1 million or more, all purchasing personnel working on the contract must disclose the relationship (if any) with the selected vendor (or any employee, stockholder, contractor, etc.) to the DPS ED on a form prescribed by SAO. See <a href="#">Texas State Auditor’s Office Nepotism Disclosure Form</a></p>
<p><b>TEC Disclosure of Interested Parties (Form 1295)</b></p> <p>Certain contracts with a value of \$1 million or more or that require an action or vote by the three-member Commission require vendors to complete the Form 1295 Certificate of Interested Parties, which is located on the Texas Ethics Commission (TEC) website. Before contract award, the vendor must submit to DPS a completed and signed form with the certificate of filing number and date. DPS, as a best practice, includes a reference to Form 1295 in the solicitation in order to allow the vendor to gather the pertinent information early in the process. See <a href="#">Texas Ethics Commission Form 1295</a></p>
<p><b>Procurement and Contract Management Conflict of Interest Disclosure</b></p> <p>Each DPS employee or official who is involved in procurement or in contract management for DPS must disclose to DPS any potential conflict of interest specified by state law or DPS 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 DPS. A DPS employee or official is required to disclose any</p>

## DISCLOSURES

potential conflict of interest specified by state law or DPS policy that is known by the employee or official at any time during (1) the procurement process, from the initial request for bids for the purchase of goods or services from a private vendor until the completed final delivery of the goods or services, or (2) the term of a contract with a private vendor.

[See Section 16.2.2 PPP-7 Conflict of Interest](#)

### 12.6.10 VENDOR COMPLIANCE VERIFICATIONS

Immediately following award, DPS conducts vendor compliance verifications. These verifications are identical to those conducted for each vendor during the minimum qualification review. Additionally, vendor compliance verifications are conducted for all potential sub-contractors after completion of HUB review for submitted subcontracting plans. This will include Secretary of State checks, as well as all other compliance verifications.

In addition to these vendor compliance verifications being conducted again prior to contract signature, the Contract Developer/Purchaser reviews DPS's systems to determine whether the vendor has any unemployment insurance overpayment debt and tax delinquency, the tax standing of the entity and state status, labor law non-compliance history and career school fees and assessments payable to the State of Texas.

SUBJECT	DESCRIPTION	WEBSITE
DEBARMENT CHECK	Establish that SPD has not debarred the vendor. An agency may not award a contract to a debarred vendor.	<a href="#">Debarred Vendor List</a>
SAM CHECK	Verify that the federal government has not excluded the vendor from grant or contract participation. In addition, 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). The SAM database is not the same as the OFAC Master List, however, the data from the OFAC master list can be found within the SAM database.	<a href="#">System for Award Management) database OFAC master list</a>
IRAN, SUDAN & FOREIGN TERRORIST ORGANIZATION CHECK	Governmental entities may not contract with a company doing business with Iran, Sudan, or a foreign terrorist organization. Prior to award.	<a href="#">Divestment Statute Lists</a>
BOYCOTT ISRAEL CHECK	May not contract with a company, with 10 or more full-time employees, for goods or	<a href="#">Divestment Statute Lists</a>

SUBJECT	DESCRIPTION	WEBSITE
	services with a value of \$100,000 or more 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.	
ENERGY COMPANY BOYCOTT CHECK	May no contract with a company, with 10 of more full-time employees, for goods or services with a value of \$100,000 or more unless the contract contains a written verification from the company that is does not boycott energy companies and will not boycott energy companies during the term of the contract.	<a href="#">Divestment Statute Lists</a>
WARRANT/PAYMENT HOLD CHECK	Check warrant hold status of the vendor in the following circumstances: (1) transaction involves a written contract, (2) payment is made with local funds, or (3) payment card purchase is over \$500. The agency cannot proceed with a purchase made with local funds or a payment card purchase over \$500 until the warrant hold has been released For transactions involving a written contract, the warrant hold check must be performed not earlier than the seventh day before and not later than the date of contract execution. If the vendor is on warrant hold, the agency may not enter into a written contract with the person unless: 1. the contract requires the agency’s payments under the contract to be applied directly toward eliminating the person’s debt or delinquency, and 2. the requirement described in paragraph (1) specifically applies to any debt or delinquency, regardless of when it arises.	<a href="#">Warrant Hold Search</a>
FRANCHISE TAX CHECK	Not all vendors are required to pay franchise tax. The Texas franchise tax is a privilege tax imposed on each taxable entity formed or organized in Texas or doing business in Texas. CPA is required by law to forfeit a company’s right to transact business in Texas if the company has not filed a franchise tax report or paid a franchise tax required under Chapter 171 of the Tax Code.	<a href="#">Franchise Tax Account Status</a>

## **12.7 CONTRACT & AMENDMENT NOTIFICATIONS**

### **12.7.1 INTERNAL NOTIFICATION**

Immediately following award, the Contract Developer must provide an executed copy of the contract to the Contract Manager and any other internal point of contact and the contractor.

### **12.7.2 CONTRACT & AMENDMENT NOTIFICATIONS AND POSTINGS**

Legislation passed in 2015 has placed more focus on state agency contracting practices, resulting in an emphasis on transparency through various reporting requirements and generally making information available to the public. DPS must comply carefully and in a timely manner with all of these requirements; several oversight agencies, and the Texas Legislature, scrutinize the reports.

Depending on the type or amount of the transaction, DPS may be required to provide one or more notifications of the contract award. These notifications may be in the form of a notice of award published to the ESD or Texas Register, a report to an oversight agency, such as the LBB, or a website posting. See the next Section for the various contracts reporting and web posting requirements.

### **12.7.3 AGENCY WEBSITE POSTINGS**

A table detailing website posting requirements for Certain Agency Contracts, DIR Statements of Work, and Contracts Exceeding \$100,000 begins on the next page.

SUBJECT	DESCRIPTION	WEBSITE
<b>CERTAIN AGENCY CONTRACTS</b>	<p><b>For contracts not posted to the LBB contracts database,</b> an agency must post the following information about each private vendor contract to the agency’s website:</p> <ol style="list-style-type: none"> <li>1. the contract until the contract expires or is completed;</li> <li>2. the statutory or other authority under which a contract that is not competitively bid under is entered into without compliance with competitive bidding procedures; and</li> <li>3. the request for proposals related to a competitively bid contract until the contract expires or is completed.</li> </ol> <p>The agency must redact the following from the posted contract:</p> <ol style="list-style-type: none"> <li>1. information that is confidential under law,</li> <li>2. information that the OAG 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, and</li> <li>3. the social security numbers of any individuals.</li> </ol> <p><b>For agency contracts for the purchase of goods or services from a private vendor that are valued at less than \$15,000, the agency may post the required information monthly instead of upon award of contract.</b></p> <p>Expressly excepted from the agency website posting requirement are contracts posted to the LBB contracts database, memoranda of understanding, interagency contracts, interlocal agreements, contracts for which there is not a cost, and institution of higher education contracts valued at \$15,000 or less and paid with money other than funds appropriated to the institution</p>	<p><a href="#"><u>CERTAIN AGENCY CONTRACTS</u></a></p>

SUBJECT	DESCRIPTION	WEBSITE
DIR STATEMENT OF WORK	<p>Upon execution of the DIR SOW, each DIR SOW entered into by the agency must be posted on the agency's internet website as follows:</p> <ol style="list-style-type: none"> <li>1. post the DIR SOW in its entirety, subject to the exceptions in the Texas Public Information Act and opinions of the Office of Attorney General;</li> <li>2. maintain the posting, at a minimum, throughout the term of the DIR SOW, including any renewals or extensions;</li> <li>3. maintain a listing of the DIR SOWs in alphabetical order by vendor name or numerical order by contract number in a central location; and</li> <li>4. maintain a current agency contact person with related email address and phone number to contact for information regarding the DIR SOW.</li> </ol>	<a href="#">DIR STATEMENT OF WORK</a>
CONTRACTS EXCEEDING \$100K	<p>Each agency, other than an institution of higher education, that receives an aggregate of \$175 million or more in the General Appropriations Act for a state fiscal biennium must post on a generally accessible website maintained by or for the agency a listing and description of all contracts with vendors that have a value exceeding \$100,000. This requirement includes contracts that the agency has entered into and that are currently being performed, or for which performance has not yet begun.</p>	<a href="#">CONTRACTS EXCEEDING \$100K</a>

## 12.8 DEBRIEFINGS

The P&CS Director, in accordance with DPS procedures, may conduct a “debriefing” meeting at the request of an unsuccessful vendor. In preparation for the meeting, the P&CS Director must be prepared to discuss the strengths and weaknesses of the vendor’s response relative to the advertised evaluation criteria as well as how DPS’s decision complied with applicable procurement law and the published solicitation.

Several vendor representatives may attend the meeting, which may be conducted by phone conference. A list of the vendor attendees should be requested in advance of the scheduled meeting. If the vendor’s legal representative will attend the meeting the P&CS Director may notify OGC.

Debriefing meetings must be limited to a discussion of the vendor’s response — the P&CS Director or his/her designee must not engage in discussions about how the vendor’s response compared to other responses. Care is taken to not divulge confidential information regarding a competitor’s response.

Debriefing meetings are beneficial to both the vendor and DPS. During the debriefing meeting, the vendor may obtain information as to why its response was unsuccessful so

that it may apply “lessons learned” in future procurement initiatives with the State. Similarly, a debriefing meeting provides an opportunity for DPS to obtain valuable insight, from the vendor’s perspective, of the procurement process.

## **12.9 PROTEST AWARD**

When a protest is received, DPS follows its rules to assess the merits of the vendor’s protest and correct any unlawful procurement actions. DPS staff should never assume that protests are frivolous; it is expected that most vendors would be reluctant to file a protest against a state agency with which it wants to conduct business unless they believe that egregious errors occurred during the solicitation process. Even if the protest is not sustainable under the DPS’s protest rules, DPS should proactively make appropriate improvements to its procurement practices if any shortcomings are uncovered during the protest. DPS rules regarding Procedures for Vendor Protests of Procurements can be found at [Texas Administrative Code Rule §1.264](#).

## **12.10 LESSONS LEARNED – INTERNAL**

The Contract Developer should call a ‘lessons learned’ meeting after the conclusion of each solicitation and prior to transition of the contract to the Contract Manager. This meeting should take place within two weeks of contract execution so that team members recall details in order to provide more feedback during the meeting. The meeting must include, at a minimum, the team assigned to the solicitation, but it can also include other DPS staff involved in the process.

The purpose of the lessons learned meeting is review the solicitation from initiation through signature and document the strengths and weaknesses of the particular solicitation and process, as well as recommendations for improvement for that particular solicitation or the process in general. The Contract Developer retains documentation or a summary of the meeting in the procurement file and sends a copy to the P&CS Director. The Contract Developer must also place a copy in the file. The P&CS Director and the review the document and may act accordingly on recommendations. The lessons learned document should be reviewed prior to a new solicitation for a similar procurement.

The Contract Developer may include the Contract Manager in the lessons learned meeting, or combine the lessons learned meeting with the transition of the contract file from the Contract Developer to the Contract Manager.

## **12.11 STANDARD OPERATING PROCEDURES**

The following Standard Operating Procedures relate to information contained in this section of the DPS Procurement and Contract Management Guide. Other SOPs are contained in other sections of the guide. For a link to the DPS SOPs, please see [Section 16.2.3 STANDARD OPERATING PROCEDURES](#).

### **12.11.1 CONTRACT REVIEW BOARD SOP 15-0001**

This provides instructions for submitting contract documents to the CRB for review. Contracts that meet the threshold of the CRB are considered contracts that require

enhanced monitoring. The CRB provides oversight that aligns DPS's procurement and contract activities with contract management best practices.

#### **12.11.2 EXECUTIVE CONTRACT REVIEW BOARD SOP 15-0002**

This provides instructions for submitting purchase requests and contract documents to the ECRB for review. Contracts that meet the threshold of the ECRB are considered contracts that require enhanced monitoring. CAPPs electronically routes all requisitions with a total estimated value of \$450,000 or more to ECRB for approval.

#### **12.11.3 VENDOR COMPLIANCE VERIFICATION SOP 15-0029**

This provides instructions for conducting the compliance checks required on vendors prior to issuance of a contract or purchase order. This requirement applies to procurements made from any non-governmental entity, regardless of funding source.

## 13. CONTRACT MANAGEMENT

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### 13.1 CONTRACT MANAGEMENT

The final step in the procurement process is contract management. The objective of contract management is to ensure the contract is performed satisfactorily and the responsibilities of both parties —DPS and the contractor — are properly discharged. Effective contract management prevents, minimizes and resolves problems and potential claims and disputes. For contract management to be successful, the Contract Manager must be involved throughout the Procurement Cycle.

Contract management includes up to eight general processes:



### 13.2 TRANSITION FROM CONTRACT DEVELOPER TO CONTRACT MANAGER

The Contract Developer should hold a post-contract award meeting for high-risk and/or high-dollar procurements. At a minimum, the meeting attendees should include the Contract Developer, the Contract Manager, End-Users, and, if assigned, the Project Manager. During this meeting, the Contract Developer must ensure that the Contract Manager, as well as other stakeholders, have an understanding of the key procurement activities that have occurred prior to contract execution.

The Contract Developer will facilitate the transition of documents and foundational knowledge of the solicitation and contract. Specifically, the Contract Developer must provide a thorough review of the scope of work and relay the contract terms and conditions, agreed-upon inspections and acceptance criteria, extension and renewal potential, and articulated remedies.

DPS business units must ensure that each contract or group of contracts is assigned to a DPS Contract Monitor who is responsible for management and oversight of the DPS contract.

In the event that a Contract Developer was involved in the contract through signature, a transition will need to occur from the Contract Developer to the Contract Manager. For relatively simple and routine procurements, like purchases using the set aside programs, Texas SmartBuy, or informal bidding, transition activities are documented as DPS procedure.

For other procurements, especially high-risk and/or high-dollar procurements, the transition occurs through a post-contract award meeting. At a minimum, meeting attendees include the Contract Developer, the Contract Manager, End-Users, and, if assigned, the Project Manager. During this meeting, the Contract Developer ensures that the Contract Manager, as well as other stakeholders, have an understanding of the key procurement activities that have occurred prior to contract execution. To the extent that the Contract Manager did not

participate in pre-contract award procurement activities, the Contract Developer facilitates the transition of documents and foundational knowledge of the solicitation and contract.

The transition is the ideal time for all DPS staff involved in the procurement to ensure that original documents have been provided to the Contract Developer or Contract Manager for proper retention in the official file. While convenience copies may be maintained, they should be marked or stored to indicate the original has been forwarded to the file. Even convenience copies, duplicate copies and drafts must be provided to OGC Open Records in the event of a public information request if there are notations or other markings on them in addition to the original text.

The Contract Developer provides a thorough review of the statement of work and relays the contract terms and conditions, agreed-upon inspections and acceptance criteria, extension and renewal potential, and articulated remedies. After the team has been briefed on the events preceding the contract award, the Contract Manager begins the administration of the contract.

### **13.3 CONTRACT MONITOR RESPONSIBILITIES**

Contract Monitors (CMs) should possess the technical and/or programmatic expertise and knowledge or have the expertise and knowledge readily available to them. CMs ensure contracting decisions involve all relevant parties and coordination and input from all stakeholder divisions to minimize risk and maximize compliance.

The CM is also responsible for:

- Responding to recommendations or guidance to address any legal concerns and/or issues;
- Often the Contract Monitor performs responsibilities outlined in the Receiver's role;
- Monitoring to ensure all requirements, measures, and deliverables are met;
- Monitoring to ensure sufficient funds are available;
- Monitoring to ensure there are no non-compliant activities;
- Understanding procurement timelines to ensure submission of renewal or re-solicitation requests in enough time to avoid lapse in service and/or non-compliant activities;
- Completing [Vendor Performance \(PPP-6\)](#) reports and [Contract Monitor Reports](#) and submitting to P&CS on time;
- Verifying accuracy of invoices and authorizing payments consistent with the contract terms.

Contract Monitors have no authority to:

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

The number of DPS staff participating in the contract administration process may vary from one to many depending on the size, level of risk and complexity of the contract. Early in the procurement process, the end user or the P&CS Director may identify staff, in addition to the assigned Contract Manager, who will participate in the contract management process. The Contract Manager must document the assignment of roles and responsibilities in the contract file.

The Contract Manager is responsible for maintaining a master contract file of records produced throughout the life of the contract.

## **13.4 PLANNING AND RISK ASSESSMENT TOOLS**

### **13.4.1 CONTRACT RISK MANAGEMENT**

Under [Texas Government Code § 2261.256](#), each state agency must develop and comply with a purchasing accountability and risk analysis procedure that provides for:

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

Performing risk assessments help to determine the level of degree of oversight and participation from the Executive Sponsor. Executive sponsorship participation increases when the risk is higher. The Agency developed a Risk Assessment tool (PPP-25) for determining the risk level of the contract. Based upon the classification of risk, the contract may require enhanced levels of reporting.

This assessment is completed to anticipate risks, mitigate or manage risks, and avoid or transfer risk in order to protect the agency. Performing risk assessment is an ongoing process throughout the life of the contract. At DPS, the frequency of which [Monitoring of Deliverables Documents](#) (contracts monitoring reports) are required is based on the risk classification assigned to the contract. The Risk Assessment is conducted at the time the requisition is submitted to P&CS, at the time of award, and throughout the life of the contract, as needed, based on current circumstances.

Risks to the contract must be reviewed and revaluated by the Contract Monitor on a continual basis until the contract has fully performed and final payment has been rendered. The Monitoring of Deliverables Document is required to provide visibility and support to remedy outstanding issues and risks in order to increase the chances for successful outcomes.

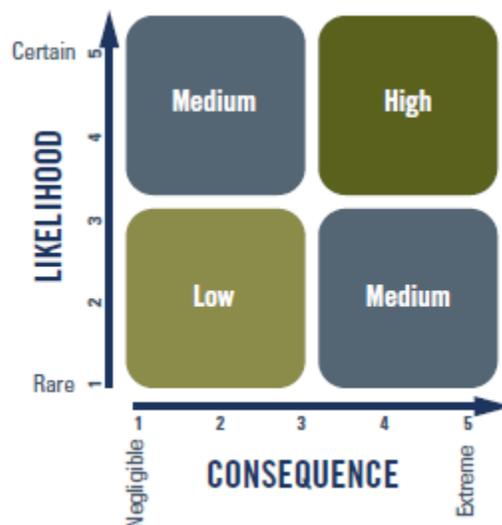
In addition to using the risk assessment tool, Contract Monitors should keep a log for all Major Contracts and Major POs. This log should identify all risks to their contract, the mitigation plan or strategy for addressing the risk, and the outcome. This log should be available for review upon request by P&CS. Current risks must also be reported on the Monitoring of Deliverables Document.

Under [Section 2261.253, TEX GOV'T Code](#), and other provisions of Senate Bill 20 (84th Legislative Session) and General Appropriations Act Art IX, Rider 7.12 adopted by the 84th Legislature, Regular Session, the P&CS Director has responsibilities relative to serious issues or risks on certain contracts. The P&CS Director will notify the agency's governing body, through the Chief of Infrastructure Operations Division, of any serious issue or risk on certain contracts. The P&CS Director will also provide a weekly report through the Chief of Infrastructure Operation Division to the Public Safety Commission that identifies risks or issues with these items.

Various methodologies are used by DPS to assess risk. Each methodology has been designed with the type of contract assessed. These models then focus monitoring resources on contracts with the highest risk of noncompliance.

DPS's risk assessment process is designed to estimate the following:

- The likelihood of the event is estimated (e.g., rare to almost certain).
- The consequence of the event is estimated (e.g., negligible impact to extreme).



DPS's risk management process includes:



### 13.4.2 RISK FACTORS

General risk factors that are considered include, but are not limited to, the following:

- The contractor's previous experience with the type of work to be performed;
- The contractor's past performance (and past performance of similar contractors);
- The dollar value of the contract;

- Reimbursement methodology (e.g., fixed price, time and materials, cost reimbursement);
- Acquisition complexity (e.g., office supplies, temporary staff, design/build/implementation project, outsourcing project);
- Acquisition involves (DPS and/or contractor) confidential and/or propriety information;
- Acquisition involves products or services that are relatively new in the marketplace;
- Acquisition involves the use of technology or implementation of processes that are new to DPS;
- Acquisition has an interdependency with other contracts;
- Acquisition has statewide impact (e.g., involves large number of constituents, a vulnerable client population);
- Findings from monitoring efforts, such as the variance between expected and actual performance;
- Turnover in key personnel of the agency and/or contractor;
- Significant problems with payment requests;
- Results of monitoring visits with the same contractor that are completed for other business units within DPS or other agencies;
- The length of time since the last monitoring activity;
- DPS personnel experience with the product provided or the type of work to be performed; and
- Available level of effort to support the monitoring activities (e.g., Contract Manager workload)

### **13.4.3 ASSESSING RISK**

After the risk factors are identified, weights are assigned to each factor. Weights describe how significant each factor is in identifying the contracts that should be monitored. However, weights may also be designed to ensure statutory or policy requirements. A contractor is also rated on the risk elements.

Since risk assessment is a dynamic process, it is updated regularly to reflect the results of monitoring visits, reviews of payment vouchers, desk reviews, etc. For example, if a contractor has fallen significantly behind schedule in delivering services, the risk assessment should be updated to indicate the elevated risk and this impacts how the contract is monitored in the future. Likewise, if a contractor is well ahead of schedule in delivering services, the risk assessment should be updated to indicate the lower level of risk.

### **13.4.4 CONTRACT ISSUE MANAGEMENT**

The Contract Monitor is the first person to know about and resolve issues. Contract Monitors should keep a log of all issues that arise during the life of the contract and document the timeline of the issue along with the resolution.

To prevent disputes, Contract Monitors will:

- Maintain regular communication with contractor;

- Respond promptly to all contractor inquiries regarding contract concerns;
- Work with P&CS to develop a strategy to resolve issues and communicate to contractors;
- Thoroughly document all issues and communications pertaining to contract issues;
- Must notify P&CS promptly of any issues;
- Must use Corrective Action Plans to address issues that are impacting performance of the contract:
  - Email the assigned Purchaser or the P&CS Quality Management Branch, cc division management. The email should contain an overview of problem(s) and actions taken towards resolution to date;
  - P&CS will provide guidance and assistance and escalate to OGC if needed;
  - P&CS will facilitate resolution with all parties, including OGC;
  - P&CS will facilitate completion of a Corrective Action Plan (CAP) and/or require the contractor to provide a formal CAP;
  - As requested, OGC will provide guidance and direction on appropriate legal action if the vendor is non-compliant.

#### **13.4.5 STATE AUDITOR MONITORING ASSESSMENT**

Under Section 2261.258, TEX GOV'T Code, before July 1 of each year, the state auditor shall assign one of the following ratings to the 25 largest state agencies as determine by the Legislative Budget Board:

- additional monitoring warranted;
- no additional monitoring warranted; or
- reduced monitoring warranted.

The state auditor shall consider the following information as applicable in assigning the ratings:

- results of an audit conducted by the state auditor or DPS internal auditor;
- results of a purchase audit conducted by the Comptroller;
- information reported by the Quality Assurance Team;
- information from the Contract Advisory Team;
- information from a review conducted by the LBB and the Sunset Advisory Commission;
- DPS self-reported improvements to the contracting process; and
- any additional internal analysis provided by DPS.

The state auditor will identify the periods in which additional or reduced monitoring is warranted from the following periods:

- contract solicitation development;
- contract formation and award; and/or

- contract management and termination.

Contract Managers at agencies assigned the rating “additional monitoring warranted” for the contract management and termination stage must complete the SPD Enhanced Contract Monitoring training by December 31 of the year of the rating assignment.

### **13.5 POST AWARD CONTRACTOR CONFERENCE**

A post award conference is a meeting scheduled by the Contract Monitor which includes the contractor and agency stakeholders. Conducted soon after the contract is awarded, the conference is an orientation for the Contract Manager and contractor to ensure a clear and mutual understanding of all contract terms and conditions, and the respective responsibilities of all parties. Although the contractor and the DPS personnel should already be fully aware of the contract requirements, the post award conference ensures that anyone involved directly in the contract administration process understands all contract performance requirements. Additional items to cover include the amendment process and relevant DPS policies and procedures. The Contract Manager must be available to provide this information again at any time during the term of the contract. Other staff that will be involved in the contract may be invited to the meeting.

Not every contract requires a formal post award conference, but some form of discussion between the contracting parties after award must occur to ensure that all parties are aware of the performance requirements and administrative procedures agreed in the contract. Care should be taken to ensure that discussions that occur during the post award conference do not result in performance expectations that do not align with the terms of the contract.

P&CS will determine if a post award conference is necessary. If the division determines a conference is not necessary they will submit justification to P&CS for the basis of the decision. For less complex, low risk, low-dollar value contracts, a telephone call with the contractor may be sufficient. During the telephone conversation, the agency should review the major points of the contract with the contractor, such as the value of the contract, major performance milestones, deliverables, reports, meetings and time and place of delivery. Factors used to determine whether a post award conference is appropriate include:

- Type of contract;
- Level of risk associated with the contract;
- Value and complexity;
- Length of contract, period of performance and/or delivery requirements;
- Procurement history of the products or services required and expertise of the contractor;
- Urgency of delivery schedule;
- Agency’s prior experience with the contractor;
- Any special or unusual contract requirements; and
- Any special or unusual payment requirements.

## 13.6 MONITORING METHODS

### 13.6.1 DPS CONTRACT MONITORING PROGRAM

Each purchase order and contract will have a designated Contract Monitor from the requesting division, a P&CS Contract Administrator, and an Executive Sponsor (the Chief of the requesting Division) to assist in the contract management process.

The Contract Monitoring Program also hosts quarterly internal Contract Advisory Team (iCAT) meetings, which provide a forum for Contract Monitors to share ideas and recommend changes for continuous improvement of the contract monitoring processes through discussion, lessons learned, and collaboration.

Follow-up is essential, as a problem will not correct itself simply by identifying it in a monitoring report. The Contract Monitor should periodically review the results for the monitoring efforts to:

- Ensure corrective actions have been taken;
- Identify common problem areas that might require training; and
- Improve contract requirements for future contracts.

The different monitoring methods include desk reviews, site visits, and third-party monitoring, which this section discusses in more detail. Other monitoring methods include status telephone calls, expenditure document review, spot audits, and scheduled audits.

*Telephone calls and meetings must be substantiated in writing and maintained as part of the contract file. Such documentation must include the date and time that phone calls or meetings occurred as well as a summary of topics discussed (e.g., meeting minutes) including pending action items and decisions that were made.*

### 13.6.2 DPS MAJOR CONTRACTS

All contracts, regardless of the dollar amount, are formally monitored. A contract is a written document referring to promises or agreements for which the law establishes enforceable duties and remedies between a minimum of two parties. An original Contract, Amendment, Modification, Extension, Purchase Order (PO), Interagency Agreement, Interlocal Agreement, Intercooperative Contract, and a Memorandum of Understanding are all considered contracts.

P&CS staff also formally monitor all POs, but only those designated as Major POs (MPO) require the Monitoring of Deliverables Document reporting and are included in the [DPS Major Contracts Library](#). New contracts and amendments to existing contracts that require posting to the Major Contracts Library must be added within five days of award or execution.

A Major Purchase Order is:

- A PO with a “High” or “Important” risk classification;
- A PO with a total value of \$1 million or more, including optional renewals;
- A PO for Staff Augmentation Services; or
- A PO that is based on a Time and Materials fee and payment structure.

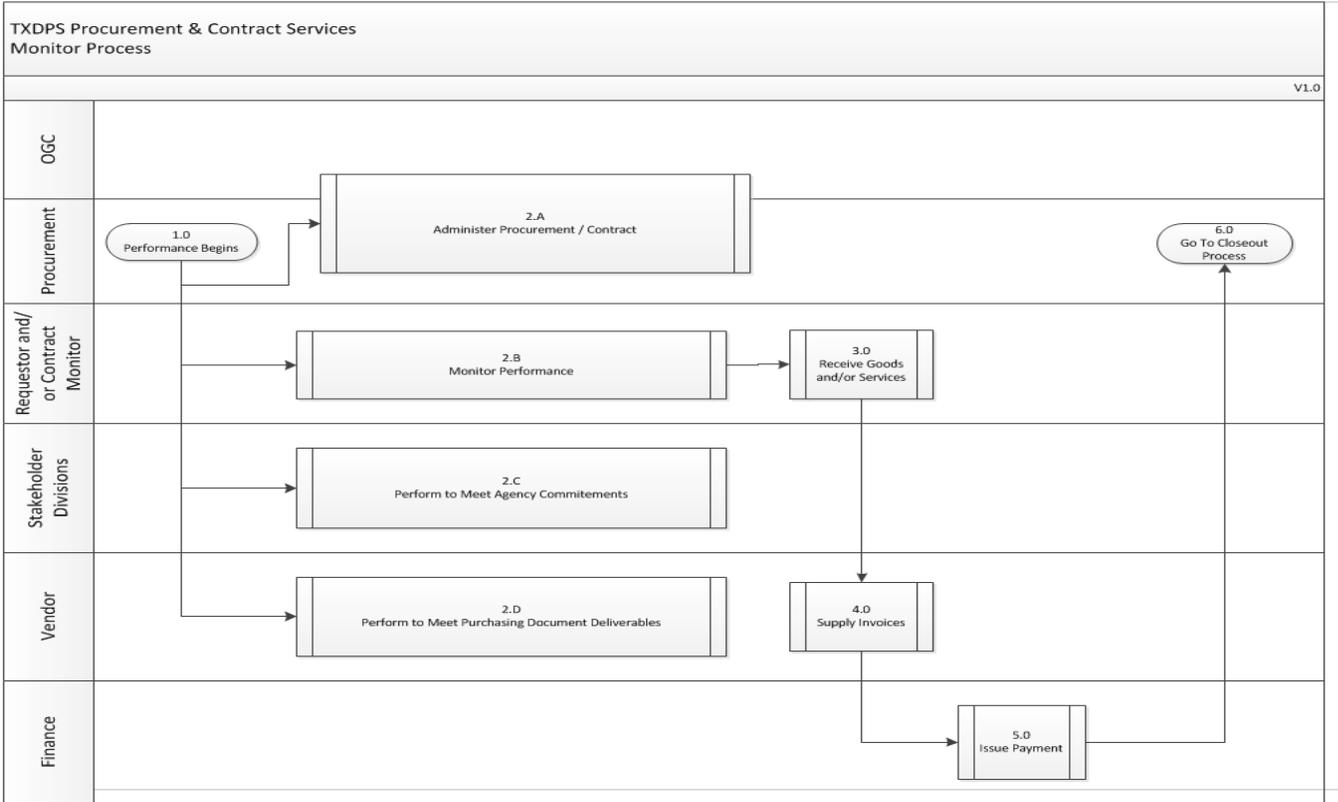
### 13.6.3 CONTRACT MONITOR TOOL KIT

The following documents comprise the Contract Monitor Tool Kit:

- Contract / Purchasing Documents;
- Monitoring of Deliverables Document (PPP-5);
- Contract Deliverables Document (CDD);
- Expenditure Report;
- Risk Assessment Tool (PPP-25);
- Corrective Action Plan (PPP-17);
- Vendor Performance Report (PPP-6);
- Change Log;
- Risk Log;
- Issue Log

### 13.6.4 CONTRACT MONITOR REPORTING SCHEDULE

Risk Level	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.
Low – Contracts, Major POs	Due on Sept. 10th to cover period of previous fiscal year											
Moderate Contracts, Major POs	Due on Sept. 10th to cover period of March to August						Due on March 10th to cover period of Sept to Feb					
Important Contracts, Major POs	Due on Sept. 10th to cover period of June to August			Due on Dec. 10th to cover period of Sept. to Nov.			Due on March 10th to cover period of Dec. to Feb.			Due on June. 10th to cover period of March to May		
High Contracts, Major POs	Sept. 10th	Oct. 10th	Nov. 10th	Dec. 10th	Jan. 10th	Feb. 10th	Mar. 10th	Apr. 10th	May 10th	June 10th	July. 10th	Aug. 10th



### 13.6.5 CONTRACT MONITORING STEPS

Task	Activity	Medium	Description	Responsibility	Typical Duration
1.0	Performance begins	Email, Meeting (Round Table)	1.1 Acquire Goods / Services Per Purchasing Documents. 1.2 Hold a Kick-off meeting if needed or specified in Purchasing Documents.	All	1 Day
2.A	Administer Procurement / Contract	Emails, Meetings, Documentation, CAPPs, Contracts Library	2.A Purchasing Lead Administers Purchase / Contract. See Purchaser and OGC Responsibilities Below.	Purchasing Lead with guidance from OGC as needed	Ongoing through Term of Purchasing Documents

Task	Activity	Medium	Description	Responsibility	Typical Duration
2.B	Monitor Performance	Emails, Meetings, Purchasing Documents, Project Documents (if applicable)	<p>2.B.1 Monitor deliverables, performance measures, and vendor performance and reports and manages to purchasing documents.</p> <p>2.B.2. Initiate requests to Purchasing for Change Orders and Work Orders. <b>NOTE:</b> These can only be initiated by the original Contract Monitor in CAPPs. You will need to contact the original Contract Monitor to request a Change Order. If the original Contract Monitor is no longer an authorized CAPPs user, then please contact <a href="mailto:Procurement@dps.texas.gov">Procurement@dps.texas.gov</a> for guidance on how to initiate your change request.</p> <p>2.B.3 Notify Purchasing of significant events, issues, or risks.</p> <p>2.B.4.Coordinate between DPS Stakeholder Divisions.</p> <p>2.B.5 Submit Vendor Performance Reports as Required.</p> <p>See Contract Monitor Responsibilities Below for additional responsibilities.</p>	Contract Monitor	Ongoing through Term of Purchasing Documents
2.C	Perform to Meet Agency Commitments	SharePoint	<p>Ensure timely completion of action items and deliverables that are the responsibility of DPS to keep the Purchase / Contract deliverables on target.</p> <p>Notify Contract Monitor of any risks, issues, needed actions, or concerns.</p>	Stakeholder Divisions	Ongoing through Term of Purchasing Documents
2.D	Perform to Meet Purchasing Document Deliverables	Email	<p>Perform to meet deliverables and actions that are the responsibility of the Vendor to keep the Purchase / Contract deliverables on target.</p> <p>Ensure no non-compliant goods or services are provided as Vendor may not be paid for goods or services outside the scope and terms of Purchase / Contract.</p>	Vendor	Ongoing through Term of Purchasing Documents
3.0	Receive Goods / Services	CAPPs, Signatures	<p>Receiver of Goods / Services will generate a receipt in CAPPs.</p> <p><b>NOTE:</b> All receiving problems should be reported to the Purchaser via email as soon as possible.</p>	Receiver or Contract Monitor	1 - 45 Days

Task	Activity	Medium	Description	Responsibility	Typical Duration
4.0	Supply Invoices	<a href="mailto:ap_invoices@dps.texas.gov">ap_invoices@dps.texas.gov</a> and copy Contract Monitor.	Vendors will Issue Invoices for delivery of goods and services per Purchasing Documents.	Vendor	Ongoing through Terms of Purchasing Documents or One-Time per Terms of Purchasing Documents
5.0	Issue Payment	CAPPS, ESBD, LBB Website, DPS Website	Finance / Accounts Payable will issue payment for goods / services that have a receipt.  See other Finance responsibilities below.	Finance	Within 30 Calendar Days of receipt of Goods or Services (dependent on completion of receipt)
6.0	Go to Closeout Process		Go To Closeout Process.		

### 13.6.6 DESK REVIEWS

Desk reviews are examinations of reports submitted by the contractor. Various types of reports may be required by the contract; however, to be an effective monitoring tool, the “type” of report will be tailored to the contract requirements. Examples of reports include progress reports, status reports, activity reports and financial reports. The Contract Monitor should also review VPTS reports filed by other agencies for the contractor.

REPORTS	DESCRIPTION
Progress Reports	Reports that describe what has been accomplished over time.
Status Report	Reports that describe achievements or current standing. The status report should be consistent with the organizational structure of the scope of work. If there are any unresolved issues that are contractually obligated to resolve, those issues should be included in the status report and a resolution should be requested.
Project Activity Reports	Reports that describe any activity on the project; project activity is not the same as a status report. A project may have a great deal of activity without making substantive progress. Activity reporting can be a core feature of contract management.
Financial Reports	Reports that include financial statements, timesheets and similar data, that substantiates the contractor’s financial resources and ability to perform

REPORTS	DESCRIPTION
Vendor Performance Reports	Reports that are required identifying vendor's performance and submitted to the Vendor Performance Tracking System maintained by SPD. Review of these reports aid in identifying vendors that have exceptional performance and have had issues performing in the past.

### 13.6.6.1 SITE VISITS

More complex contracts and any contracts that have a higher degree of risk may require both reviews and visits to the contractor's facilities to ensure progress is in accordance with the contract schedule. Site visits are used to verify actual performance against scheduled or reported performance. These visits can be an opportunity to verify that the contractor is dedicating sufficient resources and appropriate personnel to the contract. Although site visits are an efficient tool for monitoring, it is possible for a site visit to interfere with the contractor's ability to accomplish the work if monitoring is excessive or includes unnecessary checks; the Contract Monitor should consider this when arranging visits.

Site Monitoring Checklist: A comprehensive checklist that outlines the contract compliance requirements should be developed and used for the site visit. The checklist will be tailored to the specific contract.

Site Monitoring Report: Upon completion of the site visit, the Contract Monitor or designated site monitor will complete a standalone document that serves as a record of the site monitoring work. A copy of the report will be sent to the contractor and any others who may need to receive the report.

### 13.6.7 MONITORING BY THIRD PARTIES

In some instances, the obligation of monitoring the progress of a contract is assigned to another contractor. This is also known as independent oversight. For highly technical work, consultant subject matter experts may perform monitoring services independently or in conjunction with DPS staff.

### 13.6.8 CONTRACTS REQUIRING ENHANCED MONITORING

[TEX. GOV'T CODE §2261.253\(C\)](#) requires each state agency by rule to establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit to the agency governing body. The P&CS Director will immediately notify the Agency's governing body, through the Chief of Infrastructure Operations Division, of any serious issue or risk that is identified with respect to a contract monitored under this section.

Under [TEX. GOV'T CODE §2261.253](#), all procurements and contracts that meet the threshold of review by the CRB or the Executive Committee of the CRB will be considered to require enhanced contract or performance monitoring and those monitoring reports will be submitted to the PSC by the Chief of Infrastructure Operations Division. Any member of the CRB or the P&CS Director may recommend that there is a serious issue or risk with any contract that needs to be immediately brought forward to the PSC through the Chief of Infrastructure Operations Division.

### **13.6.9 ENHANCED GUIDANCE FOR CONTRACTS \$1 MILLION AND MORE**

Under [TEX. GOV'T CODE § 2261.254](#), for all contracts over \$1 million, the Agency must develop and implement contract reporting requirements that provide information on:

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

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

All contracts with a value of \$1 million or more must be presented to the CRB before the contract may be signed. Prior to entering into contracts of \$1 million or more with a final signature, the business entity must submit a disclosure of interested parties statement to the agency at the time the business entity submits the signed contract. The Form 1295 will be submitted by DPS to the Texas Ethics Commission no later than 30 days after the date received from the business entity.

DPS must provide notice to the Legislative Budget Board prior to the first payment, but no later than 30 days after execution of any contract, that is over \$1 million that was awarded outside of the competitive process. This notice will include a certification, in the form prescribed by the LBB, from the Executive Director of DPS that the purchase complied with the DPS Procurement and Contract Management Guide, the DPS Procurement & Contract Services Standard Operating Procedures applicable statutes or the alternative process used and the name of the person directing that process.

### **13.6.10 ENHANCED GUIDANCE FOR CONTRACTS \$5 MILLION AND MORE**

Under [TEX. GOV'T CODE 2261.255](#), for all contracts over \$5 million, the Director of P&CS must verify in writing that the solicitation and purchasing methods and contractor selection process complies with state law and agency policy and submit information to the CRB on any potential issue that may arise in the solicitation, purchasing, or contractor selection process.

The CAT was created to assist state agencies in improving contract management practices by reviewing and making recommendations on solicitation documents and contract documents for contracts that have a value of at least \$5 million or greater during the full term of the contract, including any renewals periods authorized under the contract.

Under [TEX. GOV'T CODE 2262.101](#), all solicitations expected to result in contracts valued at \$5 million and greater must be submitted to CAT for review before the solicitation can be posted. The contract value is determined without regard to source of funds or payment mechanism.

### **13.6.11 ENHANCED GUIDANCE FOR CONTRACTS OVER \$10 MILLION**

DPS must provide notice to the Legislative Budget Board prior to the first payment, but no later than 30 days after execution of any contract that is over \$10 million. This notice will include a certification, in the form prescribed by the LBB, from the Executive

Director of DPS that the purchase complies with the state contract management guide, state procurement manual, applicable statutes or what alternative process was used and the name of the person directing that process.

**13.6.12 ADDITIONAL REPORTING REQUIREMENTS FOR CONTRACTS OVER \$1 MILLION**

For contracts with an initial value greater than \$1 million, DPS must provide notice of the contract for services when the expected total value of the contract subsequent to amendment or renewal exceeds the total value of the initial contract by 10 percent or more, in accordance with the procedures established by the LBB.

**13.7 INSPECTION, TESTING AND ACCEPTANCE**

**13.7.1 OVERVIEW**

DPS is required to (1) inspect and evaluate at the time of receipt all goods or services that the agency receives to determine whether the goods or services comply with the contract under which they were purchased, and (2) certify, if true, that the goods or services comply with contract requirements and that the invoice for them is correct. If the goods or services are not compliant with the contract, agency personnel must notify the Contract Monitor. For statewide contracts administered by SPD, DPS must provide prompt written notice to SPD of the deficiencies. A defaulting contractor can be referred to the Office of the Attorney General for action against the contractor and repeated failures may make the contractor subject to statewide debarment if SPD determines it is appropriate.

**13.7.2 TESTING**

Goods are subject to inspection and testing by the DPS. Authorized DPS personnel must have access to a contractor’s place of business to inspect contracted merchandise. Latent defects may result in revocation of acceptance of any product. OGC should be consulted if latent defects are discovered. Tests may be performed on samples obtained by request of DPS or taken from regular shipments. When products tested fail to meet or exceed all applicable specifications, the costs of the sample used and any testing performed must be borne by the contractor.

DPS staff should consult with the Contract Manager when needed.

**13.8 SHIPPING AND RECEIVING**

**13.8.1 SHIPPING**

CARRIER SHIPPING METHODS	A SUMMARY OF COMMON CARRIER SHIPPING METHODS ARE:	CARRIER PAID BY	FREIGHT LISTED ON PO	TITLE HELD IN TRANSIT BY	CLAIMS FILED BY
FOB Origin Freight Collect	Carrier paid by Agency, Freight on PO, Title held by DPS in Transit, and DPS is responsible for filing claims	Agency	Yes	Agency	Agency

CARRIER SHIPPING METHODS	A SUMMARY OF COMMON CARRIER SHIPPING METHODS ARE:	CARRIER PAID BY	FREIGHT LISTED ON PO	TITLE HELD IN TRANSIT BY	CLAIMS FILED BY
FOB Origin Freight Collect & Allowed	Carrier paid by Vendor, Freight not on PO, Title held by DPS in Transit, and DPS is responsible for filing claims	Vendor	No	Agency	Agency
FOB Origin Freight Prepaid & Charged Back:	Carrier paid by Vendor, Freight on PO, Title held by DPS in Transit, and DPS is responsible for filing claims	Vendor	Yes**	Agency	Agency
FOB Origin Freight Prepaid & Allowed	Carrier paid by Vendor, Freight not on PO, Title held by DPS in Transit, and DPS is responsible for filing claims	Vendor	No	Agency	Agency
FOB Destination Freight Collect	Carrier paid by Agency, Freight not on PO, Title held by Vendor in Transit, and Vendor is responsible for filing claims	Agency	No	Vendor	Vendor
FOB Destination Freight Collect & Allowed	Carrier paid by Vendor, Freight not on PO, Title held by Vendor in Transit, and Vendor is responsible for filing claims	Vendor	No	Vendor	Vendor
FOB Destination Freight Collect & Allowed	Carrier paid by Agency, Freight not on PO, Title held by Vendor in Transit, and Vendor is responsible for filing claims	Agency	No *	Vendor	Vendor
FOD Destination Freight Prepaid & Allowed	Carrier paid by Vendor, Freight is on PO, Title held by Vendor in Tansit, and Vendor is responsible for filing claims	Vendor	Yes**	Vendor	Vendor

\*freight charged to vendor by deducting freight charges from invoice.

\*\* freight charged to the agency by adding freight charges to invoice.

At DPS's option, goods that have been delivered and rejected in whole or in part may be returned to the contractor at contractor's risk and expense or disposed of in accordance with SPD rules or applicable statutes. The contractor may request that goods be held at contractor's risk for a reasonable period of time for later disposition at the contractor's expense. DPS staff that accepts shipments should be aware of the following:

The following are for DPS staff to consider when inspecting shipments. The PO should be reviewed for shipment specifications.

### **13.8.2 RECEIVING RESPONSIBILITIES**

In most cases, the Receiver is the CM. The Receiver will report to the CM in the event they are not one and the same. The CM is ultimately responsible for ensuring the Receiver's responsibilities have been addressed. A key step of the Receiving process is to inspect and accept the goods or services. Goods and services procured are received by completing a receipt in CAPPs. Receiving is a very important step because failure to complete a receipt promptly can lead to interest payments to vendors. Do not wait until you get a copy of an invoice. In most cases, you should not need an invoice to submit a receiving report. Failure to complete a receiving report promptly can result in interest payments to vendors.

A receiving report is required within 48 hours of the receipt of goods/services. A receiving report may be submitted after all items or services have been received only if the PO or contract states that all goods or services must be received prior to payment.

[TEX. GOV'T CODE § 2251.021](#) mandates that state agencies issue payment in 30 calendar days or less for the following conditions (whichever is latest):

- The date the governmental entity receives the goods under the contract;
- The date the performance of the service under the contract is completed; or
- The date the governmental entity receives an invoice for the goods or service.

You have the ability to receive items partially by entering a partial receipt to account for only the goods or services received.

You must notify [Procurement@dps.texas.gov](mailto:Procurement@dps.texas.gov) and [APIInvoices@dps.texas.gov](mailto:APIInvoices@dps.texas.gov) immediately upon identifying that an item should not be paid so that proper communication can be pursued with the vendor without impeding the prompt pay requirement.

Receiving responsibilities include:

- Receiving, Inspecting and Testing, and reviewing the Acceptance Criteria;
- Verifying that all items including quality, quantity, type, performance, etc. on the manifest, bill of lading or packing slip were received;
- Coordinating of the return and/or replacement as applicable of defective, damaged or otherwise unacceptable items or services;
- Resolving of discrepancies in receivables;
- Accepting of receivables;
- Completing and submitting of the Receipt in CAPPs;
- Completing and submitting of a Vendor Performance Report within 15 days.

The receiver must inspect all shipments received against purchase orders and report any discrepancies to P&CS and the vendor. The vendor may be required to pick up any merchandise not conforming to specifications and replace the merchandise immediately.

### 13.8.3 INSPECTIONS

Condition	Solution
No Visible Damage Or Shortage	Accept the shipment if the containers are not crushed, torn, wet, or otherwise damaged.
Minor Visible Damage	Damage to the shipping containers should be noted on the shipping document and signed by the delivery person before the shipment is accepted. It is very important to note any minor damages in order to document any claims for possible concealed damage.
Severe Visible Damage	<p>If shipping containers are damaged in such a manner that it is obvious the goods are badly damaged, the entire shipment may be accepted or refused. If the entire order was refused, the vendor must be contacted and requested to re-ship (this assumes the terms of shipment were F.O.B. Destination). If only a part of the order was refused, then the vendor must be contacted to re-ship that part of the order. If damaged commodities are unloaded at your facility, immediately notify the Purchaser and vendor and request that the order be re-shipped. If the vendor abandons the merchandise (fails or refuses to pick it up), contact the responsible purchaser.</p> <p><b>NOTE:</b> In the rare instance where the terms of shipment are F.O.B. Origin and the shipping containers are damaged enough that it is probable the contents are also damaged, accept the shipment, and record the damage on the carrier's freight bill. DPS is responsible for filing freight claims with the carrier in this case.</p>
Overage	Overages should not be accepted, except in cases of commodities with indeterminable quantities (concrete, gravel, steel by the pound, etc.). This exception will always be noted on the purchase order.
Shortage	Any shortages of shipping containers, cartons, etc. are to be noted on the shipping document and the shipment accepted. Notify the responsible purchaser.
Concealed Damage	Notify the carrier and vendor in writing within 15 calendar days if damages are discovered after unpacking. Notification by facsimile transmission is acceptable. It is recommended that the Receiver state on the shipping document "allow for concealed damages" when accepting shipments. The responsible Purchaser should be notified.
Concealed Shortages	If there is a minor shortage (such as 11 of an item rather than 12) simply note on the shipping document, notify Accounts Payable and they will deduct the difference on the invoice. If it is a major concealed shortage, notify the vendor in writing and have them ship the needed goods at their expense. Notify the responsible Purchaser.

Condition	Solution
Substitution	Substitutions must meet or exceed the specifications of the purchase order and be approved by the responsible Purchaser before being received.
Failure to Meet Specification	If the goods do not meet the specifications, notify the responsible Purchaser. If it is a Term Contract or an Open Market Order processed through the <a href="#">SPD</a> , the Purchaser will notify the <a href="#">SPD</a> . Payment to the vendor should be withheld until the merchandise meets or exceeds all specifications without exception.
Inside Deliver	If required, inside delivery must be specified in the specifications to the exact location, including available access or access limitations. It is the sole responsibility of the vendor for making inside delivery and removal of packing materials. The freight company is not responsible. If there is a problem, the vendor should be contacted immediately.
Pickup and Return of Shipment	The contractor may be required to pick up the damaged goods and those not conforming to specifications and provide replacement in the timeline outlined by the agency or in the original terms of the PO/contract. This must be provided at no additional cost to the agency.
Internal Receiving Receipt	Goods and services are formally received by completing a Receipt in CAPPs. A receiving report is required for all received goods and services purchased on a PO or contract except: Building/Tower/Land Leases Utilities Memberships
Quantity Overages	An agency is not obligated to pay for amounts over the stated quantity on the order unless allowed in the terms and conditions of the contract. If overages are accepted by the agency, a POCN must be processed. It is important to notate overages as well as shortages.
Partial Shipment Considered Complete	The contractor must be contacted to confirm the partial shipment; this step must be taken prior to processing a POCN. After confirmation that no other goods will be received, and by mutual agreement the partial order is considered complete, a POCN and/or contract amendment must be processed and an accurate payment must be based on the goods received at the time of shipment.
Partial Shipment	For partial shipments, the agency must request a timeline, in writing, from the contractor for the balance to be delivered Free on Board (FOB) Destination, freight included, and the delivery for the balance must be at no additional cost to the agency. The remainder of the partial delivery must be received by the agency within the contracted delivery days after receipt of order for each item or the delivery will be considered late.

## 13.9 INVOICE REVIEW AND PAYMENT

After goods and services have been inspected and accepted, invoices must be reviewed to verify that:

- The description of goods and services is in sufficient detail to identify the order relating to the invoice and that the quantities and unit measures correspond with the referenced PO; and
- The invoice conforms to DPS invoicing standards.

Contract Monitors must be familiar with the payment and pricing terms applicable to each contract and must also monitor performance under the contract to verify that comparable costs are being charged for comparable goods and services. When DPS purchases through SPD contracts, the contractor must submit an invoice to the ordering agency at the address shown on the PO. DPS purchasing through SPD contracts may only pay restocking or cancellation fees if the agency or governmental entity determines the charge is justifiable; the extent of these fees should be anticipated when drafting the contract. The Prompt Payment Act of 1999 requires state agencies to pay interest on unpaid, uncontested invoices over 30 calendar days old. **Interest payments are taken directly out of the requesting department/unit's budget. In addition, House Bill 2251 passed by the 78th Legislature allows a vendor to suspend performance, deliveries or services, in the event that an undisputed invoice is not paid by the 30th calendar day.**

### 13.9.1 WITHHOLDING PAYMENT

Despite best efforts to resolve an invoice issue, some circumstances may require that payment approval be withheld. Circumstances where it may be necessary to withhold payment include, but are not limited to, the following:

- Invoice errors;
- Undocumented and/or unsupported costs;
- Remediating overpayments to the vendor; and

Contractor's performance is non-conforming or unacceptable.

If an invoice issue cannot be resolved, the Contract Monitor should take the following steps to escalate the issue:

- Notify procurement and contract service;
- Notify the contractor of invoice issues as soon as possible;
- Maintain documentation for inclusion in VPTS regarding the incident resolution.

Note: For disputed invoices, you must report the dispute within 21 days of receipt of invoice detailing the disputed amount and no more than 110% of the disputed amount can be withheld from payment.

### 13.9.2 PAYMENT

#### 13.9.2.1 PURCHASE ORDER

The document most frequently used by DPS to authorize the purchase of goods and services. A requisition is entered with the good or service description. The

requisition is then sourced to a purchaser who will issue the PO that will be submitted to the contractor. Once the services are performed and/or goods are received, the contractor will request payment by submitting an invoice to the agency along with the PO.

#### **13.9.2.2 PAYMENT CARD**

The P-Card may be used as a payment method for goods and services purchased for dollar amounts as outlined in the ACT-60 Payment Card Program Guide.

#### **13.9.2.3 INTERAGENCY TRANSACTION VOUCHER**

A payment between agencies for procured goods and services through a transfer of funds held in the State Treasury.

### **13.10 CHANGE CONTROL**

A key aspect to effective contract management is the ability to manage change and have sufficient oversight to prevent scope creep, unauthorized work from being performed, and over-billing. The Contract Monitor, Contract Administrator, and the Executive Sponsor all have a responsibility to ensure all contracts are memorialized in the form of a modification, amendment, or change order. Changes not addressed through formal Amendment or Purchase Order Change Notice are considered Non-Compliant.

Contract Monitors should implement a change control system for major contracts and keep a log of all requested changes. The change control system should account for evaluation of requested changes and approvals/disapprovals of requested changes, and date change was executed, if applicable.

All changes must be within scope of the original contract. Types of Changes include, Work Orders, Administrative Changes, Substantive Changes, and Constructive Changes.

Changes:

- Must not be addressed verbally; verbal agreements are NOT binding;
- Changes must be addressed in writing and must go through P&CS to be authorized;
- May require ECRB and/or CRB review/approval.
- Are not considered authorized until both parties have signed off and P&CS has identified the item as being fully executed.

### **13.11 TYPES OF CONTRACT AMENDMENTS**

#### **13.11.1 ADMINISTRATIVE CHANGES**

Occur within the scope of the contract and do not affect or alter the rights of the parties. These changes are typically executed via a unilateral amendment.

**Examples:**

- Changes in filling instructions or address;
- Corrections of typographical errors;
- Changes as permitted by the specific contract language; and
- Changes in agency personnel assigned to the contract.

### **13.11.2 SUBSTANTIVE CHANGES**

These are contractual changes affecting the rights of both parties. Such changes generally require bilateral amendments (agreement by both parties).

#### **Examples:**

- Change in the price of the contract;
- Change in the delivery schedule;
- Change in the quantity;
- Change of deliverables;
- Change of key personnel; or
- Change of any term and conditions.

### **13.11.3 CONSTRUCTIVE CHANGES**

If a contractor perceives that work beyond the scope of the contract was ordered by DPS, the contractor may claim that the contract was “constructively “changed, and the contractor may be entitled to additional compensation for the changes. Generally, a constructive change will require a bilateral amendment.

#### **Examples:**

- Accelerate the delivery schedule;
- Direct the work to be performed differently;
- Change the sequencing of the work;
- Postpone the acceptance or rejection of deliverable;
- Delay reviewing invoices and approving payment; or
- Interfere with or hinder performance.

## **13.12 ASSIGNMENT BY CONTACTOR AND CONTRACTOR NAME CHANGES**

Assignment occurs when one party to a contract (assignor) transfers its rights under a contract to another party (assignee). DPS requires the submission of a written request from the contractor to the Contract Monitor to change the contractor’s name or to recognize a successor in interest to the contract.

Payment assignment is a common business practice. The assignor is the party transferring the right to receive payment. The assignee is the party receiving the right to receive payment. Once DPS receives a notice of a financial assignment, P&CS will coordinate a review by management, OGC and Finance to determine if the assignment should be processed. When a payment assignment is requested on a delegated purchase, DPS must receive a letter from the original awarded contractor assigning the order to the new contractor and a letter from the new assignee noting acceptance of the assignment. A copy of the notice must be maintained in the procurement file.

Any name change requires documentation from the original contractor on company letterhead stating the circumstance of the name change and the new name. An authorized representative should sign the letter, showing the change and the effective date. A copy of the assumed name certificate filed with the Secretary of State or a sales tax permit may be obtained as proof of name change. The purchase will issue a letter amending the PO to

change the contractor's name and advise the contractor to contact CPA to set up a new VIN in order to secure payment, if applicable. The purchaser will change the name on the PO file copy and acknowledge the name change.

A buyout or sale occurs when one company purchases another. The contractor of record must have the purchase order and, if applicable, formal contract amended to receive payment when the order is delivered. The contractor of record must send DPS a letter stating the circumstances of the buyout or sale. If the contractor has already ceased operating as a separate business, DPS must obtain a letter indicating the sale of the company to the new contractor. DPS will then issue a letter amending the PO or obtain an amendment to the contract.

When the contractor is requesting to recognize a successor, the Contract Monitor must keep the State's interest in mind. The contractor's successor must be responsible and adequately able to perform the contract requirements. The Contract Monitor must notify P&CS so the purchaser can perform all due diligence to evaluate the proposed new contractor's eligibility and ability to perform. Also, request and review the documents executed by the contractors that constitute the transaction underlying the proposed assignment. All contractor checks must be performed for the successor to ensure the new contractor is in good standing. If the replacement contractor is acceptable, the old and new contractors must sign a novation agreement transferring all rights and responsibilities under the contract to the assignee.

For vendor assignments on service contracts for major information resource projects or contracts involving the storing, receiving, processing, transmitting, disposing or accessing sensitive personal information in a foreign country, DPS must approve of the assignment and notify the LBB and QAT of the proposed assignment at least 14 days before approving or rejecting the vendor's proposed assignment and include a partially executed contract signed by the assignor or proposed assignee. In addition, the assignment must be approved by the DPS Executive Director.

### **13.13 EXTENSION AND RENEWALS**

If a contract has an option to extend or renew, the Contract Monitor must assess whether the option will be exercised by DPS prior to the expiration of the current contract term. Once the determination is made, the Contract Monitor will notify P&CS in writing so that the renewal can be exercised or indicating non-renewal of contract.

Notification of contract extensions to a contract beyond the base term and any optional extensions provided in the contract is required to the LBB at least 30 days prior to execution of the extension. DPS must notify the LBB by uploading the required information to the LBB contract database on a form prescribed by the LBB.

For a contract with a total value over \$5 million, see section 13.19 for requirements prior to extensions and renewals.

### **13.14 FORCE MAJEURE**

Performance may be suspended when the failure to perform is due to excusable causes. An excusable cause must be beyond the contractor's control and without the fault or

negligence of the contractor. Severe weather, although beyond the contractor's control, will not generally constitute an excusable delay if it is not considered "unusually severe weather." If the contractor's performance failure is due to a subcontractor, to qualify as an excusable cause, the default must arise out of a cause beyond the control and without the fault or negligence of either the contractor or the subcontractor. Even if this requirement is met, the cause will not be excusable if the supplies or services to be provided by the subcontractor could have been obtained from other sources in time to meet the contract delivery schedule.

### **13.15 DISPUTE RESOLUTION**

Despite best efforts, there is always the potential for dispute with a contract. Contract Monitors will follow these steps in order to address disputes:

- Identify the problem – many times, what may appear to be a problem can be resolved by providing the contractor with information or clarification;
- Research facts – you should obtain all the information regarding the potential problem from all relevant sources;
- Evaluation – you should review all of the facts in conjunction with the requirements and terms and conditions of the contract. The agency should then determine the appropriate course of action;
- Corrective action – identification of problems early in the performance period, effectively communicating and formalizing the process in writing via a Corrective Action Plan (contract performance is impacted) or less formal written procedure (contract performance could be impacted if not resolved), is essential;
- Include all information related to the informal dispute in the Monitoring of Deliverables Document(s) until the informal dispute is resolved. Resolution must also be reported in the Monitoring of Deliverables Document.

If disputes cannot to be addressed, then notify your assigned Purchaser or the P&CS Quality Management Branch and your management.

### **13.16 TERMINATION FOR CAUSE**

Most contracts expire by their terms without any affirmative action on the part of DPS. There are times where DPS may want to terminate a contract early. Termination of a contract may be accomplished by: mutual agreement, convenience, for cause, or for non-appropriations. When a contract is terminated, the parties are relieved from further unperformed obligations in accordance with the agreed terms and conditions.

#### **13.16.1 TERMINATION BY MUTUAL AGREEMENT**

This occurs when both parties consent to the termination of the contract before the expiration date. The termination may be documented by the exchange of formal written correspondence or as a contract amendment.

#### **13.16.2 TERMINATION FOR CONVENIENCE**

This allows DPS to terminate any contract, in whole or in part, at any time at its sole discretion if it is determined that such termination is in the best interest of DPS. DPS must provide the contractor with written notice specifying whether DPS is terminating

all or part of the contract. The notice of termination must have the date of the termination. If portions of the contract are terminated, DPS will specify which parts of the contract are being terminated. The contract must specify the basis for settlement with the contractor upon a termination for convenience and DPS must follow the contract terms. The contractor will generally be paid for allowable costs incurred up to the date of termination. DPS will not be liable for payment to the contractor related to the terminated portion of the work or any work performed or costs incurred after the effective date of termination. Upon receipt of any invoice from the contractor for work performed prior to the notice of termination, DPS must thoroughly review the invoice to ensure that no excessive costs are included.

### **13.16.3 TERMINATION FOR CAUSE**

This occurs when DPS concludes that the contractor has failed to perform or make progress, or in any way has breached the contract. Termination may not occur even if circumstances permit, if DPS determines it is in the best interest to pursue other alternative and work with the contractor in getting the contract back on track. This determination must be made in consultation with Executive Management and OGC. If a contract is terminated for cause, the contractor is liable for actual damages and costs incurred by DPS unless otherwise stated in the contract. The contractor may be liable for cost associated with re-procuring the goods or services by DPS.

### **13.16.4 TERMINATION FOR NON-APPROPRIATION**

This is also referred to as a “funding out” clause, and must be included in a contract if the contract term will cross fiscal years. DPS is prohibited from incurring obligations in excess of amount lawfully appropriated by the Legislature over the course of a biennium. There is one exception to the prohibition against incurring excess obligations. SPD may determine that a proposed installment purchase arrangement is cost-effective and certify this finding in response to a DPS request. Any certification by SPD related to obligations incurred for the purchase or lease of automated information systems (AIS) equipment may only be made if DPS has a Biennial Operating Plan on file with the LBB, and the plan has been approved by the LBB. Requests for Certifications should be directed to SPD. For CPA to make a certification as required by the General Appropriations Act, the following information must be provided with the purchase requisition and be signed by DPS P&CS Director or designee:

- A statement comparing the anticipated cost savings to be realized through the present acquisition of the equipment versus the outright purchase of the equipment at a later time when adequate funds become available;
- A statement affirming that the ordering entity expects to be able to make payments beyond the current biennium without having to rely on an increased level of general revenue appropriations;
- An estimate of the total anticipated interest charges over the term of the installment contract; and
- A statement indicating that the lease (or installment) purchase is the most cost-effective means of obtaining the needed equipment despite the additional interest cost to the State.

In addition to the above requirements, any purchase agreement subject to this section must contain a clause that enables the agency to cancel the agreement if the Legislature curtails or fails to appropriate money to cover the term of the agreement; this is necessary to prevent any unconstitutional excess obligation. An example of a contract clause is as follows: “Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature.”

#### **13.16.5 PENALTY FOR REQUISITIONING OFFICER OR EMPLOYEE**

If General Appropriations Act, Article IX, Section 6 03 (2017) is violated, the State Auditor must certify the fact of the violation and the amount of the over-obligation to CPA, and CPA will deduct an amount equivalent to the over-obligation from the salary or other compensation due to the responsible disbursing or requisitioning officer or employee and apply the amount to the payment obligation.

#### **13.17 AGENCY REPORTING OF CONTRACTING INFORMATION IN CAPPs**

DPS is required to manage its finances and human resources in a way that supports sound business principles. State law requires all agencies using CAPPs to provide information related to solicitation and contracting according to the requirements that are adopted in rule by CPA. State law also allows for the electronic transfer of compliance requirements from CAPPs to the Comptroller of written justifications, verifications, notification or acknowledgments required by Chapter 2155 Texas Government Code.

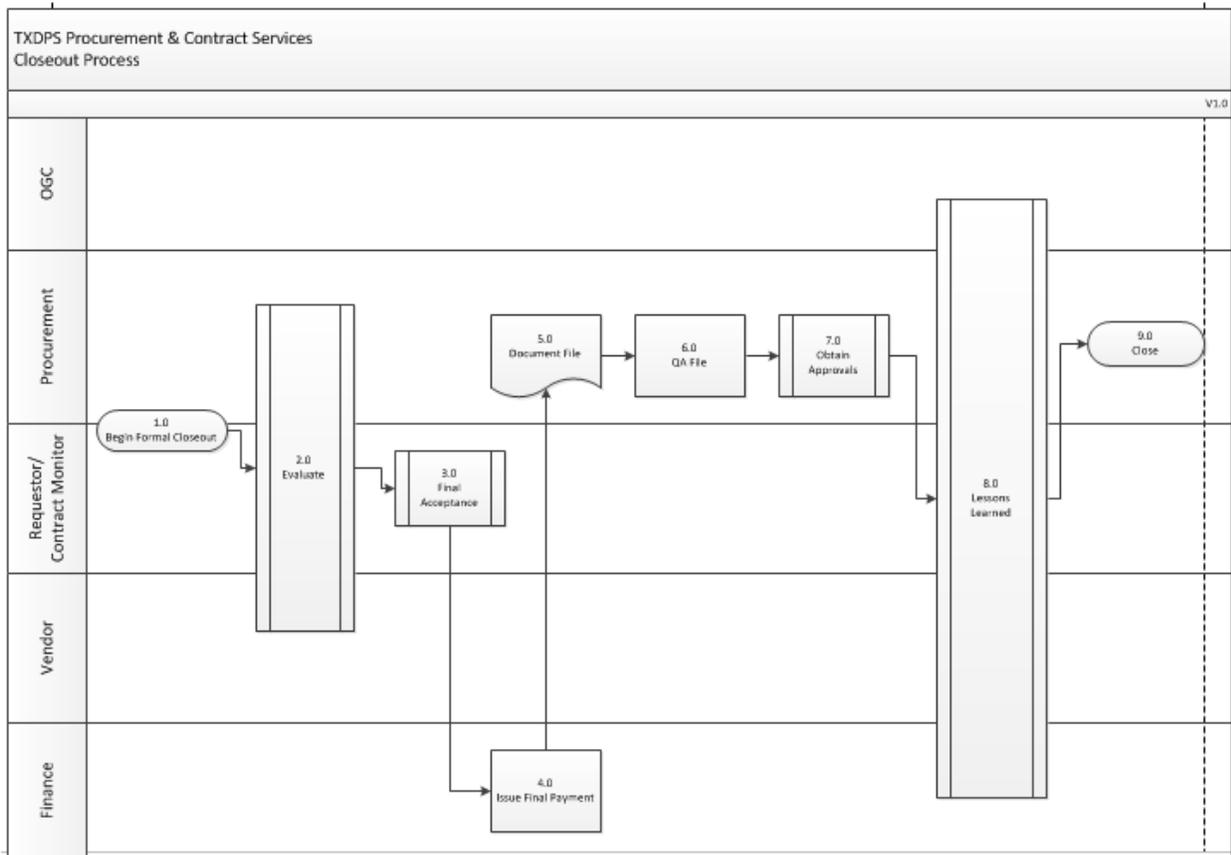
#### **13.18 CONTRACT CLOSEOUT**

The contract closeout process is usually a simple but detailed administrative procedure. The purpose of the process is to verify that both parties to the contract have fulfilled their contractual obligations. Accordingly, contract closeout must be conducted within 30 days of completion of the contract.

As part of contract closeout, the Contract Monitor must compare actual performance against performance measures, goals and objectives, to determine whether all required work has been completed. A contract is completed when:

- all goods or services have been received and accepted;
- all reports have been delivered and accepted;
- all administrative actions have been accomplished;
- all agency-furnished equipment and materials have been returned;
- all property inventory and ownership issues are resolved including
- disposition of any equipment or licenses purchased under the contract;
- final acceptance from the project manager has been received; and
- final payment has been made to the contractor.

The Contract Monitor must also ensure that vendor performance is reported to VPTS and that the contractor is aware of and complies with records retention requirements.



## 13.18.1 CLOSEOUT ROLES & RESPONSIBILITIES

### 13.18.1.1 CONTRACT MONITOR RESPONSIBILITIES

- Responding to recommendations or guidance to address any legal concerns and/or issues;
- Often the Contract Monitor performs responsibilities outlined in the Receiver's role;
- Monitoring to ensure sufficient funds are available;
- Verifying accuracy of invoices and authorizing payments consistent with the contract terms;
- Final Acceptance;
- Complete PPP-6 on Vendor Performance and Submitting to P&CS.

### 13.18.1.2 PURCHASER/CONTRACT SPECIALIST RESPONSIBILITIES

- Advising DPS staff on proper interpretation/application of purchasing policies and regulations;
- Determining if the compensation structure is appropriate for the work;
- Coordinating between legal counsel and the Contract Monitor to address any legal concerns and/or issues;
- Monitoring legal and regulatory requirements pertaining to purchasing;
- Managing, approving, and documenting any changes to the PO or contract or issuing Work Orders;

- Identifying and resolving disputes with vendors in a timely manner;
- Quality control/assurance process;
- Maintaining appropriate P&CS records;
- Documenting significant events;
- Reporting the vendor's performance to [SPD](#);
- Exercising state remedies, as appropriate, when a vendor's performance is deficient;
- Monitoring the P&CS contract file to ensure sufficient funds are available;
- Performing contract closeout process ensuring the P&CS file contains all necessary documentation, formal acceptance documented, and document lessons learned.

#### **13.18.1.3 P&CS DIRECTOR/ASSISTANT DIRECTOR**

- Assisting Contract Specialist with interpretation/application of purchasing policies and regulations;
- Reviewing the compensation structure;
- Ensuring coordination with OGC and Contract Monitor occurred to address legal concerns or issues;
- Reviewing and po or contract changes; and
- Advising on resolving of disputes with the vendor.

#### **13.18.1.4 RECEIVING RESPONSIBILITIES**

Refer to Information in [Section 13.8.2 Receiving Responsibilities](#) for Monitoring Process.

#### **13.18.1.5 CM'S RESPONSIBILITIES**

Refer to Information in [Section 13.6 Contract Monitor's Responsibilities](#) for Monitoring Process.

#### **13.18.1.6 OGC'S RESPONSIBILITIES**

- Guiding and assisting to help ensure Agency is protected;
- Helping to ensure that contracts the Agency enters into are monitorable and measurable;
- Providing "lessons learned" and "post mortem" feedback to determine where we can improve our language to mitigate Agency risk moving forward;
- Identifying opportunities to improve clarity of responsibility and expectations documented in the contract;
- Vetting and recommending Executive Director approval on signed two-party agreements that bind the agency.

#### **13.18.1.7 FINANCE'S RESPONSIBILITIES**

- Ensuring compliance with prompt payment;
- Validating and approve use of funds identified on requisition;
- Validating receipts have been completed before issuing payments;

- Performing two or three-way match before issuing payment.

### **13.19 VENDOR PERFORMANCE REPORTING**

A contractor's performance must be reported to VPTS once a contract with a value of over \$25,000 is completed or otherwise terminated. Vendor Performance Reporting is also **REQUIRED** at various intervals during the performance of a contract. The frequency of a [Vendor Performance Report \(PPP-6\)](#) depends on the activity occurring with the contract.

Contract Monitors must submit PPP-6s:

- At least once a year;
- Upon completion of any major deliverable;
- Upon any negative performance by the vendor at any time during the term of the contract;
- At PO or contract closeout;
- At time of renewal.

In addition to the requirements above, for contracts that exceed \$5 million, the contract may not be extended until the results from the vendor performance report have been submitted to the VPTS.

For information on Vendor Performance Reporting Requirements and how to report Vendor performance, see [Vendor Performance Reporting](#).

Per [Texas Government Code 2155.089](#), a state agency must provide a review of vendor performance at the completion of a contract through the Comptroller's Vendor Performance System.

#### **13.19.1 SCORING A VENDOR**

Vendor performance reporting is important as it can affect the contractor significantly on current and future procurement initiatives, so the Contract Monitor must consider all information collected when scoring a contractor.

If a contractor does not score lower than a "C," comments will not be posted publicly. All comments must be reviewed by agency staff and are typically used to explain low scoring vendors. Comments entered will be retained internally, and can always be requested from the program.

Contractors who do not fulfill the requirements of the contract or that are on corrective action plans must not be given a grade higher than a "C."

DPS requires supporting documentation justifying a grade of D or below be submitted to P&CS along with the Vendor Performance Report. A teleconference will be conducted with the Contract Monitor, Contractor, Purchaser and OGC, when applicable, to review the circumstances that created the negative vendor grade. For grades of D or F, approval must be obtained from the contracting division's Chief to submit the Vendor Performance to SPD. In addition, when issuing a grade of D or F the best value question on the Vendor Performance Report must be answered as no.

### **13.19.2 LETTER GRADE DEFINITIONS**

A – When the vendor significantly exceeded the requirements of the purchase order or contract to the state’s benefit, that any problems with the purchase order or contract were minor, and that corrective actions taken by the vendor to address such problems were highly effective. If the best value standard was used to award the purchase order or contract, an “A” means that the vendor satisfied that standard.

B - When the vendor exceeded some requirements of the purchase order or contract to the state’s benefit, that any problems with the purchase order or contract were minor, and that corrective actions taken by the vendor to address such problems were effective. If the best value standard was used to award the purchase order or contract, a “B” means that the vendor satisfied that standard.

C – When the vendor met the requirements of the purchase order or contract and that corrective actions taken by the vendor to address minor problems were satisfactory. If the best value standard was used to award the purchase order or contract, a “C” means that the vendor satisfied that standard but that the vendor’s performance did not merit an “A” or “B.”

D – When the vendor did not meet some of the requirements of the purchase order or contract, that problems with the purchase order or contract were serious, and that corrective actions taken by the vendor to address such problems were only marginally effective or not fully implemented. If the best value standard was used to award the purchase order or contract, a “D” means that the vendor did not satisfy that standard.

F – When the vendor did not meet the requirements of the purchase order or contract, that problems with the purchase order or contract were serious, and that corrective actions taken by the vendor to address such problems were ineffective. If the best value standard was used to award the purchase order or contract, an “F” means that the vendor did not satisfy that standard.

### **13.19.3 INTERPRETING EXISTING VENDOR SCORES**

Contract Developers and evaluation committees must use vendor performance scores during the evaluation process. Contract developers must read the reports in order to make a determination based on the notes left by reporting agencies utilizing the vendor being evaluated, must just limit the review to the evaluation scores from the current solicitation. There is a difference between the report score and the vendor score.

The report score is the score an agency assigns for a particulate report.

The vendor score is the score calculated by averaging all of a vendor’s report scores to provide an overall vendor score. Vendors receive an overall grade that considers both historical reports and new reports.

## **13.20 RECORDS RETENTION**

Aside from the responsibility of maintaining the contract file, the Contract Monitor, Purchaser or designated DPS employee is responsible for ensuring that contract documents

are retained by the agency for the appropriate amount of time as determined by applicable law and the agency's records retention schedule.

Solicitation documents that are electronic documents must be retained in their original electronic format.

The Texas State Records Retention Schedule (RRS) must be read in conjunction with statute enacted in 2015 which requires an agency to retain its contract records until the seventh anniversary of the later date of (1) the contract completion or expiration or expires, or (2) the resolution of all issues that arose from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents. (Texas Government Code 441.185)

- If the contract was executed on or after September 1, 2015, most documents in the contract file will have a minimum retention period of AC +7 years (after close of contract plus seven years)
- If the contract was executed before September 1, 2015, then the minimum records retention period is AC+4 years (after close of contract plus four years).

A state record must not be destroyed if any litigation, claim, negotiation, audit, public information request, administration review, or other action involving the record is initiated; all action involving the record must be completed and all issues arising from the action resolved before a state record may be destroyed.

#### **13.20.1 CONTRACT REPOSITORY**

All Major POs and all Contracts will be stored in the Major Contracts Library. P&CS is responsible for ensuring the initial contract or Major PO is loaded in the library upon award. Additionally, P&CS is responsible for ensuring that all amendments, modifications, monitoring reports, vendor performance reports, and POCNs are loaded and that all data elements included in the contract library are updated upon change.

Contract Monitors are responsible for checking the library, validating that all information for their contract or Major PO is correct and up-to-date and reporting any discrepancies to [Procurement@dps.texas.gov](mailto:Procurement@dps.texas.gov).

#### **13.21 POST-PAYMENT AUDITS**

The CPA performs audits on documents submitted to the Uniform Statewide Accounting System (USAS). DPS is audited for compliance with certain state laws and rules concerning payroll, travel, purchase and procurement and with the processing requirements of Centralized Accounting and Payroll/Personnel System (CAPPS), USAS, the Uniform Statewide Payroll/Personnel System (USPS) and the Standardized Payroll/Personnel Reporting System (SPRS). DPS will supply the complete purchasing package applicable to each Purchase Category Code for purchases in the audit. Items determined to be exempt from competitive bidding must include the legal citation exempting the purchase.

The times identified in the chart below are the times necessary to complete the associated tasks.

Task	Activity	Medium	Description	Responsibility	Typical Duration
1	Begin Formal Closeout	Email	1.A Contract Monitor notifies Purchaser of Readiness for Contract Closure 1.B Procurement Notifies Contract Monitor of expiration of Purchase / Contract Term.	Contract Monitor	1 Day
2	Evaluate	Emails, Meetings, Documentation, CAPPS, Contracts Library	2.A Contract Monitor validates that all deliverables have been met 2.B Purchasing Lead reviews files and documentation to obtain any additional needed information or clarifications from Contract Monitor and/or Vendor.	Purchasing Lead / OGC	1-5 Days
3	Final Acceptance	Emails, Signature (if applicable), CAPPS	3.1 Approve Final Acceptance of Purchase / Contract 3.2 Submits any outstanding receipts and provides signed Final Acceptance Document if applicable 3.3 Provide Vendor Performance Report.	Contract Monitor	1 Day

Task	Activity	Medium	Description	Responsibility	Typical Duration
4	Issue Final Payment	CAPPS	Finance Issues Final Payment if Applicable.	Finance	Within 30 days of receipt of Final Deliverable *dependent on completion of receipt
5	Document File	Email	5.1 Purchasing documents file with any needed documentation per state purchasing rules and Guide guidelines 5.2 Purchasing works with Contract Monitor to obtain any documents needed for file.	Procurement Lead	1-5 days
6	QA File	CAPPS	Quality Assurance is performed to ensure file contains all necessary documents and/or that file is documented to account for any non-required elements.	Procurement Lead	1-5 days
7	Obtain Approvals		Purchasing obtains approvals from P&CS management to close file.	Procurement Lead	1-3 Days

Task	Activity	Medium	Description	Responsibility	Typical Duration
8	Lessons Learned	Email, Meetings, Surveys	Purchasing conducts Lessons Learned with Contract Monitor, Stakeholder Divisions, OGC, Finance, and Vendor as necessary to capture feedback to feed continuous process or performance improvements.	Procurement Lead	1-3 Days
9	Close	CAPPS, Contracts Library	File is closed and marked Inactive	Procurement Lead	1 Day

### 13.21.1 CONTRACT FILES

Procurement & Contract Services will be responsible for maintaining an official contract file for all contracts that include the request, solicitation, responses, scoring, BAFO, award documents, corrective actions, contract monitor reports, and change documents. In addition, DPS will include in the file a checklist to ensure compliance with state laws and rules relating to the acquisition of goods and services by DPS. The checklist must be based on the checklist developed and maintained by the Comptroller and address each stage of the procurement process and must include a description of the following:

The documents that are required to be maintained during each stage of the procurement process; and the procedures and documents that are required to be completed during the following stages of the procurement process:

- contract solicitation development;
- contract formation and award; and
- contract management.

Before DPS awards a contract to a vendor, the P&CS Director or P&CS Contract Manager must:

- review the contents of the contract file for a copy of the contract or award notice, checklist, and all documents required by state law and DPS rules to ensure presences and completeness in the file; and

- certify in a written document to be included in the file that the review was completed.

The Contract Monitor is responsible for maintaining a working file that captures documents pertaining to the contract, issues, changes, risks, expenditures, invoices, payments, and correspondence and being able to provide that file on request by P&CS.

### **13.21.2 POSTING CONTRACTS AND CONTRACT DOCUMENTS**

DPS will also comply with all procurement and contract posting requirements, including those described by Sections [656.047](#), [2157.0685](#), [2261.252](#), [2261.253](#), and [2261.256](#) of the Texas Government Code. P&CS will be responsible for this compliance.

## **13.22 STANDARD OPERATING PROCEDURES**

The following Standard Operating Procedures relate to information contained in this section of the DPS Procurement and Contract Management Guide. Other SOPs are contained in other sections of the guide. For a link to the DPS SOPs, please see [Section 16.2.3 STANDARD OPERATING PROCEDURES](#).

### **13.22.1 CHANGE MANAGEMENT AND DOCUMENT CONTROL SOP 15-0004**

This procedure provide the formal process to ensure quality control and instruction for Change Management procedures. A formal written change request must be submitted for all changes and formal written approval of all changes must be obtained prior to the change occurring.

### **13.22.2 MANAGING SOLICITATION AND CONTRACTUAL CHANGE SOP 15-0006**

Provides a standardized formal process to ensure quality control and instructions for Change Management procedures. Formal written change request must be submitted for all changes and formal written approval of all changes must be obtained prior to the change occurring. Change Management procedures are for Amendments, Addendums, Change Orders and Change Order Request Forms.

### **13.22.3 RISK MANAGEMENT SOP 15-0020**

This procedure provides instructions for identifying and managing risks as well as how to complete the risk assessment tool. The nature and level of risk associated with each procurement or contract varies depending on the nature of the business and key factors.

### **13.22.4 PURCHASE ORDER & CHANGE ORDER OVERAGE SOP 15-0027**

This provides P&CS instructions to apply to the 10% tolerance threshold allowed for Purchaser Order and Change Orders.

### **13.22.5 CANCELLATION OF PURCHASE ORDERS AND CONTRACTS SOP 15-0028**

This provides instructions for canceling awarded purchase orders/contracts. The P&CS Director must be notified in writing via email of every cancellation regardless of the reason.

#### **13.22.6 POST-AWARD DEBRIEFING SOP 15-0030**

This provides instructions that apply to facilitating post-award debriefing meetings.

#### **13.22.7 DPS MAJOR CONTRACT LIBRARY SOP 15-0081**

The Major Contracts Library is the centralized repository to track and monitor contracts, modifications, amendments, the Contract Monitor, the Contract Administrator/Procurement Lead, etc. throughout the life of the contract.

#### **13.22.8 CONTRACT ADMINISTRATION SOP 15-0083**

This provides instructions for the contract administration responsibilities and established clear levels of contract management accountability between the Contract Administrator (Purchaser), the Contract and Quality Management Branch for P&CS and the Contract Monitor.

#### **13.22.9 CORRECTIVE ACTION PLAN SOP 15-0084**

This provides instructions for submission of a Corrective Action Plan (CAP) by P&CS personnel. DPS is required to ensure that issues impacting performance of a contract are resolved.

#### **13.22.10 DISPUTE RESOLUTION PROCESS SOP 15-0085**

This provides instructions for the dispute resolution process. DPS is required to ensure that issues impacting performance of a contract are resolved. The objective of this process is to resolve problems before they escalate and avoid escalation of problems to the next level and ensure the agency has not exacerbated potential problem.

#### **13.22.11 VENDOR PERFORMANCE REPORTS SOP 15-0101**

DPS is required to report vendor performance per Texas Government Code §2262.055 and 34 Texas Administrative Code (TAC), §20.115 on any purchase over \$25,000. The Vendor Performance Tracking System provides the state procurement community with a comprehensive tool for evaluating vendor performance to reduce risk in the contract award process. The VPTS tracks exceptions and satisfactory and unsatisfactory vendor performance using Letter Grades, as outlined in this procedure.

## 14. SOURCE GUIDES

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The following are additional source guides for this handbook:

[DPS General Manual](#)

[Historically Underutilized Business \(HUB\) Program](#)

[State of Texas Procurement and Management Guide Rev. 1.2](#)

[Texas Comptroller Manual of Accounts](#)

## 15. ACRONYMS, TERMS, AND DEFINITIONS

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### A

**Active Franchise Tax Account Status:** The organization's right to transact business in the State of Texas is intact as determined by the Comptroller of Public Accounts Franchise Tax Account Status Database.

**Acquisition Plan (ACP):** A plan that addresses activities for solicitation planning, development and posting, source selection, contract award, contract management and contract closeout.

**Acquisition Schedule (ACS):** The timeline that accompanies the acquisition plan.

**Addendum:** An addition, change, or supplement to a solicitation document posted to the Electronic State Business Daily prior to the solicitation's original closing date.

**Administrative Review:** When P&CS personnel open and record all the bids, proposals, or responses received by the closing date and time. This review is conducted to ensure minimum qualifications are met in order to determine vendor's responsiveness to the posted solicitation. Only the P&CS Director or the DPS HUB Coordinator may deem a vendor's response as non-responsive. Refer to the [Solicitation Responsiveness Check List](#) for specific instructions.

**Advance Payment:** The payment for goods or services before their delivery to the agency, Refer to Early Payment.

**Advertise:** To make a public announcement of the intention to purchase goods or services.

**Advisory Member:** Member of the Public Safety Commission (PSC), as designated by the PSC.

**Agreement:** An agreement written by DPS's Office of General Counsel and vendor.

**Amendment:** Written addition or change to a contract.

**AOBJ:** Agency Object (of Expense Code)

**AP:** Accounts Payable

**Appropriation:** Legislative authorization to expend public funds for a specific purpose.

**Approval Path:** A process to ensure that documents, forms, or relative information is routed to necessary parties and stakeholders for approval.

**ARO:** After Receipt of Order

**ASME:** American Society of Mechanical Engineers

**Assignment:** Transfer of contractual rights from one party to another party.

**ASTM:** American Society for Testing and Materials

**Automated Information System (AIS)** – An abbreviation for Automated Information Systems (AIS) which is denoted by an asterisk (\*) on the NIGP Class and Item Code index for products or services that have an information technology or telecommunications component. AIS products and services are under the authority of DIR and must be purchased from a DIR vendor unless an exemption is obtained.

**Award:** The act of accepting a bid, thereby forming a contract between the state and a bidder.

**AY:** Appropriations Year

## **B**

**BA:** Budget Analyst

**BAFO:** Best and Final Offer

**Best Interests of the State:** Most advantageous to the state in light of all relevant circumstances.

**Best Value:** The lowest total price at the highest quality.

**Bid:** an offer to contract with the State, submitted in response to an IFB.

**Bid Bond/Deposit:** A deposit required of bidders to protect the State in the event a low bidder attempts to withdraw its bid or otherwise fails to enter into a contract with the State.

**Bid Tabulation:** The recording of bids and bid data submitted in response to a solicitation. The bid tabulation is used for comparison, analysis, and record keeping.

**Bidder:** An individual or entity that submits a bid. The term includes anyone acting on behalf of the individual or entity that submits a bid, such as an agent, employee and representative.

**Bidders List:** A list of vendors that have expressed an interest in doing business with the State.

**Bid Sample:** A sample required to be furnished as part of a bid, for evaluating the quality of the product offered.

**BI:** Bodily Injury (insurance)

**Biennium:** For the State of Texas, the period of 24 consecutive months, beginning September 1 of each odd-numbered year. Example September 1, 2019, through August 1, 2021.

**Bill of Lading (BOL):** Document issued by a carrier identifying merchandise and transportation details.

**Blanket Bond:** A performance bond that insures a respondent's performance on two or more contracts in lieu of separate bonds for each contract.

**Blanket Order:** A purchase order to a contractor for a specified time period, specific product and an estimated minimum quantity; with actual delivery to only occur in conformance with subsequent authorization(s) by the ordering entity. Use of minimum estimated call out quantities is advised for this type of order.

**BLS:** Bureau of Labor Statistics (this is a federal agency.)

**BOM:** Bill of Materials

**BOP:** Biennial Operation Plan

**Brand Name:** A trade name or product name which identifies a product as having been made by a particular manufacturer.

**Breach of Contract:** Failure to perform a contractual obligation.

## C

**CAO:** Contract Administration Office

**Capital Asset:** Assets with an initial cost meeting the thresholds established by the Comptroller's office and with an estimated useful life in excess of one year. For more information, see [Capitalization Thresholds](#)

**CAPPS:** Centralized Accounting and Payroll/Personnel System

**CCTS:** Capitol Complex Telephone System

**CDD:** Contract Deliverables Document

**Centralized Master Bidders List (CMBL):** List used by state purchasing entities to develop a mailing list for vendors to receive bid opportunities based on class and item code, as well as zip code. The CMBL provides vendor detail such as the tax identification number, name, address, contact information, business description, catalog information, CBML and HUB status, and vendor performance scores of prospective bidders. Unless exempted by law, the CMBL must be used for all procurements subject to SPD procurement authority.

**CFR:** Code of Federal Regulations

**Change Order (CO):** Document utilized to capture customer and job information summarizing labor and/or materials used to complete the task or job

**Change Order Plan:** Document utilized to capture customer and job information summarizing labor and/or materials used to complete the task or job.

**Change Management:** Purchaser and Contract Monitor coordinate with the vendor on any proposed changes.

**Class and Item:** The classification system found in the NIGP Commodity Book.

**CNA:** Central Nonprofit Administration

**COI:** Certificate of Insurance

**Commodity:** Generally, the term means supplies, materials or equipment.

**Communication Technology Services Contracts (CTS):** Contracts which provide telecommunications, voice, data video and internet services; utilizing the statewide communication network.

**Competitive Bids:** Advertising an IFB, conducting a public bid opening, and awarding of a purchase order/contract to the lowest responsive, responsible bidder in accordance with state law.

**Competitive (Brand Specific):** Specific products which are available for purchase through multiple dealers or distributors.

**Competitive Sealed Proposals:** Advertising a RFP, the evaluation of submitted proposals and awarding of the contract.

**Competitive Sealed Offers:** Advertising a RFO, the evaluation of submitted proposals and awarding of the contract.

**Competitive Solicitation:** The process of inviting and obtaining responses from competing vendor in response to advertised competitive specifications, by which an award is made based on best value. The process contemplates giving potential vendors a reasonable opportunity to compete, and requires that all vendors be given the same opportunity. Each respondent must respond to the same advertised specifications, terms, and conditions.

**Competitive Specifications:** A specification state in such a manner that two or more vendors can meet the specifications on a level playing field.

**Confirmation Order:** A purchase order issued to a contractor, listing the commodities and terms of an order placed verbally or otherwise, in advance of the issuance of the purchase order. The original date and contractor's representative's name should be included on the order. It is recommended the purchase order include the following statement: "Confirmation Order – Do Not Double Ship."

**Conflict of Interest (COI):** A situation in which a public official or employee who, contrary to the obligation and absolute duty to act for the benefit of the public, exploits a relationship for personal benefit.

**Consultant:** A person who provides or proposes to provide the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. Does not include the federal government, a state agency or a state governmental entity.

**Consulting Services:** The service of studying or advising a state agency under contract that does not involve the traditional relationship of employer and employee.

**Consumable Procurement Budget:** That portion of an agency's budget as identified by Comptroller expenditure codes attributable to consumable supplies, materials and equipment.

**Contract:** A written document referring to promises or agreements for which the law establishes enforceable duties and remedies between a minimum of two parties. An original Contract, Amendment, Modification, Extensions, Purchase Order, Interagency Agreements, Interlocal Agreements, Intercooperative Contract, and Memorandum of Understandings are all considered contracts.

**Contract Administrator:** The P&CS procurement lead responsible for facilitating the process to ensure compliance with the procurement and contract management laws, policies, and guidelines. Contract Administrator is used interchangeably with Purchaser.

**Contract Advisory Team (CAT):** For any major solicitation with an estimated total value of \$5 million or more, inclusive of all optional renewal periods, DPS is required to send the solicitation document to include any documentation incorporated by reference as part of the solicitation to SPD for review prior to advertising the solicitation.

**Contract Monitor (CM):** An individual designated by their Assistant Director to monitor the daily activities of the vendor, receive services and goods, and coordinate stakeholder feedback/input.

**Contract Development:** The term applies to actions taken prior to contract execution, including the receipt and processing of requisitions, assessment of need, development and review of specifications, development and review of scopes of work, identification and selection of procurement methods, identification and preparation of evaluation criteria, preparation of and advertising solicitation documents, tabulation of respondent bids, evaluation of respondent proposals, negotiation of proposals, and the preparation and completion of contract award documents. The term does not include invoice or audit functions.

**Contract File:** The physical file containing the original, executed contract, as well as any amendments, correspondence, or other contract-related artifacts (also known as the Procurement file).

**Contract Review Board (CRB):** Contract Review Board was established by the Public Safety Commission to fulfill the oversight requirements for DPS. The CRB reviews significant procurements and contract to help ensure efficiency, effectiveness, and best practices. Procurements meeting any of the following must be reviewed by the CRB: New contracts valued at \$1 million or more, including all available renewal options; Contract amendments that increase the value of the original contracts by 25% or more; or Contract amendments valued at \$500,000 or more. Please see the CRB Charter for additional information.

**Contractor:** A business entity or individual that has a contract to provide goods or services to the State.

**Controlled Assets:** Assets that must be secured and tracked in the SPA system; asset's value is below the capitalization threshold and is not depreciated or reported on the balance sheet. For more information, see the [SPA Guide](#).

**CO-OP:** Cooperative Purchasing Program

**Cooperative Purchasing:** a program for qualified entities to use the SPD or DIR contract resources.

**Corrective Action Plan (CAP):** A Corrective Action Plan is a narrative of steps identifying actions that can be implemented to correct the problematic situation.

**Cost-Reimbursement Contract:** A contract under which reasonable costs incurred by a contractor in the performance of a contract are reimbursed in accordance with the terms of the contract. These contracts establish an estimate of the total cost for the purpose of obligating funds and establishing a ceiling that a contractor may not exceed without the approval of DPS.

**COTS:** Commercial Off the Shelf

**CPA:** Comptroller of Public Accounts

**CPI:** Consumer Price Index

**CPO:** Chief Procurement Officer

**CRB Chair:** The Chief – Infrastructure Operations Division serves as the committee chair, a non-voting executive board member.

**CRB Charter:** A document approved by the PSC that governs the guidelines and rights of the Executive CRB and the full CRB.

**CRB Criteria:** Predefined criterion set forth by the PSC, which is used to identify procurements and contracts that require additional oversight and approval.

**CRP:** Community Rehabilitation Program

**CS:** Contract Specialist

**CTCD:** Certified Texas Contract Developer

**CTCM:** Certified Texas Contract Manager

## D

**D&B:** Dunn & Bradstreet Business Information Report

**Debarment:** An exclusion from contracting or subcontracting with state agencies on the basis of any cause set forth in statute or SPD rules, commensurate with the seriousness of the offence, performance failure, or inadequacy to perform.

**Decision Memorandum (DM):** A justification letter submitted by end users; required for proprietary purchases over \$5,000, which explains how a product or service is proprietary, or for emergency purchases that indicates the nature of the emergency, the estimated impact of failing to use the emergency process and vendor information.

**Delegated Purchase:** A purchase made by an agency under the authority of the SPD / DIR subject to SPD/ DIR rules and procedures.

**Deliverable:** A unit or increment of work required by the contract, including such items as goods, services, reports, or documents.

**Deliverables-Based IT Services (DBITS):** Project focused, deliverables based information technology services from DIR master contracts. DBITS contracts are for project related services for a specified time period. DBITS contracts should not be used for long-term services. Click here for a [Full List of DBITS Descriptions and Examples](#).

**Department of Information Resources (DIR):** For procurements under DIR authority, DPS is required to send the Statement of Work to DIR for review, prior to advertising the solicitation, for any service related purchase above \$50,000.

**DIR Blanket Exemption:** A pre-approved list of products and services, under certain class and commodity codes, that grants state agencies the right to procure products and services from non-DIR vendors. The [DIR Blanket Exemptions](#) do not require coordination through P&CS.

**DIR Contracts:** Per the 79<sup>th</sup> Texas Legislature (HB 1516), DIR negotiates favorable prices for information technology commodities based on aggregate demand.

**DIR Cooperative Contracts:** Contracts for technology products and services including hardware, software, staffing services, maintenance, technology training, DBITS, and managed services

**DIR Exemption:** A process that allows a state agency to procure Technology-based products or services, utilizing an avenue other than a DIR contract. This one-time exemption must be coordinated through the purchaser.

**Discount-From-List:** Unit prices that are based on a discount from a manufacturer's published price list. Ordering entity can validate the discount price by reviewing the price list or catalog from which the price reduction is figured.

**Document Development Library:** A library hosted on the P&CS SharePoint site, utilized for reviewing and revising documentation in real time.

**DPS Major Contracts Library:** A SharePoint contract repository, maintained by P&CS personnel, which tracks all two-party contracts (regardless of the dollar amount), including Memorandums of Understanding. Effective September 1, 2015, all major purchase orders must be included in the contracts library for formal monitoring.

**DPS (also referred to as Agency):** Department of Public Safety of the State of Texas

**DO:** Delivery Order

**DCS:** Data Center Services (DIR)

## E

**Early Payment:** The payment for goods or services after receipt but earlier than the payment due date set forth in Section 2251.021 of the Texas Government Code.

**Early Payment Discount:** A discount, from the purchase price allowed to the agency in payment is made within a specified period.

**EIR:** Electronic Information Resources

**Electronic State Business Daily (ESBD):** The electronic marketplace where State of Texas bid opportunities over \$25,000 are posted for access to the vendor community.

**Emergency Purchase:** Emergency is defined as a situation requiring the agency to make the procurement more quickly to prevent a hazard to life, health, safety, welfare, or property.

**End User:** An individual designated to monitor the daily activities of the vendor, receive goods and services, and coordinate stakeholder feedback/input.

**EOF:** Economic Opportunity Forums (HUB)

**EPN:** Enterprise Project Number

**Equivalent Product:** A product that is comparable in performance and quality to the specified product.

**ERP:** Enterprise Resource Planning

**Escalation Clause:** A clause in a contract providing for a price increase or decrease under certain specified circumstances.

**Ethics:** The rules, standards of conduct, moral principles, or values that govern the conduct of a person, group, or the members of a profession.

**Evaluation Committee Guide (ECG):** The plan used to document the process of selecting a vendor to perform the required work, goods, or services.

**Evaluation Criteria:** The criteria of which a proposal will be evaluated.

**Excluded Parties List System (EPLS):** A comprehensive electronic list of individuals and entities excluded by federal government from receiving federal contracts or subcontracts and from certain types of federal financial and/or nonfinancial benefits.

**Executive Contract Review Board (ECRB):** Executive Contract Review Board is made up of the Assistant Chief of Finance, Office of General Counsel Contracting Managing Attorney, and Chief of Infrastructure Operations Division. The ECRB reviews DPS's proposed procurements and contracts with an estimated value of \$500,000 or more; modifications to contract with an estimated value of \$500,000 or more; and any staff augmentation services procurement

requests, regardless of contract value. ECRB approval occurs prior to the item being routed to P&CS to be processed. ECRB may also designate a procurement as needing to be managed as an Enterprise Project.

**Executive Members:** A representative from the Office of General Counsel (OGC) and a representative from Finance.

**Executive Sponsor:** The requesting Division Chief.

**Expedited DIR Exemption Request:** A state agency may submit an expedited exemption request, which DIR will process within three business days. This request must include the Exemption Request Form accompanied by a statement from the agency head, or his/her designee, describing the situation and the reasons for the expedited review. To ensure that expedited exemption requests are evaluated in a timely manner, the requesting state agency should submit the Exemption Request Form and statement from the agency head to DIR (ATTN: EXPEDITED EXEMPTION REQUEST) electronically. It is the state agency's responsibility to follow up to ensure DIR's receipt of the request form.

## F

**Family Member:** An immediate family or a person within the second degree by affinity or consanguinity. This includes a person's mother, father, son, daughter, brother, sisters, grandparents, grandchildren, uncles, aunts, nieces, nephews, and first cousins.

**FAR:** Federal Acquisition Regulation

**Fiscal Year (FY):** The period of 12 consecutive months, beginning September 1 of each year and ending August 31 of the next year.

**FOB:** Free on Board

**FOIA:** Freedom of Information Act (federal)

**FSPP:** Federal Surplus Property Program

**Fully Executed SOW:** A contract that has been signed by DIR, Vendor, and the requesting agency.

## G

**General Appropriation Act (GAA):** Act overseen by the Legislative Budget Board. An appropriations bill is legislation in the Texas Legislative to appropriate state funds to specific state government departments, agencies and programs. The money provides funding for operations, personnel, equipment and activities.

**GCI:** General Contract Information (Texas SmartBuy Contracts)

**Goods:** The term means supplies, materials or equipment.

**Governing Body:** Per HB 1295, a member of the governing body includes the Commissioners, Executive Director, General Counsel, Chief Procurement Officer, or the Procurement Director

**Grant:** An award of financial assistance, including cooperative agreements, in the form of money, property in lieu of money, or other financial assistance paid or furnished by the state or federal government to carry out a program in accordance with rules, regulations and guidance provided by the grantor agency.

**GSA:** General Services Administration (federal agency)

## H

**HSP:** HUB Subcontracting Plan

**Historically Underutilized Business (HUB):** A for-profit business that is at least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman and/or Service Disabled Veteran, who reside in Texas and actively participate in the control, operations and management of the entity's affairs. HUBs can be found through the CMBL and HUB search portal; however, HUBs are not required to be registered on the CMBL.

**HUB Directory Search:** The HUB Directory specifically locates active HUB vendors regardless if the vendor is a registered on the CMBL. This search is used to augment the CBML vendor pool to increase competition as well to support a good faith effort to locate HUB vendors per the state law requirements.

## I

**IAC:** Interagency Cooperation Agreement

**ICT:** Information Communication Technology

**IFB:** Invitation for Bids

**Incumbent Vendor:** The current contract holder, current vendor performing the services or providing the goods.

**Informal Solicitation:** An unsealed, competitive solicitation used to obtain offers submitted verbally or in writing for purchases with a value of \$15,000 or less.

**Inspection:** Examination and/or testing of merchandise to determine whether it has been received in the proper quantity and condition and to verify that it conforms to the applicable specifications.

**Inspections Report:** A report made as a result of the agency's inspection, informing the buyer of a product's compliance with advertised specifications.

**Interlocal Contract:** Written understanding between local government entities, a local government entity and a federally recognized Indian Tribe, or local government entity and a

state agency of Texas of another state as authorized by Chapter 791 of the Texas Government code.

**Invoice:** Document from a contractor requesting payment for goods delivered and/or services rendered.

**ISO:** International Standards Organization

**IT:** Information Technology

**IT Commodity Item:** Commercial software, hardware, or technology services, other than telecommunications services, that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more agencies. The term includes seat management, through which an agency transfers its personal computer equipment and service responsibilities to a private vendor to manage the personal computing needs for each desktop in the agency, including all necessary hardware, software, and support services.

**ITSAC:** Information Technology Staff Augmentation Contracts

**IT Staffing Services:** Temporary IT staff augmentation services on an hourly basis and is expected to remain in a position only for a certain period of time. The employment term may be based on the completion of a project, until a vacant position is filled, contingent on the availability of funding, or other circumstances.

**IT Statement of Work (IT SOW):** A document that states the requirements for a contract for certain services, including deliverables, performance specifications and other requirements that are not specified in a contract awarded under ICT Cooperative contracts greater than \$50,000.

**IT Services:** All the services, functions, and activities that facilitate the design, implementation, creation, or use of software or hardware. The term includes seat management, training, maintenance and subscription services. The term does not include Telecommunications Services.

**ITV:** Interagency Transaction Voucher

J

K

L

**LAR:** Legislative Appropriations Request

**Late Response:** A response that is received after the date and time established for receipt of responses to a solicitation.

**LBB:** Legislative Budget Board

**LBB Major Contracts Database:** A database maintained on the LBB website for all agency major contracts, as defined in section 322.020 of the Texas Government Code (GC), located at: [LBB Contracts Database](#)

**Lease Purchase:** An installment sale which gives the lessee the right to purchase equipment or other fixed assets at an agreed upon price under certain conditions. Title passes from seller to agency in and at the time the option to purchase is exercised.

**Life-Cycle Costs:** A procurement technique which considers operating, maintenance, acquisition price, and other costs of ownership in the award of contracts to ensure that the item acquired will result in the lowest total ownership cost during the time the item's function is required.

**Liquidated Damages:** A specified contract provision that entitles the State to demand a set monetary amount determined to be a fair and equitable repayment to the State for loss of service due to contractor's failure to meet contract requirements.

**Local Government:** A county, municipality, school district, special district, junior college district, or other legally constituted political subdivision of the State.

**Long-Term:** One or more years

## M

**Major Acquisition Plan:** A detailed solicitation plan for procurements classified as High complexity per the [Procurement Timeline](#).

**Major Contract:** A two-party contract with a total value of \$1 million or more including renewal options and has a risk score factor classification of Important or High.

**Major Consulting Services Contract:** A consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000.

**Major Purchase Order (MPO):** A PO with a "High" or "Important" risk classification, the total value of the PO (including optional renewals) is \$1 million or more; Staff Augmentation PO, or the PO is based on a Time and Materials fee and payment structure.

**Managed Contract:** A SPD Tem Contract that cannot be processed through Texas SmartBuy. The purchase order is prepared by the agency, referencing the contract number and pricing, and sent directly to the contractor.

**Manufacturer's Price List:** a price list published in some form by the manufacturer and available to and recognized by the trade. The term does not include a price list prepared especially for a particular solicitation.

**MAS:** Multiple Award Schedule

**MCL:** Major Contracts Library

**MFG/MFR:** Manufacturer

**Milestone:** An action or event marking a significant change or stage in development.

**Mini Acquisition Plan:** A basic solicitation plan for procurements classified as Low or Medium complexity per the [Procurement Timeline](#).

**Minor Technicality:** A requirement in a solicitation which, if waived or modified by the agency when evaluating responses, would not give a respondent an unfair advantage over other respondents or result in a material change in the contract.

**MIRP:** Major Information Resources Project

**MOA:** Memorandum of Agreement

**MOLA:** Master Operating Lease Agreement

**MOU:** Memorandum of Understanding

**Multiple Award Contract Procedure:** A purchasing procedure by which SPD establishes one or more levels of quality and performance and makes more than one award at each level.

## N

**NASPO:** National Association of State Procurement Officials

**National Institute of Governmental Purchasing (NIGP):** The national organization created to promote ethical, efficient, and cost-effective public purchasing policies and practices. NIGP provides educational programs, products and services for public purchasing personnel and enables public purchasing personnel to exchange useful information about policies, practices, procedures, products, and services of common interests.

**Negotiations:** A consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. In a contractual sense, negotiation means the “dealing conducted between two or more parties for the purpose of reaching an understanding.”

**Nepotism Disclosure Form:** A form which requires purchasing and agency personnel to disclose information regarding certain relationships with, and direct or indirect pecuniary interests in, any party to a major contract (valued over \$1 million) prior to the award of the contract

**NIGP Code Search Engine:** A web-based tool that allows end users access to the most current version of the NIGP Code. The search engine allows for a specific code search, drill-down, or a keyword search.

**NIGP Commodity Codes:** Commercially available hardware, software, and technology services. The National Institute of Governmental Purchasing (NIGP) class and item codes for IT commodities are annotated with an asterisk (\*). The [NIGP Commodity Book](#) should be referenced to confirm that the purchases falls within DIR’s purchasing authority.

**NOA:** Notice of Award

**Non-Compliant Purchase:** A commitment of agency funds or allowing the agency to receive benefit that would reasonably require commitment of agency funds by an employee without proper authorization from P&CS. Non-compliant purchases include circumstances beyond the agency's control, and are also referred to as "unauthorized purchases."

**Non-Compliant Memorandum:** A document used to notify a responsible employee's immediate supervisor of a non-compliant purchase and to request a written response within 48 hours in order to process payment

**Nondisclosure Agreement (NDA):** Legal document that certifies the party involved in the evaluation and award of a particular contract to disclose employment, any compensation from, recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service from or in connection with any potential vendor. The agreement requires that the contract information is kept as confidential material, knowledge or information on the of the contract details is restricted to those that have executed an agreement.

**Non-Major Contract:** A two-party contract with a risk score factor classification of Low or Moderate.

**Non-Major Purchase Order:** A PO with a risk score factor classification of Low or Moderate and does not meet the criteria of a Major PO.

**Nonresident Bidder:** For purposes of the reciprocal preference law, a person whose principal place of business is not in Texas.

## O

**OAG:** Office of Attorney General

**OCC:** Outside Counsel Contract

**OEM:** Original Equipment Manufacturer

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

**OGC:** Office of General Counsel

**OMB:** Office of Management and Budget (federal)

**OMR:** Open Market Requisition (Request)

**One-Time DIR Exemption:** A formal request to release the requirement to purchase from DIR contract if the existing DIR contracts do not meet the agency's needs

**Opening Date:** The day and time, after submission of proposals, when sealed bid responses are opened.

**Operating Lease:** A contract granting the lessee the use of equipment or other fixed assets for a specified time in exchange for payment. Title remains with the contractor.

**Overage:** An overage is any amount that exceeds the original requisition amount; this applies to purchase orders, change orders, amendments, and contract modifications.

**OVFM:** Office of Vehicle Fleet Management

## P

**P&CS:** Procurement and Contract Services (DPS procurement office)

**P&CS Record Keeper:** A designated individual within P&CS who oversees the storage and security of retained files through their retention period.

**P-card:** Payment Card (credit card)

**PAR:** Progressive Assessment Report (HSP)

**Payment Bond:** A deposit, pledge, or contract of guaranty supplied by the contractor to protect the State against loss due to the contractor's failure to pay subcontractors and material suppliers.

**PD:** Property Damage (insurance)

**Performance Bond:** A deposit, pledge, or contract of guaranty supplied by a contractor to protect the State against loss due to the contractor's inability to complete the contract as agreed.

**PI:** Personal Injury (insurance)

**PIN:** Payee Identification Number

**PIA:** Public Information Act

**PIR:** Public Information Request

**PM:** Project Manager

**PO:** Purchase Order

**POCN:** Purchase Order Change Notice

**POD:** Procurement Oversight & Delegation (section at CPA)

**Post-Award Debriefing:** A request submitted in writing (via e-mail) by the vendor requesting an explanation as to why their proposal was unsuccessful.

**Post-Consumer Materials:** Finished products, packages, or materials generated by a business entity or consumer that have served their intended end use, and that have been recovered or otherwise diverted from the waste stream for the purpose of recycling.

**Posted Date:** The actual date the solicitation document will be made available to the public.

**PPI:** Producer Price Index

**PPP-1:** Used to initiate zero dollar requests such as MOUs, a template review by OGC, Revenue Agreements, Requests for Information (RFIs), requests to have items added to existing state contracts, and for requisitions with a total contract value estimated over \$500K. PPP-1s are also used for grant applications/ grant awards. PPP-1s are submitted to [PPPRequests@dps.texas.gov](mailto:PPPRequests@dps.texas.gov) by the requesting division.

**PPP-3 Form:** The PPP-3 is used to secure new temporary employee services regardless of the dollar amount and must be attached to the requisition in the CAPPs system.

**PPP-3A Form:** The PPP-3A is used to modify an existing contract or Purchase Order regardless of the dollar amount for temporary employee services and should be loaded as a Requisition attachment in the CAPPs system.

**Pre-Consumer Materials:** Materials or by-products that have not reached a business entity or consumer for an intended end use, including industrial scrap material, and overstock or obsolete inventories from distributors, wholesalers, and other companies.

**Pre-Approved Risk Levels:** A list of pre-determined risk classifications for particular types of purchases which is based on the procurement method or contract type in conjunction with a maximum dollar amount. Refer to Appendix B: Pre-Approved Risk Levels, provided below within this procedure.

**Pre-Bid Conferences:** A formal meeting with the vendor community that is facilitated by P&CS personnel. Discussions are held to help potential prospective bidders/respondents understand the requirements of a solicitation. A Question and Answer Session is held. An Addendum is issued and the Addendum form must be posted to the Electronic State Business Daily (ESBD), if the original solicitation was posted to the ESBD. The addendum must be provided to all potential respondents who received the original solicitation notice.

**Pre-Bid Notice:** An announcement sent via email to all vendors on the CMBL associated with commodity code(s) related to the solicitation to notify prospective bidders of an upcoming bid opportunity.

**Professional Services:** Services directly related to the professional practices specified by the Professional Services Act, Chapter 2254, Subchapter A, of the Texas Government Code.

**Pricing Request (PR):** An invitation for a vendor to submit competitive prices under an existing contract, including the existing terms and conditions, or through the informal procurement process. A Pricing Request is used in conjunction with DIR purchases that exceed \$50K, TXMAS purchases over \$5K, and for Open Market purchases up to \$25K.

**Procurement Record:** Written or recorded documentation related to the administration and management of purchases. Records include evidence of the decisions made by DPS regarding method, selection and justification of procurement. This record serves as the primary source of information regarding a purchase for audits, state or federal review, public inquiries and the commission.

**Proprietary Decision Memorandums:** A DPS Procurement form required from the end user to justify why a purchase for products or services is proprietary in nature. An example of the Proprietary Purchase Justification DM can be found here: [Proprietary DM Template](#).

**Proprietary Product/Service:** Distinctive products or services offered under exclusive rights of ownership, including rights under patent, copyright, or trade secret law, and specifications are not shared by competing or similar products.

**Proposal/Bid Close Date:** The advertised date and time that proposals, offers, or responses are no longer accepted by the advertising agency.

**Protest Procedures:** Procedures for resolving vendor protests relating to purchasing issues.

**PSC:** Public Safety Commission

**PSC Approved Plan:** A list of positions, not-to-exceed (NTE) dollar amounts, and estimated duration of assignment of temporary IT personnel expected to be on-boarded through DIR ITSAC procurement method. An IT staffing plan is approved by the Public Safety Commission (PSC) annually.

**PSC Weekly Summary Report:** A report provided to the Executive Director and the Commissioners which includes statuses on purchases and contracts that require enhanced contract monitoring, issues and/or risks with active contract.

**Public Opening:** The public opening of bids, offers, or proposals, in which the names of the respondents to a solicitation are publicly read and recorded. No prices are divulged at an offer or proposal opening as these types of solicitations are subject to negotiations.

**Purchase Category Codes (PCC):** Codes used in the Uniform Statewide Accounting System (USAS) to document the purchase method, commodity type and dollar category or purchases.

**Purchaser:** Purchaser is used interchangeably with Contract Administrator.

**Purchasing:** The receipt and processing of requisitions, development of specifications, development of scope of work, the issuance of purchase orders against existing cooperative or agency contracts, and the verification of the inspection of merchandise or receipt of services by the agency. The term does not include the development of solicitations and contract awards that must be posted to the Electronic State Business Daily or in the Texas Register.

**Purchasing Liaison (PL):** A DPS full time employee who is designated by their Division to carry out procurement related activities such obtaining estimates for future purchases.

**Purge Date:** The date a record will be flagged for deletion from the CAPPS database

## Q

**QAT:** Quality Assurance Team

**QAP:** Quality Assessment Plan

**Question and Answer Period:** A predetermined period provided in the solicitation of when potential vendors are allowed to submit their clarification questions to the agency. The agency typically responds to the potential vendors within one to two days per the predetermined period.

**QPL:** Qualified Product List

## R

**Recycled Material Content:** the portion of a product made with recycled materials consisting of pre-consumer materials (waste), post-consumer materials (waste), or both.

**Recycled Materials:** Materials, goods, or products that contain recyclable material, industrial waste, or hazardous waste that may be used in place of raw or virgin materials in manufacturing a new product.

**Recycled Product:** A product that meets the requirements for recycled material content as prescribed by the rules established by the Texas Commission on Environmental Quality in consultation with CPA.

**Remanufactured Product:** A product that has been repaired, rebuilt, or otherwise restored to meet or exceed the OEM performance specifications; provided, however, the warranty period for the remanufactured product may differ from the OEM warranty period.

**Rent:** Payment of the use of property.

**Requisition (REQ):** A purchase request that is entered and approved through the CAPPs system to procure on or off contracted products and services.

**Request for Information (RFI)** – A general invitation to vendors requesting information for a potential future solicitation. This is an optional method typically used to research and gather information for preparation of a solicitation.

**Request for Payment Authorization (RPA) Requisition:** A requisition, which allows an already made purchase to be accounted for in CAPPs.

**Request for Offers (RFO):** A written solicitation requesting the submission of offers for AIS, which include hardware, software and other information technology goods and services.

**Request for Proposals (RFP):** A written solicitation requesting the submission of proposals.

**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.

**Responsive:** the bid, offer, or proposal complies with all material aspects of the solicitation document, including submission of all required documents.

**Respondent:** An individual or entity that submits an offer or proposal. The term includes anyone acting on behalf of the individual or entity that submits an offer or proposal, such as an agent, employee, and representative.

**Restricted Bids:** Only selected vendors can view and respond to solicitation

**Review and Delegation (CAT via POD):** For procurements under SPD authority, DPS is required to send solicitation documents to SPD for review and possible delegation, prior to advertising the solicitation, for any commodity purchase above \$50,000 and for any service purchase above \$100,000.

**Revenue Generating Contract:** A contract under which DPS receives compensation for providing goods and/or services to another entity.

**Revolving Door:** The waiting period before a former state employee can work in the industry or for a company that he or she had involvement with as public sector employee.

**RFA:** Request for Application

**Risk Assessment:** The document that is used to assess a purchase request or an existing contract to identify any potential risks and to determine the appropriate level of contract monitoring oversight required.

**Risk Assessment Tool:** The tool is a high-level indicator of the potential risks that can occur on projects. An Excel spreadsheet that correlates a numeric value to a possible risk used to determine the score factor classification.

**ROI:** Return on Investment

**Rotating Members:** Members from law enforcement and services divisions will serve three-month terms. A rotating member's term may be extended as necessary.

**RTI:** Recurring Transaction Index

**RtR:** Request to Retain (OAG Outside Counsel Contracts)

## S

**Salvage Value:** The estimated value of a property when the user completes its use of the property.

**SAO:** State Auditor's Office

**Scope of Work:** A section of a solicitation that provides a description of the products and services to be provided by the vendor.

**Scoring Matrix:** A tool used to evaluate individual responses based on the evaluation criteria defined in the solicitation document

**SCM:** Supply Chain Management

**Sealed Bids/Proposals:** A response which is kept secure and unopened until after the due date and time specified in the solicitation.

**Security Contracts:** Information security services including network security monitoring, testing services, intrusion prevention services, and media destruction.

**Service:** NIGP Class Code 900 and above are designated for intangibles such as services, generally referring to performance of duties.

**Set Aside Contract:** Term used to refer to the State Use Program and the Texas Correctional Industries (TCI) purchasing program.

**SLA:** Service Level Agreement

**SME:** Subject Matter Expert

**Sole Source:** Product or service is only available for purchase through the one, identified vendor, usually the manufacturer.

**Sole Source Letter:** Letter from vendor that states they are the sole source/single supplier for the specified products or services.

**Solicitation:** A document requesting submittal of bids, offers, proposals, responses, qualifications, or information for products or services in accordance with the advertised specifications. The following types of solicitations must be posted on the ESBD: IFB, RFO, RFP, RFQ, or RFI. A Pricing Request is not posted to the ESBD as this solicitation type is reserved for the DIR and TXMAS procurement methods.

**SOP:** Standard Operating Procedures

**SPD:** Statewide Procurement Division

**SPO:** Spot Purchase Order

**Staffing Services Request Form:** The form is used to initiate a staffing request with DIR. The form describes the job, required skill set, and minimum qualifications for the position to be filled.

**Stakeholder:** A person assigned by a participating division that has an interest or will be impacted by the awarded contract.

**Standard:** The established and fixed measure used in assessing quality or performance.

**Standing Order:** A purchase order to a contractor for a specified time period during which a specific quantity of product will be delivered on specified delivery dates.

**State Contract:** Contracts established and maintained by the Comptroller's Statewide Purchasing Division (SPD) or the DIR

**State Use Program:** A mandatory state set-aside purchasing program established for purchasing commodities and services from community rehabilitation programs, which employ disabled Texans. This is a non-competitive procurement method, specifically authorized by state statute, which mandates state agencies to purchase products made or services performed by persons with disabilities.

**State Use Report:** A legislatively mandated report submitted by the 15th of each month listing purchases made as an exception to Human Resource Code 122.014. The report is based upon amounts encumbered for purchases whenever a purchase order is issued. DPS is responsible for ensuring the reports are complete, accurate and approved for submission.

**Statement of Work (SOW):** Formal document that defines work activities, deliverables, and a project timeline that a vendor must consider to estimate the work effort required to meet the project deliverables.

**Status Report Slide:** A tool to provide frequent, bottom-up communication for in progress procurement and contract work, and includes the procurement method approved by the P&CS Director.

**STMP:** State Travel Management Program

**Successor-in-Interest:** Any business entity that acquires or otherwise obtains the controlling ownership of a business entity.

**Surplus:** Federal and State surplus property programs administered by TFC. Each program has its own laws, rules, and procedures.

**System of Award Management (SAM):** A federally owned and operated website that consolidates the capabilities of the excluded party list, federal contract registry (CCR) and the online representations and certifications application (ORCA), Formerly EPLS

## T

**T&M:** Time and Materials

**TAC:** Texas Administrative Code

**TCI:** Texas Correctional Industries

**TCO:** Total Cost of Ownership

**TDCJ:** Texas Department of Criminal Justice

**TEC:** Texas Ethics Commission

**Technology Commodity Items:** Commercially available hardware, software and technology services. The National Institute of Governmental Purchasing (NIGP) class and item codes for IT commodities are annotated with an asterisk (\*). The [NIGP Commodity Book](#) should be referenced to confirm that the purchases falls within DIR's purchasing authority.

**Template-Approved Contracts:** A contract document with a set format, approved by the Office of General Counsel, which cannot be modified without approval of the P&CS Director. The template allows contracts to be executed by an individual granted delegated authority for only that particular template.

**Term Contracts:** A contract established by SPD for the purchase or lease of goods or services used in large quantities by multiple agencies.

**Terms and Conditions (T&Cs):** General and special requirements utilized in a contract.

**TEX-AN:** Texas Agency Network (DIR)

**Texas Bidder:** A business incorporated in Texas, that has its principal place of business in Texas, or that has an established physical presence in Texas.

**Texas Resident Bidder:** A person whose principal place of business is in Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in Texas.

**Texas Council on Purchasing from Persons with Disabilities (TCPPD):** An agency of the State of Texas, which has the statutory responsibility for implementing the State Use Program, and dedicated to further the state's policy of encouraging and assisting persons with disabilities to achieve maximum personal independence by engaging in useful, productive employment activities.

**Texas Industries for the Blind and Handicap (TIBH):** Now referred to as WorkQuest, this is the entity that is part of the State Use Program.

**Texas Register:** Administered by the Secretary of State's office, a site used to advertise various types of procurements, such as some professional and consulting contracts.

**Texas Specifications:** A specification adopted by SPD and used whenever possible in the purchase of the item involved. Established standard of minimum quality for products or services purchased in volume by the State.

**TFC:** Texas Facilities Commission

**TIN:** Texas Identification Number

**TPIA:** Texas Public Information Act

**Transactional Purchase Order (TPO):** A purchase order issued independent of a contract. These purchase orders are one-time purchases of a commodity or service not linked to a current contract or blanket purchase order.

**TWC:** Texas Workforce Commission

**TXFS:** Texas Fleet System

**TXMAS:** Texas Multiple Award Schedule

**TxSmartBuy PO's:** A purchase orders generated by TxSmartBuy and signed by SPD purchaser

## U

**UCC:** Uniform Commercial Code (federal)

**UGMS:** Uniform Grants Management Standards

**UOM:** Unit of Measurement

**Unit Price:** The price for a good or service in accordance with the unit of measure provided in the solicitation.

**Unrestricted Bids:** All vendors can view and respond to solicitation

**USAS:** Uniform Statewide Accounting System

**USC:** United States Code

**USPS:** United States Postal Service

## V

**Vendor:** A potential provider of goods or services to the State.

**Vendor Performance:** An agency must report vendor performance on purchases over \$25,000 from contracts administered by the Statewide Purchasing Division (SPD), or any other purchase over \$25,000 made through delegated authority granted by SPD. Agencies are also encouraged to report vendor performance for purchases under \$25,000.

**Vendor Performance Reporting (VPR):** Is an electronic system managed by SPD to record vendor performance history for the purpose of vendor evaluation of future awarding of state contracting.

**Vendor Performance:** Relevant information regarding a contractor's actions under previously awarded contract.

**Vendor Performance Tracking System (VPTS):** provides the state procurement community with a comprehensive tool for evaluating vendor performance to reduce risk in the contract award process.

**VIN:** Vendor Identification Number

**Voyager:** Retail Fuel Card

## W

**WorkQuest:** A Central Nonprofit Agency (CNA) contracted with TCPPD since 1978 to serve as the program's marketing and management organization. WorkQuest handles everything from order processing the fulfillment and invoicing of purchase orders to market history analysis,

pricing requests, and CRP registration and compliance. Commodity items and services offered in the WorkQuest Catalog are reviewed and approved by TCPPD.

**Written Communications:** Examples of official Written Communications include: email, memorandums, and correspondence sent on DPS letterhead (e.g., letters).

**X**

**Y**

**YTD: Year to Date**

**Z**

The [State of Texas Procurement and Contract Management Guide](#) contains additional acronyms, terms and definitions.

## 16. ATTACHMENTS, FORMS, AND STANDARD OPERATING PROCEDURES

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### 16.1 NOTE

The documents listed below are internal DPS documents.

### 16.2 1122 PROGRAM

[1122 letter-example.JPG](#)

[Letter of Appointment for GSA](#)

[1122 Appointee Memo – Texas LESO](#)

[1122 Program Procurement Process](#)

### 16.3 OTHER ATTACHMENTS

Currently the Procurement and Contract Services SharePoint site is under construction. Please use this [LINK](#) to the home page and search for the specific item listed.

[ACQUISITION PLAN](#)

[ACQUISITION PLAN-MS PROJECT](#)

[ACQUISITION PLAN - MINI](#)

[APPROVAL MATRIX – INTERNAL AND EXTERNAL APPROVALS](#)

[BID TABULATION](#)

[CPA NOTIFICATION OF TRAINING REQUIREMENT](#)

[DIR EXEMPTION APPROVAL REQUEST EMAIL EXAMPLE](#)

[D&B BUSINESS INFORMATION REPORT](#)

[EVALUATION COMMITTEE GUIDE](#)

[INVITATION FOR BIDS](#)

[LBB REPORTING REQUIREMENTS](#)

[NAMING CONVENTION AND ABBREVIATION LIST](#)

[PRE-APPROVED RISK LEVELS](#)

[PRICING REQUEST](#)

[REQUEST FOR OFFER](#)  
[REQUEST FOR PROPOSAL](#)  
[REQUEST FOR QUALIFICATIONS](#)  
[SOLICITATION AFTER ACTION REVIEW](#)

## **16.4 FORMS**

[PPP-1 REQUEST FORM](#)  
[PPP-2a PROJECT REQUEST](#)  
[PPP-3 STAFF AUGMENTATION](#)  
[PPP-3a MODIFICATION TO STAFF AUGMENTATION](#)  
[PPP-4 DONATION BACKGROUND INFORMATION](#)  
[PPP-5 CONTRACT MONITOR QUESTIONNAIRE](#)  
[PPP-6 VENDOR PERFORMANCE REPORT](#)  
[PPP-7 CONFLICT OF INTEREST](#)  
[PPP-9 NEPOTISM DISCLOSURE](#)  
[PPP-11 CRB CHECKLIST](#)  
[PPP-13 CRB INFORMATION](#)  
[PPP-14 NON-COMPLIANT MEMORANDUM](#)  
[PPP-16 LBB ATTESTATION LETTER](#)  
[PPP-17 CORRECTIVE ACTION PLAN](#)  
[PPP-18 BUILDING, HANGAR OR OFFICE SPACE LEASE AGREEMENT CHECKLIST](#)  
[PPP-19 TOWER LEASE AGREEMENT CHECKLIST](#)  
[PPP-20 EXCEPTIONS SUMMARY FORM](#)  
[PPP-21 EMERGENCY DECISION MEMORANDUM](#)  
[PPP-22 PROPRIETARY DECISION MEMORANDUM](#)  
[PPP-23 PURCHASE LIAISON CHECKLIST](#)  
[PPP-24 Deleted - combined with form PPP-23](#)  
[PPP-25 RISK ASSESSMENT](#)  
[PPP-26 CAPPS FINANCIALS ACCESS REQUEST FOR PURCHASE LIAISON](#)  
[PPP-27 PURCHASING LIAISON CONTRACT](#)  
[PPP-28 CHANGE REQUEST FORM](#)

## 16.5 STANDARD OPERATING PROCEDURES (SOPs)

[DPS Standard Operating Procedures](#)

The link will open a document containing all of the DPS SOPs. Use the Edit – Find function to search for the desired SOP, or simply click on the SOP number in the Table of Contents.

## 17. LINKS

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[Agency Procurement Plan Template and Submission](#)

[FMX Fiscal Management](#)

[GAA Other Bills of Interest to State Agencies](#)

[General Appropriations Act](#)

[HUB Subcontracting Plan \(HSP\)](#)

[Legislative Budget Board](#)

[Object Codes](#)

[Texas Government Code - Ethics](#)

[System of Award Management \(SAM\) Search Information](#)

[Specifications Library](#)

[State Use Reports](#)

[Statutes and Procedures](#)

[Chapter 2261. State Contracting Standards and Oversight](#)