



TEXAS WORKFORCE COMMISSION

Procurement and Contract Management Handbook

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Chapter 1. Introduction

The Procurement and Contract Management Handbook (Handbook) identifies TWC's overarching policies and practices for effective contract management, as required by statute and in harmony with the Comptroller's State of Texas Procurement and Contract Management Guide (State Guide). This Handbook is not intended to describe every step in a procurement or contract management process. Rather, the Handbook provides a high-level overview to PCS customer Business Areas about where to start, what to expect, and what the Business Area will need to do. It also identifies sound contract development and management principles and policies for our agency Contract Managers and the customer Business Area staff involved in the day-to-day interaction with our contractors.

Additionally, much of this Handbook is devoted to planning and procurement for solicitations because an effective, legally sound contract begins with thorough planning and development of meaningful requirements for best value, risks and constraints considerations, and specific terms and conditions.

Finally, this Handbook does not apply to TWC grant agreements with other entities for the purpose of carrying out a public purpose. See [TWC's Competitive Grant Handbook](#) and associated procedures and laws for more information about the grants process.

If you have any questions about procurement and contracting at PCS, please contact your Contract Developer or Contract Manager or anyone in PCS and they will be happy to help you.

Your Procurement and Contract Services Team

Chapter 2. General Provisions

2.1. Procurement and Contract Services (PCS)

PCS is the centralized division that handles procurement and contract services for TWC. PCS processes most purchasing activities for TWC goods or services. The Information Technology Division may conduct purchases from existing Department of Information Resources (DIR) contracts. In the event a solicitation is required for information technology purchases, a designated PCS Contract Developer will guide the procurement.

PCS also assists TWC staff by:

- providing procurement advice and forms;
- determining procurement methods;
- planning procurements;
- developing solicitation documents;
- managing procurement timelines;
- conducting vendor conferences;
- evaluating proposals;
- assisting with negotiations when requested; and
- assisting with awarding, executing, and managing contracts.

2.2. Roles and Responsibilities

Procurement and contracting roles and responsibilities involve a broad range of functions and activities across multiple TWC business areas. The staff involved in these activities are part of the “procurement team.” The Team may consists of one or more individuals from the following, as identified by

their management or process to participate:

- Procurement and Contract Services (PCS)
 - Procurement and HUB Services (PHS) management
 - PHS Contract Developer (CD)
 - Contract Manager (CM)
- Requesting Business Unit
 - Executive Sponsor
 - Subject Matter Expert
 - Contract Manager (CM)
- Office of General Counsel (OGC)
- Finance

Below is an overview of the responsibilities through different phases of the procurement and contract cycle. The chart below is not intended to be exhaustive. For example, standard procurement planning does not usually require the Office of the General Counsel (OGC) consultation. However, nuanced procurements may involve OGC in order to determine the best approach or answer questions regarding options for the procurement.

Phase	Responsibility
Procurement Planning	Business Area: Provides procurement planning documents (purchase requisition; needs assessment and cost estimate (TWC 1300)). Finance: Identifies funding source and availability. PCS: Assists with planning documents. OGC: Provides legal consulting, if needed. OGC/Chief Information Security Officer and staff (CISO)/Privacy Office/Finance/others: Provides consulting services, if needed.

<p>Development</p>	<p>Business Area: Drafts the Scope of Work.</p> <p>PCS: Assigns a Contract Developer, creates the procurement record, provides technical assistance, identifies appropriate procurement method, develops schedule, conducts kick-off meeting, guides Business Area and procurement team through the Acquisition Plan, obtains external reviews and approvals, and guides the Business Area and procurement team through the process. PCS is available to provide assistance to the Business Area as needed when drafting the SOW.</p> <p>OGC: Assists with solicitation, including risk mitigation measures, such as insurance, bonds, liquidated damages, and other issues in collaboration with Business Area/Finance/others.</p> <p>Finance: Assists with determining financial requirements.</p> <p>CISO/IT/Privacy Office/others: Provides technical assistance as needed and based on procurement.</p>
<p>Publication</p>	<p>PCS: Posts applicable solicitation notice to ESBD (Electronic State Business Daily) and Bonfire.</p> <p>Business Area: Drafts responses to vendor questions.</p> <p>OGC: Reviews responses to vendor questions and provides legal advice.</p> <p>CISO/IT/Privacy Office/others: Provides technical</p>

	assistance as needed and based on procurement.
Evaluation and Negotiation	<p>Business Area: Serves on evaluation committee; selects final vendor.</p> <p>PCS: Serves as chair of evaluation committee.</p> <p>Finance: Reviews financial documents submitted by respondents.</p> <p>CISO/IT/Privacy Office/other technical advisors: Responds to evaluation committee questions and provide technical expertise, as needed.</p>
Award	<p>PCS: Contract Developer reviews final response; Purchasing and Historically Underutilized Business (HUB) Services (PHS) Director certifies final vendor selection; transitions to Contract Manager for contract development.</p> <p>Finance: Handles vendor set up in WRAPS.</p> <p>OGC: Reviews final vendor response.</p>
Contract Development	<p>Contract Manager: Creates contract record; drafts contract; routes contract for signature.</p> <p>Business Area: Reviews draft contract documents.</p> <p>OGC: Reviews draft contract documents and provides recommendations for revisions.</p> <p>CISO/IT/Privacy Office/others: Review draft contract documents for technical matters, as needed.</p> <p>PCS: Contract Developer or Purchaser issues purchase order after contract is signed.</p>
Contract Management	<p>Contract Manager: Ensures contractor accountability and responsibility during the contract life by monitoring and assessing risk; works with contractor,</p>

	<p>Business Area, and TWC staff to resolve contract issues and disputes.</p> <p>Business Area: Works in close coordination with the Contract Manager to ensure sound contract management; escalates contract issues to the Contract Manager immediately.</p> <p>OGC: Provides legal guidance and counsel pertaining to contract management issues.</p> <p>CISO/IT/Privacy Office/others: Assists with technical issues regarding the contract, as needed.</p>
<p>Contract Termination and Closeout</p>	<p>Business Area: Provides vendor performance report assessments.</p> <p>Contract Manager: Verifies financial activity has been completed, completes the contract file, reports vendor performance, and concludes the contract.</p> <p>Finance: Releases remaining funds on Purchase Orders (POs) and closes POs.</p>

2.3. Ethics

Unbiased. Fairness. Impartial. Transparent. Integrity. These five principles from the State Guide drive the numerous requirements in purchasing and contracting and the foundation of public procurement. As stewards of public money, we are obligated to implement these principles in our procurements. We do this by:

- Ensuring fair competition in procurement so that we are not favoring one vendor over another—or even appearing to favor one vendor over another;
- Observing a “quiet period” during solicitation drafting and forwarding vendor communications during this time to the PCS Contract Developer so we do not give one vendor an advantage over another

vendor by sharing information;

- Signing disclosure statements to remind us of our obligations generally and for each procurement regarding conflicts with potential vendors and maintaining the integrity of the process; and
- Publishing solicitations for transparency and to reach as many vendors as possible to give TWC and the State the best value for the money.

[TWC's Ethics Policy](#), [TWC's Non-Endorsement Policy](#), and the [State Guide](#) provide more information regarding ethical responsibilities and the agency policy and exceptions for requests for endorsements and references by outside entities.

In the event of questions or concerns, please contact a supervisor, the Chief Ethics Officer, or the Ethics Advisor.

2.4. Required Disclosure Statements

Disclosure statements serve to remind us of our ethical obligations in the procurement and contracting process. See [Disclosures Procedure and Forms](#) for more information.

2.4.1. TWC 1501 Annual Non-Disclosure and Conflict of Interest Certification

TWC staff involved in procurement and grant solicitation activities must sign the TWC 1501 annually. The TWC 1501 is a general certification not associated with any specific procurement. Business Areas and PCS have a shared responsibility for ensuring the necessary staff sign the TWC 1501 annually. Signed TWC 1501s are retained on Business Operations PCS SharePoint.

2.4.2. TWC 1502 Specific Conflict of Interest Non-Disclosure Statement

Before solicitation kick-off and participating in any of the solicitation

activities, PCS requires that evaluation members, technical advisors, and other TWC staff involved in the procurement or in resulting contract activities sign the TWC 1502. This disclosure statement reminds staff of their obligation to keep the procurement activities confidential throughout the procurement up until contract signature. Staff must immediately notify the Contract Developer, a supervisor, or OGC if there are any conflicts with a vendor responding to the solicitation. Staff must retain the TWC 1502 in the official Enterprise Contract and Procurement System (ECPS) files, specifically the Procurement Record. In some cases, a staff member may be asked to sign both the TWC 1501 and the TWC 1502. For example, a staff member that has access to purchasing or contract files in general, including files in the ECPS, should sign the TWC 1501. This staff member may later be involved in the development of a particular solicitation or management of a specific contract and therefore be required to sign the TWC 1502.

2.4.3. TWC 1503 Nepotism Disclosure Form

State law¹ requires that prior to awarding a major contract, TWC staff working on the contract must disclose information regarding certain relationships with any party to the contract. A “major contract” is defined as a contract with a value of at least one million (\$1M) dollars for the purchase of goods or services to a business entity. The Contract Developer will provide the TWC 1503 to sign at the appropriate time. The TWC 1503 is based on the State Auditor’s Office form developed for this disclosure. The Contract Developer then sends the disclosure form to the Executive Director or his designee for signature, also required by statute.²

2.5. Communication with Potential Vendors

¹ See [Texas Government Code § 2262.004](#).

² [Texas Government Code § 2262.004](#).

Communication between TWC staff and potential vendors is encouraged in procurement planning. If used effectively, this communication can be a vital resource for TWC staff. Even in pre-planning, staff must exercise care to avoid any appearance of favoritism.

TWC staff may provide a response regarding a prior or current TWC vendor, product, or service upon receipt of a request for reference from a governmental entity, according to the [TWC Non-Endorsement Policy](#).

The appropriate division director must approve this response. Once solicitation drafting has started, TWC staff must cease communications with vendors and coordinate procurement efforts through the PCS point of contact. If there is any doubt about appropriate communications with vendors, consult with PCS, a supervisor, the Chief Ethics Officer, or the Ethics Advisor.

Below is a summary of guidelines for communicating with vendors at various stages of the procurement and contracting process. The chapters below include more information when appropriate.

See also the [TWC Vendor Communication Procedure](#) for more information.

Solicitation Development Phase	Communication with Vendors
Pre-Solicitation Fact Gathering	Allowed. See TWC Vendor Communication Procedure for important guidelines to avoid the appearance of favoring one vendor over others.

Solicitation Development Phase	Communication with Vendors
Solicitation Drafting	Allowed only by PCS-designated point of contact for the limited purpose of answering questions that arise during drafting specifications. This is the "Quiet Period" where communications with vendors must cease.
Solicitation Publication	Allowed only with or through PCS-designated point of contact identified in the solicitation and at certain points of the procurement.
Evaluation and Negotiation	<p>Allowed only with or through PCS-designated point of contact identified in the solicitation. Examples include:</p> <ul style="list-style-type: none"> • clarification of a vendor's ability to meet the solicitation requirements; • negotiations, as appropriate based on the procurement method, including request for best and final offer (BAFO); and • the exchange of information as necessary to facilitate a potential contract award.
Contract Development	Allowed only through PCS-designated point of contact or the assigned Contract Manager for the period prior to contract execution and during contract development.

Solicitation Development Phase	Communication with Vendors
Contract Award	Allowed for any staff as it relates to the executed contract. Communications with contractors pertaining to ongoing solicitations are not allowed except through PCS-designated point of contact.

Current Contractors. Contract Managers and other staff who have regular interactions with active TWC contractors may continue to work directly with those contractors. However, the Contract Manager and other staff must exercise caution to ensure that conversations with current contractors are limited to the current contract, and do not stray into pending solicitations or possible future contracts. Staff must direct questions to a supervisor, the PCS Director, the Chief Ethics Officer, or the Ethics Advisor.

2.6. Confidentiality of Information

TWC staff must take necessary steps to protect the confidentiality and non-disclosure of information throughout the procurement and after the procurement. Examples include:

- Secure individual client information and any other information considered to be Personally Identifiable Information (PII) at all times;
- Refrain from discussing the procurement without the PCS-designated point of contact being present or consulted in advance;
- Do not distribute any information regarding the procurement with any internal staff, including management, unless directed to do so by the PCS-designated point of contact; and
- Do not share any information with external parties during the

procurement; this could provide or appear to provide a competitive advantage to one vendor over other vendors. Confidentiality may apply to records other than just PII. Staff should not share any information except through OGC's Open Records division.

Vendors must provide questions during the procurement to the PCS-designated point of contact. They must refer questions or requests for information after a contract is executed to the [TWC OGC Open Records Section](#), which makes the determinations regarding whether information is public and can be released.

2.7. Official Procurement and Contract Records

ECPS is TWC's official system of record for procurement and contract records that meet the [ECPS Record Matrix criteria](#).

Purchase Orders that do not require an ECPS record are maintained in an established folder on a shared network drive, to facilitate the transfer of the purchase order files for subsequent posting to the TWC website, as required by statute.³

Purchasers, Contract Developers, and Contract Managers are responsible for completing the required checklists and ensuring the required records are retained in the official procurement and contract file. Procurement and contract staff must retain ancillary documents⁴ in a shared SharePoint location designated for this purpose. Staff must retain working drafts containing OGC comments and edits in the official procurement and contract file. TWC staff must not retain required documents in personal SharePoint or

³ [Texas Government Code § 441.1855](#).

⁴ Ancillary documents may include working drafts and transmittal emails that are not required to be retained in the official file.

network locations or on a computer hard drive that other procurement or contract staff cannot access.

See [ECPS Resources](#) for more information. See also [TWC 1400 Procurement and Contract Checklist](#).

Chapter 3. The Procurement

3.1. Procurement Personnel

Staff conducting purchasing and solicitation activities for a state agency must meet certain training and certification requirements. Only PCS Purchasers and Contract Developers conduct these activities in accordance with how they are defined in the State of Texas Procurement and Contract Management Guide, the Texas Government Code, the Texas Administrative Code, and training and certification requirements. Purchasing tasks include the receipt and processing of requisitions, development and/or review of specifications or scope of work, the issuance of purchase orders against existing cooperative or agency contracts, and the verification or the inspection of merchandise or receipt of services by the agency. The term “purchasing,” as defined by agency rule in 34 Texas Administrative Code, § 20.133,⁵ does not include the development of solicitations and contract awards that staff must post to the ESBD or in the *Texas Register*.

Purchasers or Contract Developers may perform purchasing tasks. Guiding a procurement through a solicitation process is a “contract development” activity, as defined by agency rule in 34 Texas Administrative Code, § 20.133⁶ and applies to actions taken prior to contract execution, from the

⁵ [34 Texas Administrative Code § 20.133](#).

⁶ [34 Texas Administrative Code § 20.133](#).

receipt and processing of requisitions through to the preparation and completion of contract award documents. A designated PCS Contract Developer manages a solicitation.

3.2. Plan your Procurement

Depending on the procurement, one or more of the documents listed below may be necessary. The Business Area that needs to acquire goods or services is responsible for providing the planning documents that initiate the purchase or procurement. To have a successful contract and minimize risk during the contract, Business Area staff must ensure that the Business Area requirements for the contract are well documented before moving forward with the procurement.

3.2.1. Subrecipient-Grantee or Contractor Determination (TWC 1299)

The TWC 1299 is required only if a federal or state grant-funded procurement or grant initiative will result in a signed contract or grant award and the determination has not previously been made for the same contractual relationship. If the use of grant funds for a procurement or grant initiative is necessary or appropriate, then the TWC 1299 is the first form that Business Area staff must complete to decide the relationship with the contracting party. The determination will instruct the Business Area whether to proceed with the procurement process or the TWC grant development process. See the [TWC 1299 Subrecipient-Grantee or Contractor Determination procedure and form](#) for more information.

3.2.2. Purchase Requisition (PR)-Always Required

The most common procurement planning tool is the PR. A PR is required for each purchase or procurement, regardless of value or complexity. The PR is submitted through WRAPS and goes through required approvals.

For routine purchases such as office supplies, conference registrations, certain publications and other purchases that do not require a contract, a PR is the only document required. For these purchases, the PR is assigned to a Purchaser or Contract Developer and fulfilled by PCS. For procurements that will result in a contract, additional planning documents are required, including the TWC 1300, and for certain procurements, the TWC 1316 (Acquisition Plan). The procurement is assigned to a Contract Developer to begin the procurement process.

See [PR guidance](#) that identifies minimum information required on the PR for certain PR requests.

3.2.3. Needs Assessment and Cost Estimate Form (TWC 1300)

The [Needs Assessment and Cost Estimate \(TWC 1300\)](#) is necessary when a contract document, signed by TWC and the contractor, is needed regardless of dollar amount, and includes any contract or agreement that may result from a competitive solicitation for bid procurement process. This also includes IACs, ILCs, and MOUs.

The TWC 1300's purpose is to capture the key business requirements for the procurement and state the business problem the procurement will solve.

The Needs Assessment portion of the TWC 1300 may be developed using market research, analyzing historical spending by the agency for the same or similar contract, benchmarking, or issuing a Request for Information (RFI) to vendors.

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 a best practice for RFI activities to conclude prior to TWC solicitation drafting. RFIs are commonly published on the ESBD or submitted to the appropriate trade or professional organizations. This is not a procurement method but only used for information gathering. This information is used to develop specifications for a solicitation and may assist with determining budget in order to develop the Cost Estimate.

Applicable Business Area staff must develop the Cost Estimate portion of the TWC 1300 in good faith since it is used to determine the procurement method and other requirements that may apply based on contract value, funding source, and expenditure restrictions. A Cost Estimate is much like annual budget planning to determine the amount needed and whether the funds are available. Sources such as informal budget quotes, historical contract spending, and online research may be used. If a budget quote is needed, the Business Area staff may obtain. Staff must attach documentation or information used to develop the Cost Estimate to the TWC 1300. In the event of an audit, the procurement file will then contain this information for inspection.

The Cost Estimate provides information to the Contract Developer to review the procurement and ensure that it is not prohibited by law, including the General Appropriations Act.⁷ For example, appropriated funds may not be used for the following goods and services unless the procurement falls within a statutorily authorized exemption:

- alcoholic beverages;⁸
- an audit of the agency's financial records or accounts;⁹
- postage or a post office box from an entity other than the U.S. postal service;¹⁰
- membership in or dues for professional organizations, unless approved by the TWC Executive Director (or designee);¹¹
- live or artificial indoor plants;

⁷ [General Appropriations Act, Art. VII, Rider 17, pages VII-40.](#)

⁸ [Texas Government Code §§ 2113.012, 2113.101.](#)

⁹ [Texas Government Code § 2113.102](#) (see exceptions).

¹⁰ [Texas Government Code § 2113.103](#) (see exceptions).

¹¹ [Texas Government Code § 2113.104](#) (requiring prior review and approval).

- private facilities for meetings, conferences, or exams¹²; and
- generally informational, promotional, or educational periodicals and publications issued by TWC intended for use by the general public and not essential for achievement of a TWC statutory objective.

Additionally, there may be certain restrictions based on the funding sources. Although many of these requirements are included in a resulting contract, the Business Area should have awareness of them during the planning phase to decide whether to proceed with the procurement.

See the [TWC 1300 Needs Assessment and Cost Estimate](#) for more information.

3.2.4. Acquisition Plan (TWC 1316)

The Acquisition Plan form contains guidance for usage and is required for each procurement that:

(1) results in a major contract that is expected to have a value of one million (\$1M) dollars or more; or

(2) meets other requirements for a complex procurement that the Contract Developer determines using the [1401 Procurement Risk Assessment tool](#).

The assigned Contract Developer determines when an Acquisition Plan is required and completes the plan with the assistance of the Business Area.

¹² [Texas Government Code § 2113.106](#) (prohibiting use of appropriated funds on private spaces for meetings, conferences, and administration if examinations unless state facilities are not available when needed with adequate space to accommodate the event, and are not an economically favorable alternative to other facilities).

It is a best practice for Business Areas to use the Acquisition Plan in planning any procurement, even before the proposed procurement is submitted to PCS. The Acquisition Plan is available on the PCS SharePoint site for downloading at any time. The Contract Developer will use it when it is submitted with the TWC 1300.

See the [TWC 1316 Acquisition Plan](#) procedure and form for more information.

3.2.5. Other Forms, when applicable

Other forms may be required, depending on the procurement. These forms are not necessarily planning documents but are either required by statute or rule to move forward with the procurement. Business Area staff must attach these forms to the PR.

1. [Justification for Purchase of a Professional Membership \(TWC 1603\)](#): Required for a new or renewal membership in a professional or non-professional organization. Business Area staff must complete all blanks and the Executive Director must sign the form. The requester attaches a complete, fully executed form to the PR.
2. [Justification for Proprietary/Sole Source Purchase \(TWC 1605\) and memo](#): The TWC 1605 is required for proprietary purchases of ten thousand (\$10,000) dollars and over. The Business Area, the PHS Director, and the Director of PCS, when applicable, must complete all blanks and sign the form. The requester attaches a complete, fully executed copy of the TWC 1605 to the PR. For proprietary purchases of goods valued at more than fifty thousand (\$50,000) dollars and services valued at more than one hundred thousand (\$100,000) dollars, the justification form and the memo must also be prepared by the Business Area. The Business Area is responsible for obtaining the Executive Director's or designees' signature on the justification memo.

3. **Emergency Purchase Request Letter:** Emergency purchases occur when the agency must make the procurement quickly to prevent a hazard to life, health, safety, welfare or property or to avoid an undue additional cost to the state. An emergency purchase request letter is required for any emergency purchase, if the request exceeds ten thousand (\$10,000) dollars and the nature of the emergency does not allow for competitive bidding. The requester's completed letter must include adequate justification and reflect Business Area approvals. The requester must attach a complete, fully approved copy of the Emergency Purchase Request Letter to the PR.

3.3. The Procurement Method

3.3.1. Determining the Procurement Method

The importance of selecting the proper procurement method cannot be overstated. If the incorrect procurement method is selected, the purchase will not achieve the Business Area requirements or result in best value to the State. In fact, it may be more expensive and less efficient than if the correct method was used. In the worst case, it may result in a void contract that requires a re-solicitation.

The procurement method selection is not a matter of preference by the Business Area, Contract Developer, or anyone else. Staff must consider certain procurement methods above others. The Contract Developer determines the procurement method using the information provided on the PR, other planning documents, and based on TWC's authority. The State Guide identifies a twelve (12) step process for the Contract Developer to identify the proper procurement method out of approximately twenty (20) procurement methods. **Note:** The State Guide does not address the Open Enrollment process.

Many of the procurement methods are applicable to very specific purchases, such as consulting or professional services. Some procurements require a competitive process that is accomplished

through obtaining bids or competitive sealed proposals. Other procurements may occur through an already established statewide contract and can be fulfilled more quickly. See the [Procurement Method Determination Section of the State Guide](#) for information on the procurement methods and [Appendix 1](#) in this Handbook for codes, description, and authority used by PCS.

3.3.2. TWC's Procurement Authority

For certain procurements, either the Texas Comptroller's Statewide Purchasing Division (SPD) or the DIR have primary purchasing authority and may delegate specific procurement authority to TWC. These delegations are either for a pre-approved class of procurements, such as a particular procurement type or contract value, or are obtained on a case-by-case basis upon request by TWC. Other TWC procurement authority, such as procurement of professional, consulting, or legal services,¹³ or interagency¹⁴ and interlocal contracting,¹⁵ is derived specifically from statute.

While there are many similarities in procurements, there are also distinctions depending on the procurement, most notably reporting to external entities such as the Legislative Budget Board or the Governor's office. In addition to the various procurement methods, the Contract Developer must have knowledge about, and ensure TWC has or is delegated, the appropriate procurement authority.

3.3.3. What is best value and why is it important?

As a procurement and contracts professional, you will encounter the phrase "best value" a lot. It's mentioned 55 times within the 115 pages

¹³ [Texas Government Code § 2254.](#)

¹⁴ [Texas Government Code § 771.](#)

¹⁵ [Texas Government Code § 791.](#)

of the State Guide—it’s the building foundation and goal of any procurement. Purchasing statutes¹⁶ and agency rule¹⁷ require that procurements achieve the best value standard, which covers cost, quality, reliability, indicators of vendor performance, and the effect of the purchase on agency productivity. State agencies are required by law to award contracts to the vendors providing best value based on an evaluation of the best value factors.¹⁸ Additionally, purchasing and contracting management are required to verify in writing that the best value standards have been applied in the procurement.¹⁹ The Purchasing and HUB Services Director signs each Procurement Checklist, The Form 1400 in accordance with (34 TAC §20.217(a)), affirming that Best Value applied to the procurement.

This is important to mention because the statutes for the procurement method selected²⁰ identify the applicable best value standard.

And as mentioned before, the information provided by the Business Area in the planning documents guides the Contract Developer in selecting the procurement method. Determining the best value for TWC and the state also involves ensuring that the solicitation documents clearly identify all the factors used to evaluate vendors’ proposals and the factors that will apply to the particular contract award.

¹⁶ [Texas Government Code §§ 2155.074, 2157.125.](#)

¹⁷ [34 Texas Administrative Code § 20.217.](#)

¹⁸ [Texas Government Code § 2156.125.](#)

¹⁹ [Texas Government Code § 2155.0755.](#)

²⁰ [Texas Government Code §§ 2155.074, 2156.007 2157.003, 2254.003, 2254.027.](#)

3.4. What is Competition in Procurement?

A competitive procurement is the process of inviting and obtaining responses from vendors in response to advertised specifications. A contract is then awarded based on best value in accordance with all factors advertised in the solicitation. The process should give potential vendors a reasonable opportunity to compete and requires that all vendors be placed on a level playing field. Texas law promotes the use of competition in procurements.²¹ However, not all procurement methods require TWC to go through a competitive process. For example, using already established contracts from DIR or SPD means the competitive process has occurred through DIR or SPD and TWC may simply purchase from these contracts. Also, agencies contracting with one another have special authority to do so for certain activities and a competitive process is not required.

3.5. The Solicitation Process

3.5.1. What are the solicitation types?

There are certain advantages and disadvantages to each solicitation type, and it is necessary to consider each in the context of what is being procured. Like the procurement method, the Contract Developer will determine the appropriate solicitation type to be used, using the planning documents provided by the Business Area.

²¹ [Texas Government Code § 2155.063](#).

Solicitation Type	Use When	Advantages	Disadvantages
<p>Invitation for Bids (IFB)</p>	<p>Products and services are standardized or uniform.</p>	<p>Award process is simpler.</p> <p>In determining best value, price and whether the goods or services meet specifications are the principal considerations.</p>	<p>Defined specifications may be difficult to develop.</p> <p>Does not encourage innovative solutions.</p> <p>Negotiations are not allowed if there is more than one responsive bidder.</p>
<p>Requests for Proposals (RFP) and Request for Offers (RFO)</p>	<p>Negotiations are desired.</p> <p>It is clear what is expected of the vendor and detailed information about the product or service is required.</p> <p>Vendor is expected to provide innovative ideas or solutions.</p>	<p>Allows customized proposals suggesting different approaches to the same business need.</p> <p>Allows for negotiations.</p> <p>Considerations in addition to price are used to determine best value.</p>	<p>Lead time for procurement is much greater.</p> <p>Evaluations tend to be more complex.</p>

Solicitation Type	Use When	Advantages	Disadvantages
Open Enrollment	Goods or services are needed to be provided to the public by the Vocational Rehabilitation program.	<p>This method is a non-competitive, enrollment style application process wherein all qualified responsive vendors can be awarded a contract (subject to successful completion of procurement and contract award process).</p> <p>Allows for multiple awards which can offer more options for VR customers to select from.</p>	It does not follow the same processes as a competitive Request for Proposal process, which can create confusion.
Request for Qualifications (RFQ) (often required by statute, such as Professional Services) ²²	<p>Selection is made solely on the skills and qualifications of the vendor (bidders are “pre-qualified” based on criteria identified in the solicitation).</p> <p>Price is not a factor until after a vendor is selected.</p>	Emphasizes the competency and experience of the vendors.	<p>Vendor is selected before price is negotiated.</p> <p>Not suitable for purchases of goods since an essential feature of RFQ is that price is not a factor until after vendor selection.</p> <p>Two-step process.</p>

²² [Texas Government Code § 2254.003](#).

3.5.2. Why does Procurement Lead Time take so long?

Typically, a solicitation takes six (6) to nine (9) months from development to contract award. There are numerous statutory and regulatory requirements to move a solicitation through the process and very few of these requirements are due to requirements imposed by TWC. Complying with these requirements ensures a fair, impartial, and transparent process.

As part of the solicitation planning process, it is a best practice to consult the [PCS Procurement Lead Time Guidance document](#) for a baseline of the procurement process length.

The following activities are related to the solicitation process and can affect how long the process can take.

1. Agency Processes and Reviews

Some procurements may be subject to other internal agency process reviews prior to proceeding. This includes Commissioner approvals or Information Technology Business Enterprise Strategic Technology (BEST) Committee approvals. Reviews and the obtaining of approvals should occur prior to submitting the TWC 1300. Failure to do so may result in a delay in moving forward with the procurement until the necessary approval is obtained.

2. Review and Approval of [Needs Assessment and Cost Estimate \(TWC 1300\)](#)

The TWC 1300 is used to identify risks associated with the procurement. If an incomplete TWC 1300 is submitted, delays in assigning or beginning the procurement process will occur. The Contract Developer must have complete and accurate information to determine the procurement method.

3. Pre-Publication Notice Posting Period

For procurements exceeding twenty million (\$20M) dollars, PCS staff must post a Notice of Intent to Procure on the ESBD at least two (2) months prior to advertising the solicitation.

4. Preparation of the Scope of Work (SOW)

The Business Area is responsible for preparing an SOW that clearly describes the products and services the vendor will provide. The Business Area should use the requirements identified in the TWC 1300 as the starting point for drafting. Additional guidance on other documents that may help the Business Area develop an SOW (such as the Acquisition Plan or a previous procurement for similar goods or services) and which elements to include (such as descriptions of the specifications, deliverables, monitoring activities, and applicable standards) is provided in the subsection titled "[Scope of Work \(SOW\)/Specifications and Scoring Matrix](#)" under [Section 3.5.6 - Solicitation Preparation](#). Staff should recognize that a contract cannot be awarded to a vendor that has received compensation to help write specifications. However, a potential respondent or contractor may provide free technical advice, if assistance occurs prior to solicitation drafting.

5. Preparation of and Finalizing the Solicitation Document

After the draft SOW is developed, the Contract Developer will complete a review for completion and sufficiency, and then incorporate it into the solicitation document. The procurement team will work together to complete other requirements of the solicitation document, including insurance, bond, liquidated damages, cost and qualification considerations, other requirements, and attachments.

6. Justification for Proprietary or Emergency Purchases

Written justification is required for proprietary and emergency procurements. Posting of the solicitation for responses on the ESBID is required when the proprietary or emergency purchase exceeds twenty-five thousand (\$25,000) dollars.

7. HUB Review

For procurements expected to result in a contract award of one hundred thousand (\$100,000) dollars or more, the PCS HUB Coordinator reviews the draft documents to determine if subcontracting opportunities are probable and identifies the applicable class and item codes for the procurement.

8. Internal Reviews

The Business Area is asked to review and approve the solicitation and attachments at various times in the solicitation development process before moving them to further reviews. PHS management reviews the solicitation document for quality assurance. Depending on the procurement, additional reviews from CISO, IT, or the Privacy Office might also be necessary. OGC reviews all solicitation documents.

9. External Entity Reviews

Depending on the procurement method and anticipated value of the contract award, reviews by external entities may be required. These entities usually have thirty (30) calendar days to review. These include SPD's Procurement Oversight & Delegation (POD), the Contract Advisory Team (CAT), the Quality Assurance Team (QAT), and DIR.

10. Approval to Post

The requesting Business Area's approval is required prior to posting any solicitation.

11. Publication on ESBD

Staff must post all solicitations on the ESBD website. A minimum of fourteen (14) to twenty-one (21) calendar days is typical for most solicitations to allow for adequate competition. However, if the procurement is complex and requires significant documentation, or if the Business Area must submit complex pricing, staff should allow additional time for the publication period.

12. Evaluation and Award of Proposals

The time required to evaluate proposals will depend on the type and complexity of the procurement. Evaluations for complex procurements may include clarification, a request for a best and final offer, or oral presentations. Sometimes, additional internal approvals may be necessary before contract award.

13. Contract Negotiation and Formation

Timeframes will vary depending on the type and complexity of the procurement. Before the draft contract is shared with the awarded vendor, it also undergoes internal reviews, including those by OGC.

14. Contract Execution

Assigned Contract Manager will route the final contract for signature and will distribute copies to the vendor and interested parties within the agency.

See [Procurement Action Lead Time Guidance document](#) for more information for planning. This document contains general timelines for various procurements, including solicitations.

3.5.3. Meet the Procurement Team

The solicitation process is a group effort. In addition to the Contract Developer and the Business Area, team members from Finance, OGC, Cybersecurity, Information Technology, Privacy, and other areas may participate in the solicitation development or provide technical expertise.

The Business Area will identify key participants when it submits the procurement planning documents, such as those listing key management staff and subject matter experts. Information provided on the TWC 1300, such as information technology needs or data sharing requirements, will result in identification of other team members. The Contract Developer will quickly assemble the procurement team and include it in the solicitation process.

3.5.4. Vendor Communications During the Solicitation Process

The solicitation lists TWC's designated point of contact and identifies the acceptable forms of communication to TWC. If a potential respondent contacts program staff or other non-purchasing personnel about the solicitation, staff must politely decline to discuss the procurement and forward the inquiry to the assigned Contract Developer. All communication with potential respondents must occur only through the Contract Developer 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 the pre-bid/offer/proposal conferences about the solicitation.

3.5.5. Pre-Solicitation Development Activities

There are a few things that need to occur before the team fully engages in solicitation development.

1. Disclosure Statements

The Contract Developer will send a [TWC 1502 \(Procurement Specific Non-Disclosure and Conflict of Interest Statement Form\)](#) to each procurement team member. Each member must sign and return a copy of the form to participate in any part of the procurement.

These forms are discussed in more detail in [Section 2.4](#), above, and in the [Disclosures Procedure and Forms](#).

2. Kick-Off Meeting

The TWC solicitation process begins with a kick-off meeting called by the Contract Developer that includes the procurement team. The meeting will include an introduction of the team members, an overview of the goods or services to be procured, a reminder about ethics in procurement, and a review of the solicitation timeline. Only those who have completed the TWC 1502 may attend this meeting.

3. Solicitation Timeline Development

The Contract Developer develops an internal solicitation project tracker that identifies the tasks to be completed and timeframes for each task. The procurement team reviews the draft tracker and indicates conflicts or issues that may affect its ability to complete the tasks.

It is a best practice to schedule the solicitation advertisement and other procurement timelines by taking into consideration holidays, the complexity of the procurement, and the fulfillment of any statutory requirements.

The Contract Developer will revise the tracker based on feedback from the procurement team in consultation with applicable stakeholders. The tracker is made available to the procurement

team, so members are aware of next steps and deadlines.

4. Expedite Requests

After the development of a timeline, a Business Area may request expedited processing of a procurement. Since most of the processes and requirements to be followed are established by statute or agency rule, such as reviews by external agencies or minimum solicitation publication requirements, PCS cannot expedite them. Often, the only tasks PCS can modify are internal workflow reviews. PCS makes every effort to accommodate expedite requests. However, if any tasks performed by other team members need to be expedited, the Business Area is responsible for following the procedures for team members to speed up those tasks.

See [Expedite Process for Solicitations and Contracts](#) for more information regarding expedites.

5. Acquisition Plan

The Acquisition Plan was introduced earlier in this Handbook as a planning tool. At the beginning of the solicitation process a Contract Developer works with the Business Area and procurement team to draft the Acquisition Plan. The Acquisition Plan is much like a solicitation roadmap—the Contract Developer and procurement team will use it to get to the destination of completing the solicitation. It will also transfer via ECPS workflow to the Contract Manager and help manage the contract throughout its lifespan.

6. Solicitation Template

The Contract Developer will provide the applicable solicitation template. It is crucial the correct template and the most current version of it is used since these are amended as changes in the law occur or other updates are needed. Templates are locked to capture any changes made in track changes. This is to facilitate

later reviews that will need to occur and assure management and OGC that key terms and requirements have not been inadvertently removed or edited.

7. Internal Procurement Reporting

The Contract Developer must ensure internal reporting of the procurement occurs if the anticipated total value of the contract awarded will meet or exceed one million (\$1M) dollars. See the [TWC 1606 Notification to Commissioner of \\$1 Million Procurements and Contracts](#).

3.5.6. Solicitation Preparation

1. Solicitation Contents

The solicitation must contain adequate information for vendors to respond to the solicitation and for them to receive notification of certain requirements. The content of the solicitation will vary depending on what is being procured, the complexity of the transaction, and the identified risks associated with the procurement.

TWC has template solicitation documents based on the procurement type. These templates have been created to identify TWC's requirements in the solicitation, because TWC will not be able to hold a vendor accountable for performance of a requirement that is not specified in the solicitation or resulting contract. Also, TWC may not add requirements to a contract that are outside the scope of the solicitation.

The Contract Developer will guide the Business Area and procurement team in completing the solicitation template and ensure that the solicitation contains all of TWC's requirements. Solicitations, regardless of organizational structure, usually include the following components:

Solicitation Section	Description
Introduction	High-level summary of the procurement; consists of two or three sentences.
Schedule of Events	Calendar of procurement events from issuance of solicitation to anticipated contract award date. This Schedule of Events should include a date and time for the Pre-Proposal conference, if applicable.
Scope of Work	Description of goods and services to be provided by the vendor. See section titled "Scope of Work (SOW)/Specifications and Scoring Matrix" below.
Contract Term and Renewals	Initial contract term and renewal periods. The Texas Legislature requires contracts not exceed five (5) years, with very limited exceptions usually based on contract type. ²³ Limited exceptions most commonly include IT contracts, lease contracts, and vocational rehabilitation contracts.

²³ General Appropriations Act, [H.B. No. 1, 88th R.S. at Article IX, § 17.09\(c\)](#) (2023).

Solicitation Section	Description
Payment and Pricing Terms	Each payment should reflect the value of the work performed—longer projects may be divided into smaller components to manage financial risk. Terms also include the process of managing remittances, the reimbursement of costs, and timing. The payment may include a price sheet and the unit of measure that will serve as the basis for payment, and should identify invoice procedures and if retainage will apply. It is also a best practice to request the respondent to identify in its response whether an early payment discount is offered to TWC for early payment.
Terms and Conditions	Provided by OGC. The solicitation template may also include standard terms.
Bonds, Financial Requirements, Insurance, Warranties	Risk mitigation measures to ensure the vendor can perform and cover the agency against loss. It is a best practice to require each vendor to provide evidence of financial capability to perform all the services required by the solicitation as well as all services offered in the response. For capital-intensive projects, the solicitation should also require disclosure of the source of any outside financial resources the vendor will utilize to enable it to perform under the awarded contact.
Remedies	Liquidated damages, service level agreements, or credits that provide protection for TWC in case of a contract breach.

Solicitation Section	Description
Response Submission Requirements	Required response content, format, and delivery instructions. Describes each item that a response must contain. A checklist for the vendor may be helpful.
Evaluation and Award	Identifies minimum qualifications a vendor must meet to move to evaluation. Identifies vendor evaluation criteria and cross-checks against submission requirements. Criteria must reflect essential qualities or performance requirements and the weight assigned to each must correlate to its importance. Respondents and evaluation committee should clearly indicate which portion of the vendor response applies to each criterion. Evaluators must be careful not to engage in technical leveling activities. Technical leveling is helping a respondent bring its response up to the other responses through rounds of discussion. Discussion of the responses should be limited to only committee scoring members.
Historically Underutilized Business (HUB) subcontracting	If the resulting contract is one hundred thousand (\$100,000) dollars or more, the PHS HUB section will review to determine whether HUB subcontracting opportunities are probable. See HUB Determination below, for more information.

2. Scope of Work (SOW)/Specifications and Scoring Matrix

The Business Area is the subject matter expert regarding their procurement needs. For this reason, the Business Area is tasked with developing the SOW—the detailed description of what the Business Area needs to procure and what the vendor is required to provide to satisfactorily perform the work.

It is a best practice for the Business Area to develop the SOW with the TWC 1300 and submit these two documents together. This SOW is then used to develop other requirements in the solicitation and the scoring matrix that contains the specific criteria to be used by the evaluation committee in scoring solicitation responses. Providing the SOW at the beginning of the procurement process can result in a more efficient solicitation development timeline.

The resulting contract cannot be effectively managed without a clear and concise SOW. Not only does it need to be clearly defined and unbiased, but it must also encourage innovative solutions to the requirements described in the SOW and allow for free and open competition.

The Comptroller's website provides several reference guides on preparing a SOW.

Other information that will help the Business Area develop the SOW includes:

- The Needs Assessment and Cost Estimate (TWC 1300) inclusive of all required signatures;
- The Acquisition Plan;
- A previous procurement for the same or similar goods or services (if applicable); and
- The current contract for the service (if applicable).

Common elements to include in the SOW include, but are not limited to:

- **Background.** This section briefly describes the current business operations related to the goods or services being procured and identifies what need this procurement will fulfill. If there is a legal requirement for this procurement, this is good place to indicate that.
- **Purpose.** Describes the goods or services and what a vendor must deliver under the contract. Provides clear and understandable specifications. Specifications should not be so restrictive that they do not allow competition between vendors for goods or services of equal quality.
- **Specifications.** Concise statements that often answer the questions of who, what, when, where, why, how, how much, and how many. These written criteria are used to evaluate the responses.
- **Location of Work or Service Areas.** Describes the locations where the work is to be performed (e.g., region, counties, cities, zip codes), if applicable.
- **Deliverables.** Lists and describes what is due and when, including any reports the vendor must submit. A table of deliverables may help to make it clear.
- **Monitoring Activities.** Identifies the strategy to monitor the quality of performance. The monitoring activities identified in the solicitation should be tailored to the complexity and scope of the procurement. Monitoring activities may include timelines for completing scheduled tasks, meetings, and status reports.
- **Minimum Qualifications.** Lists the characteristics required of the vendor, such as technical skill, years of experience, or a specific license or certification.

- **Record Keeping.** Describes in detail those records the vendor should retain, including the format and retention periods.
- **Applicable Standards:** Describes regulatory, agency, or industry specific standards that need to be followed in fulfilling the contract. For example, if the contract is a construction contract, identify if there are certain building codes that must be met.
- **Acceptance Criteria.** Specifies criteria determination if the product or service is acceptable.
- **Transition and Turnover Planning.** Identifies transition activities the vendor must perform to provide services readily and effectively on the contract's effective date. If the goods or services will be required for a long period of time and subsequently must be resolicited, identify transition activities the vendor shall perform at the end of the contract to effectively transition to the next vendor.

3. HUB Determination

PCS administers the Historically Underutilized Business (HUB) Program. The purpose of the HUB Program is to promote full and equal business opportunities in state contracting through openness, fairness, and the highest ethical standards. The goal is to provide opportunities for minority, woman-owned, or service-disabled veterans' businesses to have full and equal access to TWC procurement opportunities, through contracts or subcontracts.

By statute, when issuing a new solicitation with a resulting contract that has an estimated value of one hundred thousand (\$100,000) dollars or more, state agencies must determine whether subcontracting opportunities are probable.²⁴ The agency's HUB Coordinator conducts these reviews, prior to releasing solicitation

²⁴ [Texas Government Code § 2161.252.](#)

documents. If HUB subcontracting opportunities appear probable, the solicitation will include the appropriate language and instructions. Per statute, when TWC requires the HUB Subcontracting Plan (HSP), the vendor response must contain the HSP to be considered an adequate response to the solicitation.²⁵

4. Pre-Bid/Offer/Proposal Conference

PCS recommends a pre-bid/offer/proposal conference for all solicitations, although it is a determination for the Business Area to make. Having a conference will not slow down the solicitation process as it occurs during the required solicitation period. The pre-bid/offer/proposal conference will include a solicitation overview and a HSP requirements training presentation. A question-and-answer session may also take place regarding general and HSP questions. During the Pre-Proposal Conference, TWC may provide responses to questions, but only written question and responses will be posted. Conducting a pre-bid/offer/proposal conference does not slow down the publication timeframe for the solicitation.

Benefits to conducting pre-bid/offer/proposal conferences are:

- Allowing vendors to ask specific questions or mention specific concerns;
- Focusing on minimum qualifications necessary for a Respondent's response to move to evaluation;
- TWC providing information, schematics, plans, reports, or other data that is confidential and requires receipt of a non-disclosure agreement;
- Providing opportunities for subcontracting relationships to develop through the conference; and
- Emphasizing the need for a Respondent to submit a sufficient

²⁵ [Texas Government Code § 2161.252](#).

HSP with their response, thereby reducing the likelihood of disqualification of a vendor.

For most procurements, attendance at the conference is recommended, but not mandatory. However, certain pre-proposal conferences may be mandatory for the following reasons:

- an on-site visit is required to have a full understanding of the procurement;
- a non-disclosure agreement will disclose confidential information; and/or
- the solicitation is so complex that attendance is critical for respondents to fully understand it.

A video and sign-in sheet or record of attendance of the conference is posted to ESBD.

5. Drafting Tips

Creating an organized and clearly worded solicitation will have an impact on the overall time spent on the solicitation process. An organized and clearly worded solicitation may result in:

- fewer questions throughout the solicitation process, and therefore, decreased need for clarifications to the solicitation that could prolong the publication period; and
- more complete and a larger number of responses from vendors, giving TWC a better vendor pool for evaluation and selection.

There are several resources to consider for drafting tips, including the [State Guide](#). PCS also has a [Style Guide](#) that includes solicitation drafting tips.

3.5.7. Advertising the Solicitation

1. Publication period

Once the solicitation drafting and review is complete, the solicitation is advertised to reach as many potential respondents as possible. The Contract Developer will work with the Business Area and procurement team when determining the appropriate solicitation posting period. While a fourteen (14) day posting may satisfy the statutory minimum for posting on the ESBD, it is a best practice to publish solicitations for thirty (30) calendar days or more.

If the entire solicitation package, including all parts, exhibits, and attachments is posted to ESBD, there is a minimum publication period of fourteen (14) calendar days. If the entire solicitation package is not posted to ESBD, staff must publish the solicitation package for a minimum of twenty-one (21) calendar days.

The goal of the posting period and schedule of events is to provide interested eligible vendors enough time to develop and submit quality responses.

Publishing solicitations for time periods that are too short may have the effect of artificially limiting the vendor pool and the resulting contract will be void.

2. Where solicitations are published

By law, TWC is required to post procurements with a contract value of more than twenty-five thousand (\$25,000) dollars to the ESBD, regardless of the source of funds to be used for the contract.²⁶ The ESBD, which is managed by the Comptroller's SPD, is an online directory listing procurement opportunities.

²⁶ [Texas Government Code, § 2155.083](#).

TWC advertises a notice on the ESBD but publishes the solicitation and documents through a separate program called Bonfire. A written addendum to the solicitation identifying an addition or correction to the solicitation must also be posted in the same manner as the solicitation. For example, since TWC uses Bonfire, staff must publish the addenda to Bonfire and ESBD.

3. Centralized Master Bidders List

The Centralized Master Bidders List (CMBL), which is maintained by the Comptroller, is an online directory of vendors registered to receive bidding opportunities from State of Texas purchasing entities. TWC must use the CMBL to select vendors for competitive bids or proposals to the fullest extent possible. For procurements exceeding twenty-five (\$25,000) dollars, TWC must use the CMBL to solicit from each eligible vendor on the list. TWC may also supplement the CMBL with additional vendors, and the Contract Developer will reach out to the Business Area to ask for this. The Business Area must provide this timely, since internal approvals are required to supplement the CMBL.²⁷

4. Vendor Questions during Publication

The solicitation will include a period for vendors to submit questions regarding the solicitation and its contents. The Contract Developer will coordinate the draft answers with the procurement team, ensure similar questions have similar answers, and coordinate internal reviews. Finally, the Contract Developer ensures the answers are posted in Bonfire and a notification of the responses is posted to ESBD according to the timelines established in the solicitation. A solicitation amendment may be required based on the questions received in the event any responses would result in a material change to the solicitation. The Contract Developer also coordinates the amendment draft and posting.

²⁷ [34 Texas Administrative Code § 20.107.](#)

3.5.8. And the Award Goes to...

The final step in the solicitation process is evaluating the responses received in response to the solicitation and making a selection decision. TWC must conduct a fair and impartial evaluation process as identified in the solicitation using the published criteria.

1. Administrative Review of Responses

The Contract Developer conducts an administrative review of the minimum qualifications a vendor must meet to move forward to the evaluation process. These are indicated in the solicitation and scored on a pass/fail basis. Only responses that contain the required information move forward. This ensures that responses provided to the evaluation committee for review are on a “level playing field” from a responsive standpoint. It would not be fair to evaluate one vendor that included all required documents against another vendor that failed to submit key documents. Unsigned vendor responses are not responsive to the solicitation are automatically disqualified even if all other information is provided.

2. Vendor Compliance Verifications

Compliance verifications are all about managing contract risk and ensuring that the agency is entering into a contract with a vendor in good business standing. Compliance verifications are required by law for nearly every contract before the agency can enter into the

contract.²⁸29303132

TWC performs vendor compliance verifications twice before contract execution. The Contract Developer will perform vendor compliance verifications on all proposals that meet minimum qualifications to move forward to the evaluation process. The Contract Manager will perform these compliance verifications for the awarded vendor just before contract execution.

These verifications include checking the Comptroller's vendor performance tracking system, debarment, federal database checks and other verifications. A vendor that fails a verification may not move forward in the evaluation process and receive a contract award.

See [Conducting Vendor Compliance Checks Procedure](#) for more information.

3. Single Response Received

In the event only one response is received, the Contract Developer and the Business Area will discuss before the evaluation process:

1. whether the SOW was too strict to limit competition and either:
 - a) prepare a Proprietary Purchase Justification for the proprietary

²⁸ [Office of Foreign Assets Control Sanctions Lists \(SDN\)](#).

²⁹ [Vendor Information Center](#) and [Franchise Tax Account Status](#) pages on the Texas Comptroller's website.

³⁰ [Texas Government Code §§ 808.051, 809.051, 2252.152, 2252.153, 2252.903, 2261.252, 2271.001, 2271.002, 2276.001, 2276.002](#).

³¹ [Texas Tax Code § 171.251](#).

³² Version 3.0 of the [State of Texas Procurement and Contract Management Guide](#), Appendix 32 and Vendor Compliance Verifications section.

sole source purchase; or

b) revise and readvertise the solicitation; or

2. reasons why potential eligible respondents did not participate in the process (such as not enough time to complete a proposal) and either:

a) revise and readvertise the solicitation; or

b) proceed with the evaluation process.

If the Business Area decides to proceed with the procurement, the response will move to evaluation in accordance with the solicitation process used.

4. Solicitation Evaluation Process

The evaluation process used depends on the solicitation process used.

Invitations for Bid (IFBs) are evaluated solely on objective criteria and may be conducted by the Contract Developer. Generally, these are evaluated when the bids are opened. For all other solicitation types, an evaluation committee process is used.

The Contract Developer will manage the evaluation committee process. Here are some key elements of the evaluation committee:

- Selection occurs prior to receipt of the solicitation responses;
- May participate in the solicitation development;
- Consists of three, five, or some odd number to avoid a tie in scoring by the evaluation committee;
- Supervisors and subordinates should not participate together on an evaluation team to avoid undue influence on the evaluation outcome;
- Contract Developer serves as the committee chair, and may serve as a scoring or non-scoring member; and
- Depending on the procurement, the Contract Manager may

participate as either a scoring or non-scoring member of the evaluation committee.

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.

See [Evaluation Committee guidelines](#) for more information.

5. Conflict of Interest Check

After the administrative review is complete but prior to meeting with the evaluation committee, the Contract Developer will distribute the names of the vendor respondents and proposed subcontractors to the committee members and technical advisors prior to providing access to the responses.

The Contract Developer must ensure that only the names are disclosed at this time, without associating any response with a particular vendor.

The Contract Developer must promptly report actual or potential conflicts to OGC and address these conflicts accordingly. OGC and PCS may require the designation of a different committee member or technical advisor to the evaluation.

Failure to report a conflict of interest may result in disciplinary action up to and including termination. Failure to report a conflict of interest may also invalidate an award if the conflict of interest is not discovered until after award has been made.

6. Evaluation of Responses

After evaluating the responses, performing the administrative review, and ensuring there are no conflicts, the Contract Developer will schedule a meeting with the evaluation committee to discuss their responsibility, the process, confidentiality of the process, and how to conduct a fair and impartial evaluation. The Contract Developer will ensure the evaluation committee has a copy of the solicitation scoring matrix.

In the event any evaluations differ significantly from the majority, the Contract Developer will schedule a meeting 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 were misunderstandings of the criteria or the requirement, or that information has been overlooked that was included in the response, the evaluator may provide a revised scoring matrix.

7. Evaluation Committee Assistance

The evaluation committee may seek assistance from technical experts within TWC 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.

Prior to discussing a procurement with a technical advisor, the Contract Developer will ask the advisor to complete TWC 1502 (Specific Conflict of Interest Disclosure), if the form has not already been completed.

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

Technical advisors cannot be non-TWC employees.

8. What if the response is unclear?

An unclear response is different from an incomplete response. Incomplete responses will not be provided to the evaluation committee because they do not meet the administrative review or other requirements.

Clarifying questions may be asked of a respondent to resolve conflicting information, apparent ambiguities, or minor clerical errors within the response. If a clarification is desired, only the Contract Developer will contact the applicable respondent and distribute the written clarifications to the evaluation committee. A respondent's clarification must be in writing and signed by an authorized representative.

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.

9. What if there are a lot of responses to consider?

This is a good problem to have and there is a way to address it that is both fair and impartial. 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 objective of this determination is to narrow the field of respondents for further evaluation activities, if needed. Not all procurements will need this determination or proceed to further evaluation activities.

10. Additional Evaluation Activities

If included and permitted by the solicitation, TWC may elect to conduct oral presentations or demonstrations after reviewing the responses.

These are a great opportunity for respondents to highlight the strengths and unique aspects of their responses and to provide answers to clarify questions TWC 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. All vendors

will receive an equal amount of allotted time and presenters will adhere to the same agenda format to ensure fairness in this process. Presentation order is determined in an impartial manner.

Following the oral presentation, TWC may submit written questions to the respondent to document in writing the verbal clarifications provided during the presentation. An authorized representative of the respondent should sign the answers to these clarification questions. Following all oral presentations, the evaluation committee will complete another evaluation scoring round.

11. Best and Final Offers (BAFOs)

BAFOs are used only in the RFP, RFO, and RFQ process; they are not used in the Invitation for Bids (IFB) process.

After additional evaluation activities are completed, TWC may hold discussions with respondents. If discussions are held, TWC must give respondents an equal opportunity to discuss and submit revisions to proposals. Revisions of proposals are normally accomplished by formally requesting a BAFO at the conclusion of discussions with a deadline set for receipt of BAFOs and instructions as to what should be submitted in response to the BAFO. TWC may request BAFOs prior to negotiation and may use them to narrow the field of competition.

Like clarifications, a BAFO cannot be used to “cure” deficiencies in the response.

12. Negotiations

If the Business Area wants to pursue negotiations with respondents, the Contract Developer must first closely review the terms of the solicitation and confirm that negotiation is permitted or necessary. The IFB procurement method, including best value bids, generally does not allow negotiations. However, the RFP and RFO methods generally do allow negotiations.

Negotiations, including preparation, may not begin until the Business

Area has completed the appropriate portion of the technical summary and selection form and provided it to the Contract Developer. This portion of the form documents the Business Area's selection of respondents for further negotiations.

12.1 Negotiation Team

Upon receipt of the necessary form from the Business Area, the Contract Developer will document the negotiation team and obtain necessary disclosures. The negotiations team should preferably consist of program area employees already involved in the solicitation process, but they do not have to be. Employees with effective negotiation and communication skills should serve on negotiation teams. For complex procurements involving high-dollar or high-risk projects, it is recommended that a team with employees experienced in negotiations conduct the negotiations. It is not recommended that a Contract Developer or any one negotiator singlehandedly negotiate the purchase of a complex procurement.

Criteria for choosing or excluding team members include leadership style, negotiation skills, and subject matter expertise. Too often state agencies are at a disadvantage during contract negotiations simply because the right people are not present during negotiations.

For complex procurements, it is recommended that the Business Area assign employees with negotiation skills to participate throughout the procurement, should the procurement eventually lead to negotiations.

Otherwise, the Business Area will need to designate the staff with the required skills and decision-making authority to participate in negotiations and become familiar with the procurement quickly. The negotiation team should also be kept to the minimum number of necessary staff.

In addition to Business Area staff, the negotiation team may include the Contract Developer, the Contract Manager, and OGC. For a major

information resources procurement, technical staff, such as IT or CISO, may also be included.

A designated lead negotiator will establish an organized and controlled negotiating environment to support an efficient, coordinated, and unified team effort. For a complex procurement, the Contract Developer is rarely the lead negotiator.

12.2 Negotiation Preparation

Successful negotiations begin with careful preparation. The amount of preparation may vary based on the procurement complexity. The negotiation team should meet as often as necessary to ensure key team members are confident in the preparation and ready to move forward.

The negotiation team must be familiar with the documentation submitted by the respondent and be well-versed in the business requirements, constraints, and TWC's objective for the procurement. The team should tailor the negotiation strategy to suit the particular facts and circumstances of each procurement.

Formal planning activities must include:

- Identifying the negotiation goals;
- Understanding and prioritizing the acceptable trade-offs between the various negotiation goals;
- Establishing the settlement range on the items to be negotiated;
- Anticipating the positions the respondent will take during negotiations; and
- Discussing with OGC "contract terms" crucial to the agreement and identifying terms upon which TWC is either unable or unwilling to compromise, as well as contract terms that TWC is willing to compromise or relinquish. These are "contract terms"

outside of the standard terms and conditions indicated in the paragraph directly below.

Note that during a solicitation process, a respondent is required to submit with its proposal whether it is seeking any exceptions to terms and conditions. The Contract Developer must share any exceptions with OGC as soon as they are received. The Contract Developer should again provide any exceptions to OGC as soon as the Business Area indicates it wants to pursue negotiations. Only OGC can advise on certain terms and conditions and legally acceptable exceptions or deviations.

12.3 What to Avoid During Negotiation

During negotiations, TWC may not use “technical leveling” or “technical transfusion” techniques.

- “Technical leveling” means helping a respondent bring its proposal up to the level of other proposals through successive rounds of discussion, usually by pointing out proposal weaknesses.
- “Technical transfusion” means disclosing technical information or approaches from one respondent’s proposal to other competitors during the discussion.

In addition, the following disclosures during negotiations are prohibited:

- disclosing 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.

Staff must exercise care to avoid making substantial changes to TWC’s contracting objectives, requirements, and specifications

identified in the solicitation. If the contracting objectives, requirements, or specifications are substantially changed through the negotiation process, the pool of vendors who may have been interested in submitting a response could have been different. Additional vendors may have competed if the changed objectives, requirements, and specifications were included in the original solicitation. Whenever it appears that contracting objectives, requirements, or specifications may have been changed, legal counsel must be consulted before proceeding further.

TWC may continue with negotiations until the best value for the TWC is achieved and an award to one or more vendors, as allowed by the solicitation, is made.

NOTE: A request for a vendor to clarify its proposal is not the same as negotiation of the terms of vendor's proposal. However, when seeking clarifications, TWC should not give one vendor an advantage over another and should extend the same opportunity to each vendor as necessary and applicable.

13. Recommendation for Contract Award

Almost there! The Contract Developer will provide the technical summary and selection forms to the Business Area to complete for the contract award recommendation. If negotiations were indicated by the Business Area, then the Business Area will update the technical summary and selection forms.

If the solicitation allows, more than one respondent may be issued a contract award, provided, however, that the awarded respondents are the highest ranked in the evaluation. Necessary management must approve the recommendation for contract award.

Staff must remember that the "quiet period" for the procurement extends through contract execution and information about a contract award must not be disclosed at this time. Only the Contract Manager or Contract Developer will share the contract award later in the

process.

14. Pre-award Contract Compliance Checks

Prior to contract award, the Contract Developer and PHS management use the internal PCS 1400-PHS checklist to ensure the required compliance checks and internal reviews and approvals have all been performed, and the required disclosure statements have been completed. The checklist should also ensure that the award to the selected vendor or an amendment to an existing contract is not prohibited by law.

3.6. Transition to Contract Manager

Now that the recommendation for contract award has been made and approved and certain pre-award activities have been completed, the Contract Developer will assign the contract award in ECPS to the Contract Manager to begin developing the contract and may elect to have a joint meeting.

3.7. Post Procurement Activities

3.7.1. Posting the Contract Award

The Contract Developer will post notice of the award to the ESBD upon receiving the final, signed contract from the Contract Manager.

Staff should forward any questions from the contractor to the Contract Manager for response. They should forward questions from other vendors that have not been awarded the procurement to the Contract Developer, especially if they pertain to a vendor protest. They should also refer requests for procurement or contract records to the Office of General Counsel, Open Records Division.

3.7.2. Vendor Protest of Contract Award

By agency rule, unsuccessful vendors have an opportunity to protest the

contract award in writing.³³ If a vendor has an issue with the solicitation, the vendor must file the protest by the date the solicitation responses are due. If the protest is about the evaluation or actual contract award itself, the vendor has ten (10) business days after the notice of award is posted in ESBD to file a protest.

TWC follows its [protest rules](#) to assess the merits of the protest and correct any unlawful procurement actions.

Any staff receiving information about a contract protest must immediately forward it to the Contract Developer that handled the procurement. The process will include OGC. The Contract Developer will immediately notify the Contract Manager since contract development may need to halt until the protest is resolved.

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 the vendor truly believes unlawful procurement actions occurred during the solicitation process. Even if the vendor does not prevail with the protest, PCS proactively examines the protest and makes appropriate improvements to its procurement practices if any shortcomings are uncovered during the protest.

3.7.3. Lessons Learned – Internal

The Contract Developer may call a “lessons learned” meeting at any time. This meeting ideally takes place within two (2) weeks of contract execution. The meeting must include, at a minimum, the team assigned to the solicitation, but it can also include other TWC staff involved in the process, including the Contract Manager (this is a best practice to include the Contract Manager in the solicitation writing process).

The purpose of the meeting is to review the solicitation from initiation through signature and document the strengths and weaknesses of that

³³ [40 Texas Administrative Code § 800.301](#).

solicitation and process, as well as to make recommendations for improvement.

Staff should review the lessons learned document prior to a new solicitation for a similar procurement.

3.8. The Procurement Record

The Contract Developer is responsible for ensuring the official ECPS procurement record is complete and updated throughout the procurement. The Contract Developer must use the TWC 1400-PHS Checklist at procurement development and throughout the procurement life to ensure all required records are in the procurement file. The TWC 1400-PHS for procurements must also be retained in the procurement record.

By law, procurement management must provide certain verifications on this checklist.³⁴

See [Procurement and Contract Checklist Procedure](#) and [ECPS Procurement Record Process Guide](#) for more information.

Chapter 4. The Contract Manager

4.1. Contract Manager Assignments

Each TWC contract must have an assigned Contract Manager. Depending on the contract type, a PCS CAS certified contract manager or, if the contract will be managed outside of PCS, a certified contract manager in the Business Area will serve as the Contract Manager. Business Areas that manage contracts must establish an internal organizational structure that assigns accountability for contract management activities. To be considered certified,

³⁴ [Texas Government Code, § 2262.053](#).

the Contract Manager must obtain and keep current a Certified Texas Contract Manager certification through SPD's certification program.

All TWC contract managers must familiarize themselves with and follow the State Guide, this Handbook, and applicable statutes and rules. Business Areas with contract managers outside of PCS may follow PCS contract management procedures that have been drafted with the State Guide and applicable laws as a basis or establish their own procedures, so long as they are consistent with the State Guide, TWC rules, and other legal requirements.

Without exception, all Contract Managers must follow ECPS requirements, including those related to recordkeeping, since ECPS documentation and information is used to fulfill statutorily required reporting requirements, audits, and requests for information.

4.2. Contract Manager Certification Required

According to Comptroller rule, the term contract management activities 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 Manual and Contract Management Guide.**³⁵

An employee must be certified as a Certified Texas Contract Manager (CTCM) to engage in contract management activities for TWC if:

1. The employee has the job title of contract manager, contract administration manager, or contract technician; or

³⁵ [34 Texas Administrative Code § 20.133 \(a\)\(3\)](#).

2. Performs contract management activities as fifty percent (50%) or more of their job activities; or
3. Manages any contract more than five million (\$5M) dollars.³⁶³⁷³⁸

Business Area staff involved in contracts or contract activities that do not meet the criteria for certification are encouraged to take the Comptroller's certification class even if they do not take the certification exam. This class provides an overview of contract management and best practices.

While CPA defines contract management activities as beginning at contract execution, TWC believes it is a best practice for Contract Managers to begin their activities earlier in the process, typically when the solicitation planning and drafting begins.

4.3. Contract Manager Responsibilities

A successful contract is not one where TWC never looks at the contract again after signing. Rather, effective contract management requires the active involvement of a Contract Manager throughout the contract lifecycle. The extent of contract management and the activities involved will not be the same for all contracts. It depends upon the complexity and level of risk of the contract, the contract term, and dollar value. Staff who are responsible for contract management must perform these responsibilities in accordance with TWC practices and policies, the State Guide, and contracting laws and rules. A contract manager's obligations begin with the initiation of the procurement through contract closeout and include the following:

³⁶ [34 Texas Administrative Code § 20.133 \(c\)\(3\)](#).

³⁷ Version 3.0 of the [State of Texas Procurement and Contract Management Guide - Professional Certification and Training Program](#).

³⁸ [Texas Comptroller of Public Accounts website – Certified Texas Contract Manager Training](#).

1. Procurement

- Promote the use of contract management best practices;
- Identify and assess risk associated with the potential contract award;
- Assist the Purchasing team and the applicable Program areas in developing a well-defined statement of work; and
- Assist the Purchasing team and the applicable Program areas in establishing performance measures, deliverables, and schedules to ensure contractor accountability.

2. Contract and Amendment Formation

- Identify and use the appropriate contract and amendment templates;
- Confirm all appropriate approvals have been obtained and necessary verifications and reporting have occurred;
- Ensure the scope of work clearly defines contractor responsibilities, performance outcomes and expectations; and
- Ensure contract amendments are aligned with the solicitation and do not exceed the scope of work.

3. Contract Oversight

- Know the contract. Thoroughly read the contract and amendments and become familiar with the requirements, including purpose, scope, and deliverables to ensure the contractor is held accountable for performance according to the terms of the contract;
- Read the contract file, especially the contract itself, if assigned a contract that has been previously managed by another Contract Manager. Understanding the contract and contract history can

prevent costly mistakes when amending it or discussing it with staff or the contractor;

- Establish a [contract monitoring plan](#) and continually review contracts and assess risks;
- Attend contractor meetings and be prepared for questions. Have the contract and amendments on hand in anticipation of each meeting;
- Ensure the vendor adheres to all applicable statutes, rules, regulations, and contract terms and conditions;
- Oversee performance, quality, and receipt of deliverables;
- Review and approve billing and track budget trends;
- Conduct timely [contract closeout/termination activities](#) and [vendor performance reporting](#);
- Document lessons learned and apply lessons learned to future contract management activities; and
- Stay ahead of contract deadlines. Meet internal and external deadlines and submit reports and other information as required. Use all available information when determining a course of action. If staff identify an issue, research further to get details. This is not meant to challenge the staff's assessment, but rather to clarify as the issue might either be worse or not as problematic as it originally appeared.

4. Communicate Effectively

- Keep open, consistent, and clear communication with those involved in the contract;
- Meet with Business Area staff regularly to discuss contract and amendment status. Meetings do not have to be frequent or lengthy, but enough to keep the line of communication open and allow staff to ask questions or raise concerns;

- Seek input and advice early on from PCS CAS management, OGC, and subject matter experts before a problem worsens and becomes more difficult to resolve or increases risk to the agency;
- Document contractor performance issues timely to ensure PCS staff, legal, and management have ready access to information when needed;
- Be mindful of roles and responsibilities and any pre-determined [Roles and Responsibilities Matrices](#) (RASCI – Responsible, Accountable, Supportive, Consulted, and Informed), including knowing who has authority for decisions, who is responsible for taking actions, and who should be consulted and informed; and
- Adhere to TWC’s delegated signature authority.

Chapter 5. Contract Formation

5.1. Contract Formation Assignment

5.1.1. How Contracts are Assigned to Contract Managers

A Contract Manager will receive an assignment to develop a contract from the Contract Developer through ECPS workflow if there was a solicitation, or directly from management if there was no solicitation (such as for an interagency contract (IAC), a disaster declaration contract, or a memorandum of understanding (MOU)).

The Contract Manager must first create the ECPS contract record with the correct information and then identify the correct contract template for contract formation. The Contract Manager should consult with PCS CAS management and/or OGC if there are any questions about the correct template or what the template should incorporate.

See [New Contract Procedure](#).

5.1.2. ECPS Contract Record

Immediately upon contract formation assignment, the Contract Manager must create the ECPS Contract Record, using the [ECPS Contract Record Process Guide](#) for instructions. The Contract Manager must also use the [Mandatory ECPS Reporting Fields](#) document to ensure the data in the ECPS Contract Record is accurate since this data is then used for statutory and other reporting.

5.1.3. TWC 1400 Checklist

The Contract Manager must use the applicable TWC 1400 (1400-PHS, 1400-CAS, or 1400-IT) checklist at contract development and throughout the contract life to ensure all required records are in the contract record. The TWC 1400 checklist must also be retained in the contract record.

See the [Procurement and Contract Checklist Procedure](#) and the associated checklist for more information. See also the [ECPS Contract Record Process Guide](#).

5.2. Vendor Communications during Contract Formation

Contract formation is still a part of the procurement process—an executed contract does not yet exist, and negotiations may occur, although at this point the Contract Manager will play a more active role than the Contract Developer. During this time through to contract execution, all communications with any vendor must be through PCS and the assigned Contract Developer or Contract Manager. At no point in time should other TWC staff have any discussions with the vendor or share any draft documents or information regarding the procurement and contract.

See [TWC-Vendor Communications](#) for more information.

5.3. Form of the Contract

5.3.1. Overview

Before an awarded vendor can provide goods or services to TWC, there must be a written contract document. The purpose of this document is to memorialize the agreement between TWC and the vendor to prevent misunderstanding or conflict and manage risks. What is “easiest” or “fastest” to get a contract in place is not a valid reason for determining the most appropriate contract format.

Contracts can be memorialized in different formats. The formats used by TWC are “four-corner” contracts, “layered” contracts, and purchase orders (POs). A transactional purchase order (TPO), a form of PO, is also a contract but limited in duration and value, as discussed below.

Each and every purchase made by TWC will have a PO.³⁹ Based on the criteria identified here, a “transactional” purchase order may be all that is necessary, while other more complex or high-risk procurements will require a “four-corner” or “layered” contract where the PO serves as the encumbering mechanism.

Each of these contract formats has advantages and disadvantages. The Contract Manager, in consultation with PCS and OGC when necessary, determines the appropriate format based on an assessment of the risks involving contract construction or interpretation.

5.3.2. Four-Corner Contract

In a TWC “four-corner” contract, the contract provisions are all contained within a single document. Although the standard terms and conditions are typically attached or incorporated into both purchase orders and contracts,

³⁹ Service authorizations are similar to purchase orders and used with Vocational Rehabilitation contracts. They are not discussed in this Handbook.

the terms and conditions of a “four-corner” contract may be tailored to be more specific to the transaction, particularly in the case of a complex contract. The “four-corner” contract must be signed by an authorized representative of each party to the contract.

Contract management is often easier when the provisions regarding the duties, obligations, and responsibilities of each party are logically organized within one document. Although “four-corner” contracts can require more time to plan and prepare, they are the most desirable format and provide the most clarity for the contracting parties, especially in addressing complex or high-value procurements that present more risk.

5.3.3. Layered Contract

An alternative to the “four-corner” contract is a “layered” contract. The solicitation, awarded vendor’s response, terms and conditions, including negotiated or final terms and conditions, and other relevant documents are attached to a top-level “contract cover sheet” with execution page, all of which serve as the formally signed agreement. The “contract cover sheet” identifies all documents that are part of the agreement and establishes an order of precedence should there be any conflicts between the documents. Key provisions in the incorporated documents are not reiterated in the contract cover sheet to avoid conflicts.

The “layered contract” must be signed by an authorized representative of each party of the contract. A layered contract can be developed more quickly than a “four-corner” contract because it incorporates existing key documents and requires less drafting.

Contract management of a layered contract is similar to that of a “four corner” contract. However, because of the various attachments, the Contract Manager must pay careful attention to the order of precedence in interpreting prevailing provisions. Amendments to a “layered contract” must also be carefully written, again being mindful of the order of precedence and ensuring clarity as to the exact attachment or “layer” being amended.

5.3.4. Purchase Order (PO)

1. Purchase Order (PO) for “Four Corner” or “Layered” Contract

When a “four corner” or “layered” contract is in place, the PO is the mechanism to encumber the funds and is linked to the contract. The PO should refer to the TWC contract number and the term covered by the PO, which usually coincides with the fiscal year but may or may not coincide with the contract term. Other information may be required to be included on the PO by PCS, Finance, or the Business Area; the person entering the PR should include this in the WRAPS PR request.

Depending on the value, there may not be a need for a four-corner or layered contract document.

2. Transactional Purchase Order (TPO)

A TPO is a type of purchase order that serves as the documentation of a point-in-time purchase. It is a legally enforceable agreement to purchase a good or service, established for a single procurement term not to exceed twelve (12) months or one fiscal year. A TPO has no stated renewals and may cross fiscal years if it is a capital expenditure for a service or good, or if the total expenditure is completed during the fiscal year but services last longer than one (1) fiscal year (i.e., software maintenance, warranty).

Once accepted by the vendor or contractor, a TPO is a legally binding contract and requires contract monitoring and contract management activity. Any request by the Business Area to either extend or amend a TPO in any way that alters the duties, expectations, or relationship of the parties must be processed through PCS and OGC.

5.3.5. Criteria for Determining Contract Form

See [Appendix 2 for Criteria for Determining Contract, PO or TPO](#) that summarizes the thresholds, criteria, and minimum requirements.

PCS management or TWC Executive Staff, in consultation with OGC as

needed, may require a specific form of contract based on an assessment of the procurement risk and other factors, including, but not limited to, the following list:

- A procurement for goods accompanied by a service (i.e., installation);
- Operational impact on TWC of incomplete or delayed delivery of goods or services; and
- Potential data security implications.

A Contract Developer or Contract Manager may also identify that a specific form of contract is necessary and must raise the issue with the appropriate PCS management staff for consideration.

5.4. Contract Templates

5.4.1. Template Maintenance

PCS maintains the contract templates that include standard contract language intended to protect TWC and that contain up-to-date legal terms, references, and requirements. OGC reviews and approves these templates.

Using a prior or existing contract example will not incorporate the most recent updates to contract template language. Therefore, the Contract Manager must begin the contract drafting process using the latest approved template.

5.4.2. Terms and Conditions

OGC maintains the Terms and Conditions that are attached to TWC contracts. The Contract Manager will use the current approved version that is appropriate for the contract. OGC will advise when any special or additional terms and conditions are required.

Slight variations can significantly change the meaning of a term or condition, resulting in noncompliance with applicable statutes and rules. OGC must

review and accept any request from a vendor or contractor to modify any contract terms or conditions.

NOTE: During the solicitation process, respondents are provided an opportunity to note exceptions with certain terms and conditions. The Contract Developer provides these exceptions to OGC during the procurement process. The Contract Manager must be mindful of any allowed or negotiated exceptions and incorporate these into the contract. The Contract Manager should also be aware of exceptions that were not allowed or new exceptions, should these be raised again by the awarded respondent during the contract drafting process. If a current contractor wants to negotiate terms and conditions during the contract term, the Contract Manager must promptly forward to and discuss with OGC.

Staff should forward all questions regarding legal terms and clauses to OGC promptly.

5.4.3 Contract Dates

The Contract Manager must pay particular attention to the contract dates when drafting the contract. A contract resulting from a solicitation will include key dates and renewals in the solicitation. Under no circumstances can a contract be "backdated" to have a start date that occurred in the past, otherwise known as a "hard start date."

The Contract Manager must be mindful of the begin date on the draft contract and change it accordingly since the drafting period or a funding period may affect the start date.

5.4.4. Contract Attachments

It may be necessary to attach or incorporate by reference any of the following documents, instead of attempting to insert the applicable provisions into the contract template and potentially missing key provisions.

- Office of General Counsel Terms and Conditions;
- The Scope of Work or Specifications as published in the solicitation

document (RFP, IFB, RFO, etc.);

- The contractor's signed proposal;
- The contractor's signed cost proposal or revised cost proposal; and
- Any other documents determined by the Contract Manager, OGC, or PCS management that identify the performance obligations of the parties under the contract.

The documents listed above are those most likely to identify the obligations of the parties through the life of the contract. Care must be exercised that only the documents necessary are included since any changes to the contract—or its attachments—will need to be accomplished through a formal amendment. For example, an invoice template for the contractor's use does not need to be attached to the contract since terms and conditions in the solicitation, contract document, or OGC's terms and conditions identify invoicing requirements.

PCS management or OGC may instruct the Contract Manager on the correct documents to include and the order of precedence of these documents.

5.5. Contract Reviews

Each draft contract goes through a series of established reviews, consisting of those by the Business Area, PCS management, and other stakeholders. OGC is the last to review so the assigned attorney can review all comments and revisions by prior reviewers. If there are any significant changes made by any reviewer, the review process may start again, but must always end with OGC. Following OGC's review and the resolution of OGC's comments, the Contract Manager may share the draft contract with the awarded vendor for review and comments.

Prior to routing the draft contract, the Contract Manager should carefully review the draft to ensure it is in harmony with the solicitation and negotiations and encompasses all the required elements. There is no substitute for reading through the contract in the context of the awarded procurement.

Any modifications requested by the awarded vendor must again be reviewed by OGC at a minimum. Should the awarded vendor request modifications to required or essential contract clauses, these must be clearly pointed out to OGC for review. Many of these requirements stem directly from statutory or other law; TWC has no authority to negotiate or deviate from them. Prior to sending to OGC, the Contract Manager should review the file and note in the draft whether any exceptions requested were previously requested by during a solicitation process. The Contract Manager should also note OGC's previous determination and whether the current draft includes the agreed upon exception revisions or if the exception request was denied.

Following OGC's final review, the Contract Manager may share the draft with the Business Area or other staff for awareness. If any further modifications are requested by the Business Area at this time, OGC must be provided another review of the draft contract.

5.6. Compliance Verifications

With all reviews complete, the contract is ready to be routed for signature. Before that can occur, the Contract Manager must perform compliance verifications that are similar to those conducted during the procurement process. Verifications are performed at this time to meet specific timing identified in law for certain verifications, as well as to ensure there have been no changes in the vendor status before the contract is executed.

These compliance verifications occur **not more than seven (7) calendar days before** contract execution for contracts resulting from a competitive process.⁴⁰

See the [Vendor Compliance Checks Procedure](#) for more information.

⁴⁰ [Texas Government Code § 2252.903](#).

5.7. Contract Signature

TWC has established delegations of signature authority to key staff based on threshold amounts. Only those authorized in the delegation of signature memorandum may sign a contract on behalf of TWC. For example, the TWC Executive Director, by delegation of authority from the Commission, signs all contracts and awards exceeding one million (\$1M) dollars.

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

See [Delegated Signature Authority](#) for more information regarding contract value thresholds. See also [Sending Contract Documents for Executive's Signature](#) for communication requirements when sending documents internally.

5.8. The Contract is Executed!

Immediately following contract execution, the Contract Manager sends an executed copy to the Contract Developer, Business Area, and other internal points of contact. This copy of the contract document must be provided to the Contract Developer, Business Area, and other internal points of contact prior to the Contract Developer posting the Notice of Award to the ESBD. This makes internal staff aware of the contract award should they receive any inquiries.

For high-risk and/or high-dollar procurements, the Contract Manager may call an internal meeting with Business Area and other staff assigned to the contract for a thorough review of the scope of work, terms and conditions, agreed-upon criteria for accepting deliverables and reports, invoicing process, and other matters about contract management. This meeting can be a useful tool to internal staff to prepare for a contractor orientation meeting (see Section 6.2, below).

The PCS Data Analysis Unit is responsible for agency notification and reporting to the Legislative Budget Board (LBB), including Attestation

letters and associated documentation. The agency may not expend funds to make payments on a contract of appropriated funds if the amount of said contract is to exceed or expected to exceed the following thresholds until the required notice is provided to the LBB. The notice requirement applies to a “reportable contract” that is defined as an agreement to acquire goods or services that exceed the dollar thresholds described in the table below. This definition includes a contract, grant, revenue generating contract, interagency and interlocal agreement, and any other kind of purchase of goods or services, including any amendment, modification, renewal or extension thereof. Failure to timely comply with the notification requirements may result in recommendations for enhanced monitoring of agency procurement and contract management processes. For this reason, contract records must be complete with all required documentation as soon as the contract is executed and the record is approved.

Chapter 6. Contract Management

6.1. Overview

Contract Management is a collaborative effort between the Contract Manager and the Business Area staff and subject matter experts. The assigned Contract Manager has the primary responsibility for ensuring the contract is managed and that the obligations and responsibilities of TWC and the contractor are met and documented in the file. Business Area staff and subject matter experts play a crucial role in keeping the Contract Manager informed throughout the contract duration and in timely submitting reports and amendment requests. For more detailed information regarding contract management roles and responsibilities, see the [RASCI matrices](#) developed by the Business Areas and PCS Contract Administration Services.

6.2. Contractor Orientation

The contract has been developed, negotiated, and finally executed. The next step is important to contract success—contractor orientation. Ideally, this is

scheduled by the Contract Manager within five (5) business days of contract execution. The Contract Manager facilitates the meeting and prepares a meeting agenda, with input from TWC staff assigned to the contract. This is a time for all key members for that particular contract to meet. In a sense, the contractor is like a new employee onboarded for success. The following are some items to address:

Introduce the contract team. In addition to the Contract Manager, introduce other potential TWC staff members associated with this contract. Identify the roles. Ask the contractor to do the same.

Cover key requirements that will mean contract success. Although agency staff and the contractor might already be aware of these, this ensures the key requirements have been discussed and provides an opportunity for questions. Refer to the section of the contract, but do not read the contract to attendees.

Contract requirements. Discuss performance and administrative requirements such as deliverables. Again, refer to the sections of the contract.

Contract meetings. If the term of the contract involves regular meetings throughout, make sure it is clear who will schedule such meetings and their frequency.

Special terms. Point out special terms, such as training or disclosure agreements that must be executed prior to beginning any work, as this is a great time to mention it.

Insurance and bonding. If any insurance or bond requirements are included, remind the contractor these must be updated annually or as specified in the contract.

How to get paid. Discuss the invoicing process and what information is required to be included on an invoice. Be sure to mention who must receive a copy of the invoice. It is also a good idea to give examples of what will hold up invoice processing, such as an incorrect purchase order number.

Share important documents. For example, if there are certain invoicing requirements, this is a great time to share an invoice template of how you want to see future invoices.

Amendment process. Discuss how the amendment process works and that the Contract Manager is the primary contact during any contract modifications. The Contract Manager must be available to provide this information again at any time during the term of the contract.

The type of and potential risk of a contract are large factors in determining the length or scope of the orientation meeting.

See [Contractor Orientation procedure](#) for more information.

6.3. Communications with Contractors

We want our contractors to succeed in delivering what is required in their contract with TWC. The administering Business Area will handle or coordinate routine, day-to-day communications and regular meetings. These activities should include the Contract Manager. Staff should direct questions from current contractors regarding any active procurements to the assigned PCS Contract Developer.

The Contract Manager and Business Area staff may provide technical assistance throughout the contract term that may include:

- Clarification of monitoring and oversight requirements;
- Clarification of billing or payment requirements;
- Explanation of compliance when a contractor experiences difficulty with following contract terms and conditions, policies and procedures, or reporting requirements;
- Updating contractor personnel designated in the contract when there is a turnover in key staff; or
- Guidance on other vendor issues.

Like the contract drafting process, the Contract Manager is the only person authorized to have discussions with the contractor regarding any draft amendments. Business Area staff may continue to communicate with the contractor on matters that do not pertain to the details of the amendment.

6.4. Contract Amendments

6.4.1. Requesting a Contract Amendment

Any change, revision, or modification to a TWC contract must be memorialized in writing. This includes renewals and extensions, as discussed below. Some amendments are through a formal document, and some minor changes are through a letter.

Requests for changes from the contractor should not be agreed to by the Business Area or other staff working with the contractor. Instead, inform the contractor that TWC's contract amendment request process will initiate the request. Requests for contract amendments, renewals, or extensions must be submitted by the Business Area on the Contract Amendment, Renewal and Extension (CARE) form (TWC 1720) and signed by the person with delegation for the amendment value or request.

The Contract Manager will review the request, prepare an amendment, work with the Business Area to seek additional information or clarification, and send the amendment through the required reviews and approvals. The Contract Manager must also ensure internal reporting occurs if the contract value will meet or exceed one million (\$1M) dollars due to the amendment.

See [TWC 1720 Contract Amendment Requests Procedure and Forms](#) for more information. Contract Managers, see [TWC 1606 Acknowledgment of Executive Director's Notification to Commissioners of \\$1 Million Contracts Procedure and Form](#).

6.4.2. Contract Renewals

If a contract allows contract renewals, it will be identified within the contract. Renewals allow TWC to continue the contract for the renewal period specified up to the number of renewal periods specified. Some contracts might have an automatic renewal period.

At fifteen (15) months from contract expiration, PCS Data Analysis Unit (DAU) sends an automated report to the Contract Manager and other identified Business Area staff to make them aware of contracts approaching expiration. At any time, Business Area staff may review the expiring contracts dashboard to determine contract renewals.

It is the responsibility of the Business Area to ensure that a renewal or a new solicitation is started timely. However, the Contract Manager must also coordinate with the Business Area to determine if contract renewal is necessary. It is best practice for a Contract Manager to keep a list of contract renewal and expiration dates and regularly discuss with the Business Area their future contract or procurement needs.

The Business Area must complete the TWC CARE 1720 requesting the renewal option be exercised and submit it through the [PCS Portal or IT Acquisitions Portal for technology contracts](#). The Contract Manager will review the information, prepare the renewal, work with the requesting Business Area to seek additional information or clarification, and workflow the documents for the appropriate reviews and approval. All signatures on the renewal must occur prior to the expiration date of the existing term — “back dating” a contract or renewal start date (using a “hard start date” that occurred in the past) is not allowed.

If no renewals remain available under a contract, the Business Area staff should discuss internally to determine whether services and pursuing a new procurement are still necessary. Timing is critical. If they determine a new procurement is necessary, it may take six (6) months and probably more, so these internal discussions should begin early.

See [Contract Amendment Requests \(TWC 1720\)](#) for more information.

6.4.3. Contract Extensions

A contract extension is the continuation of the contract period beyond the initial contract period and renewals specified in the procurement or contract document. Extensions can only be processed if the original solicitation or contract contained a clause allowing for an extension period. The extension must be completed and executed prior to the expiration date of the existing term.

The Business Area must complete the TWC CARE 1720 to request an extension and submit it through the [PCS Portal](#). The Contract Manager will review the information, prepare the extension, work with the requester to seek additional information or clarification, and workflow the documents for the appropriate reviews and approval. All signatures on the extension must occur prior to the expiration date of the existing term. "Back dating" a contract or extension start date (using a "hard start date" that occurred in the past) is not allowed.

Two specific types of extensions—holdover extensions and General Appropriations Act (GAA) extensions—are available. The Contract Manager is responsible for carefully examining the contract language to determine whether any of these options are available and ensuring all requirements are met for a contract extension.

1. Holdover Extensions

A holdover extension is an extension that is specifically identified in the contract or attached terms and conditions which allows for a holdover period beyond the base term and any renewal periods. The length of a holdover extension is often a short amount of time that is specifically identified in the contract, such as up to ninety (90) calendar days.

2. General Appropriations Act (GAA) Extension

"It is the intent of the [Texas] Legislature that state agencies minimize the use of [GAA contract] extensions that extend a contract beyond the base

term and any optional extensions [(such as holdovers)] provided in a contract.”⁴¹

The legislature has indicated that a condition for using the GAA is to address immediate operational or service delivery needs. For example, use of the GAA would be appropriate when a new procurement has occurred; there has been a delay in awarding a new contract; and the existing contract needs to be extended to ensure the existing vendor continues to provide necessary services. **Failing to timely plan a new procurement is not an acceptable justification for using the GAA.**

The GAA contract extension provision may be used only once, regardless of the period selected. The GAA extension provision requires that the extension be reported to the Texas Legislative Budget Board (LBB).

Before becoming eligible for a GAA extension, all holdover, renewal, and extension options in the contract must be exhausted. There are other specific requirements that must be met to utilize the GAA extension. The Contract Manager must be familiar with and ensure compliance with these requirements.

See [Contract Amendment Requests \(TWC 1720\)](#) for more information.

6.4.4 ECPS Amendment Record

The Contract Manager must create new contract versions in ECPS for all amendments, renewals, extensions, and budget adjustments associated with four-corner and layered contracts. New contract versions in ECPS should not be created for administrative amendments, i.e., amendments that do not affect or alter the rights of the parties. See [Contract Amendment Requests \(TWC 1720\)](#).

ECPS supplier ID changes are contract assignments and must be documented through contract amendment. These changes require special handling. Refer to [Chapter 8 of the Enterprise Contract and Procurement](#)

⁴¹ [GAA, Art. IX, § 17.09\(e\)](#).

[System – ECPS Contract Record Process Guide](#) for detailed instructions.

6.5. Contract Assignments

A contract assignment occurs when the contractor transfers its rights under the contract to another. A contract assignment is not a contract amendment. The Contract Manager must ensure that the assignment is documented through [TWC 1304 Contract Assignment Approval](#) and reviewed by OGC. By the terms of TWC’s contract, a contract assignment cannot occur without TWC’s approval. The Contract Manager must also be aware of statutory reporting requirements. For example, the Contract Manager should report an assignment of a major information resources information project to the Legislative Budget Board.

See the [Enterprise Contract and Procurement System – ECPS Contract Record Process Guide, Section 8.](#)

6.6. Risk Assessment

By assessing risk and allocating monitoring resources accordingly (see Section 6.7, Contract Monitoring, below), the Contract Manager can focus on contracts that pose risk above a low level. This does not mean that lower risk contracts should not be monitored—it just means that more complex or higher risk contracts may—and will usually—receive more frequent or in-depth (enhanced) monitoring.

PCS has developed a [Risk Assessment Tool](#) for the Contract Manager to use to establish the levels of contract monitoring on an annual basis. The Contract Manager should also perform the risk assessment more often, if required.

The risk assessment consists of a variety of risk factors that, in the aggregate, are used to determine the overall risk level of the contract (high, medium, or low). Since risk assessment is a dynamic process, it should be updated accordingly. See the [CAS Quality Risk Assessment and Monitoring procedure](#) for more information.

A Contract Manager in PCS CAS must follow the procedure. A Contract Manager outside of PCS CAS **must** either 1) use this PCS procedure or 2) establish their own written risk assessment procedure. The resulting risk assessment on a contract must be retained in the ECPS contract record.

6.7. Contract Monitoring

6.7.1. Overview

Contract monitoring is putting the risk assessment discussed in Section 6.6. above into action. The purpose of contract monitoring is to ensure the contractor is performing all contract obligations and that the Contract Manager is aware of and addressing developing issues or concerns as they arise. The risk assessment will inform the Contract Manager of the monitoring efforts required for each contract assigned to the Contract Manager. Contract monitoring activities, including the Contract Monitoring Plan, can be conducted in a variety of ways that are objective and consider contract complexity, value, and risk. Based on legal requirements and best practices, PCS CAS has established minimum contract monitoring activities for contracts regardless of the size, value, or risk. Note that certain contracts may be legally exempt from monitoring requirements. See the [CAS Quality Risk Assessment and Contract Monitoring procedure](#) for more information.

Minimum contract monitoring includes:

6.7.2. Invoice Reviews

The Contract Manager and the Business Area share responsibility for reviewing and approving invoices, provided the Contract Manager has access to the invoices. The Contract Manager will promptly provide a technical review to determine if the rates and services are the same as allowed by the contract, and if all supporting documentation is provided. This includes confirmation that the goods and/or services being invoiced have been received and accepted by the agency. The Business Area will confirm that all deliverables have been received and goods/services were provided satisfactorily.

The Contract Manager will dispute incorrect invoices, those lacking supporting documentation, and those for which the corresponding goods/services have not been provided in accordance with the contract.

A best practice is that the Contract Manager maintain a log of all incoming invoices that includes the date received, the invoice amount, key dates, and payment date. This will also demonstrate that all invoices and the final invoice have been received at contract closeout.

See [Contract Invoice Review and Cost Management Procedure](#).

6.7.3. Deliverables and Reporting

The Contract Manager and the Business Area share responsibility for tracking the status of deliverables. The Contract Manager ensures the receipt of the goods and services and that the Business Area has accepted the goods and services in accordance with contract requirements (scope of services).

The Contract Manager must also ensure the receipt of vendor compliance deliverables, such as reporting, performance bonds, and insurance. For example, if the contractor is required to provide a certificate of insurance and the insurance must be renewed annually, the Contract Manager must monitor to ensure it is received.

6.7.4. Contract Terms and Conditions

The contract's terms and conditions may contain certain administrative reporting activities that require monitoring. These include vendor reporting of litigation, lobbyist activities, changes in ownership or financial status, changes in data access, background checks, cybersecurity requirements, and changes in key personnel. Staff must retain the Contract Manager's communication with the contractor regarding compliance with these terms and conditions in the ECPS file.

6.7.5. Enhanced Monitoring

Enhanced monitoring (meaning higher-frequency or more robust monitoring tools) is required by statute for high-dollar and high-risk contracts.⁴² MOUs, IACs, Interlocal Contracts or ILCs, and no-cost contracts are exempt from enhanced monitoring. The process established by PCS CAS and followed by PCS Contract Managers ensures enhanced monitoring occurs quarterly, and a report is prepared and provided to TWC executive management and the Commission (i.e., each of the three commissioners) as required by [Texas Government Code § 2261.253](#) and TWC's rules at [40 Texas Administrative Code §§ 800.350-352](#). See PCS' policies and procedures at [Risk Assessment and Contract Monitoring](#) for more information regarding enhanced monitoring.

A Contract Manager outside of PCS performing contract management functions must ensure the reporting occurs to the Procurement and Contract Services Director as required by [40 Texas Administrative Code, § 800.352](#).

6.7.6. Monitoring Documentation

The Contract Manager must ensure that any documentation of monitoring activities is factual, thorough, and substantiates any findings, such as performance deficiencies or instances of non-compliance.

Monitoring documentation must be maintained in the official contract file.

The Contract Manager should share any issues or findings identified because of contract monitoring activities with the Business Area and OGC to determine what action should be taken, such as escalation, warning letter, liquidated damages, corrective action plan, payment holdback, or some other action.

See [Risk Assessment and Contract Monitoring](#) for more information.

⁴² [Texas Government Code § 2261.253](#).

6.8. Escalation of Contract Issues

Staff involved with the contract must immediately notify the Contract Manager of issues with a contractor and work with the Contract Manager, and OGC when applicable, to determine whether formal communication or action is required to address these issues, including:

- Non-compliance with contract terms and conditions;
- Missed deliverable due dates;
- Issuance of sanctions or liquidated damages; or
- Billing or payment issues (such as disputing invoices).

Formal or official communication with the vendor must be adequately documented and retained in the ECPS contract file. Examples of significant issues requiring escalation include:

- Risk that the contract will exceed budget limitations or timeframes;
- Repeated non-compliance;
- Security or integrity concerns;
- Invoice disputes;
- Appearance of impropriety or potential conflict of interest; and
- Suspicion of fraud, waste, or abuse.

Escalation of these issues to the Contract Manager helps ensure that serious problems and issues are addressed quickly to prevent harm to the agency, gaps in goods or service coverage, or misuse or waste of taxpayer dollars.

6.9. Vendor Performance Reporting

State statute requires state agencies to report vendor performance for certain contracts to the Comptroller's [Vendor Performance Tracking System \(VPTS\)](#).⁴³

Vendor performance reporting is required within thirty (30) calendar days from the completion or termination of all contractual activities if the total contract value is twenty-five thousand (\$25,000) dollars or more. Purchase orders issued for which there is no separate contract document, such as TPOs, are also subject to this requirement.

Additional vendor performance reporting is required for contracts valued at five million (\$5M) dollars or more as follows:

- At least once per year during each term (not fiscal year unless the contract term follows the fiscal year) of the contract and at each key milestone; and
- Before amending a contract to execute a renewal period.

Certain contracts that are characterized as subrecipient relationships, such as interagency agreements, memoranda of understanding, and grant funded initiatives, are exempt from the VPTS reporting requirement. See the [TWC 1310-Vendor Performance Tracking System and Vendor Performance Report Procedure](#) for more exemptions and information.

Vendor performance reporting is a shared responsibility.

The Contract Manager will send the necessary form to the Business Area and should plan to meet with the Business Area, if needed.

The Business Area must then complete the form and return it to the Contract Manager. All information provided on the form must be factual in nature and

⁴³ [Texas Government Code § 2155.089](#).

objective since it will then be reported to the Comptroller's external VPTS system. If a Business Area neglects to submit the form to the Contract Manager after two (2) reminders, the Contract Manager must timely and contemporaneously escalate the matter for action to the PCS Director, the Director of Contract Services, and the respective Manager of the applicable contracts area.

As a best practice, Business Areas should use the TWC 1303 Contractor Performance Report throughout the contract life to document positive or negative performance or technical assistance provided to a contractor. Business Areas should submit the TWC 1303 to the Contract Manager to retain in the contract record. The TWC 1303 can then be used to complete the TWC 1310 VPTS reporting form.

See the [TWC 1310-Vendor Performance Tracking System and Vendor Performance Report Procedure](#) for more information. See also [TWC 1303 Contractor Performance](#).

6.10. Contract Expiration and Termination

Contract expiration or termination is an end to the contract between TWC and the contractor. It occurs when:

- The contract expires according to its own terms;
- Both parties agree to terminate the contract; or
- Either party terminates the contract.

If there is a need to terminate the contract, the Contract Manager must review the contract terms and conditions, agency policy, and applicable laws and regulations to ensure termination is allowed and to determine the basis for termination.⁴⁴ The Contract Manager must consult with OGC for any

⁴⁴ [Texas Government Code § 552.374](#).

termination action.

During termination discussions, the Contract Manager must coordinate with the Business Area so alternate arrangements can be made for goods or services and to ensure a smooth transition before the contract termination date.

A written notice of termination must be sent to a contractor prior to the contract termination date. The Contract Manager will coordinate with OGC to ensure the contractor receives the notice in the required time frame and in a manner that complies with the contract terms.

OGC must approve a notice of termination that may contain any of the following:

- The effective date of the termination;
- The reason for the termination;
- Contract citation that allows the termination;
- Record retention requirements; and
- A description of the closeout procedure.

If the termination is for cause, the notice may also include the following, subject to OGC approval:

- A statement of all contract provisions that the contractor failed to meet;
- Any related materials demonstrating contractor failures; and
- Notice of the contractor's rights of recourse, if any.

The Contract Manager must ensure the contract record is properly documented.

6.11. Contract Closeout

Contract closeout is the final step of the contract lifecycle and occurs once the contract has expired or is terminated. For most contracts, closeout occurs within ninety (90) calendar days after the expiration, termination, or completion of a contract. See the [Agency Contract Closeout procedure](#) for timing for specific contracts.

The complexity of each closeout can depend on factors such as:

- a. Whether the contract is a TPO;
- b. Whether the contract is competitively or noncompetitively procured;
- c. Whether it is administrative, revenue-generating, goods, or client services; and
- d. The status of the contract deliverables at the time of contract termination.

The Contract Manager uses the [TWC 1302 Agency Contract Closeout Form](#) to document the process. The Contract Manager may request that the Business Area provide information to complete the contract closeout.

Basic steps to contract closeout include:

- a. Completion of all administrative actions and resolution of contractor performance;
- b. Verification that all deliverables have been received and entered in ECPS;
- c. Verification that all invoices have been received and paid;
- d. Settlement of contract disputes, claims, and agreements;
- e. Protection of any TWC confidential information;
- f. Settlement of financial claims;

- g. Audit of any records or payments;
- h. Cancellation of any goods or services not yet received;
- i. Transferring of equipment, hardware, software, and goods;
- j. Transferring access to any information or reporting systems;
- k. Review of ECPS contract records documents and data for completeness and accuracy;
- l. Completion of the contract record checklist and closeout checklist, and saving them in ECPS; and
- m. Evaluating and documenting vendor performance (VPTS reporting).

See [TWC 1302 Agency Contract Close-Out Procedure and Forms](#) and [ECPS Contract Record Process Guide, Section 15. Contract Closeout](#).

6.12. The Contract Record

Documenting and maintaining contract management activities is a key part of successful contract management. It helps in making informed decisions about contract activities, settling claims or disputes, and accurately accounting for and reporting contract data. It is also necessary to keep the contract record up to date in the event of an audit.

The Contract Manager is responsible for maintaining the official ECPS contract record and ensuring the contract record is updated throughout the lifecycle of the contract. The Contract Manager should also verify that it contains accurate and complete information. Business Area staff working on agency contracts are responsible for ensuring that the Contract Manager receives all contract related documentation as it occurs so information can be filed timely.

The Contract Manager must use the applicable TWC 1400 checklist at contract development and throughout the contract life to ensure all required records are in the contract record. The TWC 1400 checklist must also be retained in the contract record.

See the [Procurement and Contract Checklist Procedure](#) and the associated checklist for more information. See also the [ECPS Contract Record Process Guide](#).

6.13. Contract Records Retention

Records retention requirements are automatically applied to the official contract records in ECPS. TWC's Records Retention Schedule (RRS) for contracts follows state law requiring contract documents be retained for a minimum of seven (7) years after the contract is complete (expired, terminated, or otherwise closed) or the last action related to the contract is resolved, whichever is later.⁴⁵

⁴⁵ [Texas Government Code § 441.1855](#).

Appendix 1

TWC Purchase Category Code and Authority

The PCC codes in the chart below are used by TWC to document the purchase method. A brief description and legal authority for the purchase is also provided in the chart.

PCC Code	Description	Authority
A	Comptroller of Public Accounts (CPA) term contract	34 Tex. Admin. Code § 20.220
B	Texas retail fuel card purchases	34 Tex. Admin. Code § 20.82 (Delegated Purchases)
C	Comptroller SPD managed term contract	34 Tex. Admin. Code § 20.220
D	Automated Information Systems (AIS) purchases not available on DIR contracts	34 Tex. Admin. Code § 20.222
E	Goods or services less than \$10,000.00	34 Tex. Admin. Code § 20.82 (Delegated Purchases)
F	Goods between \$10,000.01 and \$25,000.00	34 Tex. Admin. Code § 20.82(d)(1)(a) (Delegated Purchases)
G	SPD-administered agency-specific (Comptroller use only)	34 Tex. Admin. Code § 20.184
H	Payment card purchases	34 Tex. Admin. Code § 5.57
I	AIS purchases using DIR contracts	Tex. Gov't Code Chapter 2157

PCC Code	Description	Authority
K	Direct publications	34 Tex. Admin. Code § 20.82(a)(5)
L	Perishable goods	34 Tex. Admin. Code § 20.82(a)(3)
M	Distributor purchases	34 Tex. Admin. Code § 20.82(a)(7)
N	AIS bulk purchases using DIR contracts	Tex. Gov't Code § 2157.068(e-3)
P	Fuel, oil, or grease purchases	34 Tex. Admin. Code § 20.82(a)(6)
Q	Services between \$10,000.01 and \$25,000.00	34 Tex. Admin. Code § 20.82(d)(1)(A)
S	Goods or services above \$25,000.01	34 Tex. Admin. Code § 20.82
T	Emergency purchases above \$25,000.01	34 Tex. Admin. Code § 20.210
X	SPD Texas Multiple Award (TXMAS) contracts	34 Tex. Admin. Code §§ 20.231-20.233
0-1	Consultant	Tex. Gov't Code §§ 2254.021-2254.041
0-2	Professional services	Tex. Gov't Code §§ 2254.001-2254.008
0-3	Interagency	Tex. Gov't Code Chapter 771
0-4	Interlocal	Tex. Gov't Code Chapter 791
0-5	Intergovernmental	Tex. Gov't Code Chapter 792
0-6	Postage	Tex. Gov't Code § 2113.103
0-7	Training	Tex. Gov't Code §§ 656.041-

PCC Code	Description	Authority
		656.055
0-8	Set aside: WorkQuest	Tex. Gov't Code § 2155.132 (F)(2) and § 2155.138; Tex. Hum. Res. Code Chapter 122
0-9	Set aside: TDCJ/TCI	Tex. Gov't Code §§ 497.021-497.031 "The award was made under the Prison Made Goods Act and is non-competitive."
0-10	Lease space	Tex. Labor Code § 301.061(b)(5)
0-11	Utilities	Tex. Gov't Code § 2155.001(2)(D)
0-12	Refunds of deposits	Tex. Gov't Code § 403.077
0-13	Settlements	Gen. App. Act. Art. IX, sec. 16.04, 88 th Leg. R.S., pgs IX-78-80 (2023)
0-14	Trust or suspense	Tex. Gov't Code § 404.094
0-15	Insurance services	Tex. Labor Code § 412.051(a)(2)
0-16	Employee moving expenses (limited applicability)	Tex. Gov't Code § 2113.204

Appendix 2

Criteria for Determining Contract, PO, or TPO

If (value)	And Procurement Type (IT or non-IT)	And meets the following criteria	Then (Form of Contract)	Must include, at a minimum:
Less than \$100,000	Non-IT	<ul style="list-style-type: none"> • Single procurement term that will not exceed 12 months or one fiscal year (may cross fiscal years if the purchase is for a capitol good or service or if the total expenditure is completed during the fiscal year, but services last longer than one (1) fiscal year; AND • No extensions or renewals and a specific statement is included on the TPO. This statement should also be included in a solicitation, when applicable, to provide notice to potential vendors. 	TPO	<p>In addition to standard PO requirements, a purchase requisition must include the following information that the TPO will contain:</p> <ul style="list-style-type: none"> • references the master or other contract (such as SPD contract number), • the master contract term, • the TPO term, ensuring it does not exceed what is allowed by the master contract terms or survival clause, • the finding and justification included on the Purchase Order if issuing a PO after the Master Contract has expired and includes a survivability clause, • the statement that no renewals or extensions are available; • attachments consisting of any document or documents that contain the specifications, SOW, signed vendor or bidder quote or response, negotiations, etc.; and • the correct terms and conditions attachment identified by OGC must always be incorporated into a TPO. If a vendor or

If (value)	And Procurement Type (IT or non-IT)	And meets the following criteria	Then (Form of Contract)	Must include, at a minimum:
				contractor asks for an exception to any terms and conditions, the exceptions must be reviewed by OGC and these exceptions incorporated into the TPO.
Any value	Non-IT, except for TCI, WorkQuest, Managed Contracts or SmartBuy (see below)	<ul style="list-style-type: none"> Solicitation includes stated contract renewals, regardless of value, and Procurement term exceeds twelve (12) months or one (1) fiscal year, regardless of value 	Four-corner or layered contract and Encumbrance PO	<ul style="list-style-type: none"> Standard OGC-approved template with all requirements
Any value	Any	Professional, consulting, legal or auditing services or interagency contracts, interlocal contracts and MOUs	Four-corner or layered contract and Encumbrance PO	Standard OGC-approved template with all requirements
Any value	Non-IT	<ul style="list-style-type: none"> Texas Correctional Industries (TCI), or WorkQuest (State Use Program), or Managed Contracts, or SmartBuy (Term) Contract, or TXMAS, and Single procurement term that will not exceed 12 months or one fiscal year (may cross fiscal years if the purchase is for a capitol good or service or if the total expenditure is completed during the fiscal year, but services last longer than one (1) fiscal year; AND No extensions or renewals and a specific statement is included on the TPO. This statement should also be included in a 	TPO	<p>In addition to standard PO requirements, a purchase requisition must include the following information that the TPO will contain :</p> <ul style="list-style-type: none"> references the master or other contract (such as SPD contract number), the master contract term, the TPO term, ensuring it does not exceed what is allowed by the master

If (value)	And Procurement Type (IT or non-IT)	And meets the following criteria	Then (Form of Contract)	Must include, at a minimum:
		<p>solicitation, when applicable, to provide notice to potential vendors.</p> <p><i>If there are extensions or renewals, a four-corner or layered contract is required.</i></p>		<p>contract terms or survival clause,</p> <ul style="list-style-type: none"> • the finding and justification included on the Purchase Order if issuing a PO after the Master Contract has expired and includes a survivability clause, • the statement that no renewals or extensions are available; • attachments consisting of any document or documents that contain the specifications, SOW, signed vendor or bidder quote or response, negotiations, etc.; and • the correct terms and conditions attachment identified by OGC must always be incorporated into a TPO. If a vendor or contractor asks for an exception to any terms and conditions, the exceptions must be reviewed by OGC and these exceptions incorporated into the TPO.
<p>Less than \$100,000 Not from</p>	<p>IT</p>	<ul style="list-style-type: none"> • Single procurement term that will not exceed 12 months or one fiscal year (may cross fiscal years if the purchase is for a capitol good or service or if the total expenditure is completed 	<p>TPO</p>	<p>In addition to standard PO requirements, a purchase requisition must include the</p>

If (value)	And Procurement Type (IT or non-IT)	And meets the following criteria	Then (Form of Contract)	Must include, at a minimum:
DIR Contract		<p>during the fiscal year, but services last longer than one (1) fiscal year (such as for software maintenance); AND</p> <ul style="list-style-type: none"> No extensions or renewals and a specific statement is included on the TPO. This statement should also be included in a solicitation, when applicable, to provide notice to potential vendors. 		<p>following information that the TPO will contain:</p> <ul style="list-style-type: none"> references the master or other contract (such as DIR contract number), the master contract term, the TPO term, ensuring it does not exceed what is allowed by the master contract terms or survival clause, the finding and justification included on the Purchase Order if issuing a PO after the Master Contract has expired and includes a survivability clause, the statement that no renewals or extensions are available; attachments consisting of any document or documents that contain the specifications, SOW, signed vendor or bidder quote or response, negotiations, etc.; and the correct terms and conditions attachment identified by OGC must always be incorporated into a TPO. If a vendor or contractor asks for an exception to any terms

If (value)	And Procurement Type (IT or non-IT)	And meets the following criteria	Then (Form of Contract)	Must include, at a minimum:
				and conditions, the exceptions must be reviewed by OGC and these exceptions incorporated into the TPO.
\$100,000 or greater Not from DIR Contract	IT	<ul style="list-style-type: none"> Any IT solicitation of \$100,000 for a purchase subject to DIR’s purchasing authority for which an exemption is required to procure outside of DIR’s authority. 	Four-corner or layered contract and Encumbrance PO	<ul style="list-style-type: none"> Standard OGC-approved template with all requirements
Less than \$1,000,000 From DIR contract	IT	<ul style="list-style-type: none"> Purchases for technology tools and products including but not limited to requirements for the vendor to keep the product up to date with security patches, scheduled upgrades and defect repairs; Single procurement term that will not exceed 12 months or one fiscal year (may cross fiscal years if the purchase is for a capitol good or service or if the total expenditure is completed during the fiscal year, but services last longer than one (1) fiscal year; AND No extensions or renewals and a specific statement is included on the TPO. This statement should also be included in a solicitation, when applicable, to provide notice to potential vendors. <p><i>This does not apply to DIR ITSAC. See DIR ITSAC below.</i></p>	TPO	<p>In addition to standard PO requirements, a purchase requisition must include the following information that the TPO will contain:</p> <ul style="list-style-type: none"> references the master or other contract (such as DIR contract number), the master contract term, the TPO term, ensuring it does not exceed what is allowed by the master contract terms or survival clause, the finding and justification included on the Purchase Order if issuing a PO after the Master Contract has expired and includes a survivability clause,

If (value)	And Procurement Type (IT or non-IT)	And meets the following criteria	Then (Form of Contract)	Must include, at a minimum:
				<ul style="list-style-type: none"> the statement that no renewals or extensions are available; attachments consisting of any document or documents that contain the specifications, SOW, signed vendor or bidder quote or response, negotiations, etc.; and the correct terms and conditions attachment identified by OGC must always be incorporated into a TPO. If a vendor or contractor asks for an exception to any terms and conditions, the exceptions must be reviewed by OGC and these exceptions incorporated into the TPO.
Any value From DIR Contract	IT	<ul style="list-style-type: none"> Hardware or software, licenses, maintenance and support purchased from DIR Contract Can go beyond 12 months or one fiscal year (Example- 12 software licenses that run on fiscal year term, then need arises to add additional licenses with 4 months remaining. Need is to co-term all license maintenance/support to be on the same annual cycle) 	TPO	<p>In addition to standard PO requirements, a purchase requisition must include the following information that the TPO will contain:</p> <ul style="list-style-type: none"> references the master or other contract (such as DIR or SPD contract number), the master contract term, the TPO term, ensuring it does not exceed what is allowed by the master contract terms or survival clause,

If (value)	And Procurement Type (IT or non-IT)	And meets the following criteria	Then (Form of Contract)	Must include, at a minimum:
				<ul style="list-style-type: none"> the finding and justification included on the Purchase Order if issuing a PO after the Master Contract has expired and includes a survivability clause, the statement that no renewals or extensions are available; attachments consisting of any document or documents that contain the specifications, SOW, signed vendor or bidder quote or response, negotiations, etc.; and the correct terms and conditions attachment identified by OGC must always be incorporated into a TPO. If a vendor or contractor asks for an exception to any terms and conditions, the exceptions must be reviewed by OGC and these exceptions incorporated into the TPO.
\$1,000,000 or greater From DIR contract	IT	<ul style="list-style-type: none"> IT purchase using a DIR Master Contract not identified elsewhere as subject to other thresholds and requirements. <p><i>This does not apply to DIR ITSAC. See DIR ITSAC below.</i></p>	Four-corner or layered contract and Encumbrance PO	<ul style="list-style-type: none"> Standard OGC-approved template with all requirements
DIR ITSAC,	IT	<ul style="list-style-type: none"> Staff augmentation 	TPO	In addition to standard PO requirements, a purchase

If (value)	And Procurement Type (IT or non-IT)	And meets the following criteria	Then (Form of Contract)	Must include, at a minimum:
any value				<p>requisition must include the following information that the TPO will contain:</p> <ul style="list-style-type: none"> • references the master or other contract (such as DIR contract number), • the master contract term, • the TPO term, ensuring it does not exceed what is allowed by the master contract terms or survival clause, • the finding and justification included on the Purchase Order if issuing a PO after the Master Contract has expired and includes a survivability clause, • the SOW on the OGC-approved template that was submitted to DIR vendors and subsequently signed by TWC and the vendor; and • the correct terms and conditions attachment identified by OGC must always be incorporated into a TPO. If a vendor or contractor asks for an exception to any terms and conditions, the exceptions must be reviewed by OGC and these exceptions incorporated into the TPO.