

State Office of Administrative Hearings

Contract Management Handbook

The State Office of Administrative Hearings (SOAH) has developed this contract management handbook as required by Texas Government Code § 2261.256. This handbook is to be used by Purchasing, Contract Management, Executive Management and assigned Program Area staff. It was written in compliance with the State of Texas Contract Management Guide.

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Ethical Standards and Conflict of Interest

It is the policy of the State of Texas that a state officer or state employee may not have a direct or indirect interest, including financial and other interest, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the officer's or employee's duties in the public interest. Texas Government Code § 572.001.

Under Texas Government Code § 572.069, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the officer's or employee's service or employment with the state agency ceased.

Under Texas Government Code § 2261.252, each state agency employee or official who is involved in procurement or in contract management for a state agency shall disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency.

Risk Assessment

The Texas Department of Information Resources (DIR) has developed and included in its Contract Management Handbook a Risk Assessment Matrix (RAM). SOAH has adapted the DIR RAM for its use and adopts the document in Appendix A as its RAM.

The RAM is a tool used by SOAH staff to analyze contracts for areas of risk (the potential for loss, harm, or damage that may occur due to errors or problems associated with contractors' performance). This tool also allows staff to identify specific areas that may need accelerated or heightened monitoring.

This tool should be used prior to: 1) awarding contracts from RFP/RFO proposals; 2) entering into new contracts with vendors; and 3) renewing existing contracts.

Risk factors are indicators that determine the risk of the contract or of project objectives not being met.

The risk factors included in the RAM include:

- Type of contract purchase – *i.e.*, the type of contract solicitation (competitive/non-competitive, Master Cooperative Contract, Enterprise Contract);
- Payment type/structure – the type of budget included in the contract;
- The dollar amount of the contract;
- Essential agency function;
- Stability and experience of contractor's key management staff;

- Percentage of services performed by subcontractors;
- Compliance history;
- Past programmatic performance;
- Audit outcomes;
- Number of years in business;
- Performance measures;
- Deliverables; and
- For contracts greater than \$1 million – the level and significance of financial reports provided by the vendor.

Additional risk factors should be added when appropriate for the particular contract.

Rate each contractor on the risk elements using the range of Low (score 1-3), Medium (Score 4-7), or High (Score 8-10). The form will total the scores in the Overall Risk Score field. The range for the Overall Risk Scores are:

Low risk procurement: 0 – 48

Medium risk procurement: 49 - 112

High Risk Procurement: 113 – 160

Roles and Responsibilities

Soliciting large contracts and providing effective contract management are the responsibilities of several sections at SOAH. Understanding the role each group plays is important to a successful project and vendor relationship. The following list is applicable to large-scale contracts with multiple deliverables.

1. Program Area
 - a. Coordinates with DIR and seeks approval using the Project Delivery Framework from Quality Assurance Team (QAT) for major IT projects.
 - b. Completes Statement of Work (SOW)
 - i. unbiased and non-prejudiced toward respondents
 - ii. clearly defined
 - iii. contractually sound
 - iv. encourages innovative solutions to the requirements described
 - v. allows for clear, open, and constructive communication
 - c. Develops evaluation criteria
 - d. Follows purchasing and contracting rules and regulations
 - e. On evaluation team to score vendor proposals
 - f. Makes award recommendation to executive sponsor and CALJ
 - g. May participate in contract negotiations
 - h. Understands the contract
 - i. Works with Contract Manager and vendor during implementation

2. Contract Manager
 - a. Works with Program Area to complete SOW and evaluation criteria
 - b. Provides required documents to oversight agencies
 - c. Follows purchasing and contracting rules and regulations
 - d. Facilitates evaluation team's deliberations
 - e. Understands the contract
 - f. Facilitates the post award conference as needed
 - g. Approves invoices for payment
 - h. Initiates and manages contract amendments and change orders
 - i. Performs risk analysis throughout the contracting process
 - j. Monitors funding with CFO
 - k. Monitors HUB Subcontracting Plan
 - l. Monitors vendor performance, alerts executive sponsor as needed, and monitors corrective action plan
 - m. Provides vendor performance to Purchasing for input into CPA portal
3. General Counsel
 - a. Executive sponsor
 - b. Approves evaluation criteria
 - c. Screens proposals with CFO to ensure insurance, bonding, and financial statement requirements are met
 - d. Negotiates contract and contract amendments
 - e. Negotiates escalated vendor performance issues
4. CFO and Purchasing
 - a. Facilitates procurement following purchasing and contracting rules and regulations
 - b. Works with Program Area, Contract Manager, and General Counsel to create the procurement documents, such as solicitations
 - c. Screens vendor proposals with General Counsel to ensure insurance, bonding, and financial statement requirements are met
 - d. Completes HUB Subcontracting Plan review
 - e. Scores pricing and compiles overall scoring
 - f. Facilitates vendor demonstrations
 - g. Serves as contact with potential vendors during procurement process
 - h. Processes purchase order and amendments as required by contract
 - i. Attach contract to purchase order in CAPPS
 - j. Retains contract documents according to records retention contract requirements
 - k. Inputs vendor performance into Comptroller portal
5. Chief Administrative Law Judge
 - a. Approves vendor selection
 - b. Signs contract

Procurement Method

The procurement method used will be in compliance with the State of Texas Procurement Manual. <http://www.cpa.texas.gov/procurement/pub/manual/ProcurementManual.pdf>.

An Invitation for Bids (IFB) uses competitive sealed bids. This is used when requirements are clearly defined and price is the determining factor.

A Request for Proposal (RFP) is used when factors other than price are to be considered or when objective criteria cannot be defined. Negotiations are allowed. The RFP must be submitted to CPA for review prior to solicitation.

A Request for Offer (RFO) is used for IT purchases exempt from the DIR IT Commodity Program. It is generally the same process as the RFP except that a SOW may need to be submitted to DIR.

A Request for Information (RFI) is not required, but can be a good planning tool. It provides a means to gather information in order to prepare a complete and accurate solicitation document. Industry standards, best practices, potential performance measures, and price structure can be identified. It is particularly useful prior to issuing an RFO.

A Request for Qualifications (RFQ) is generally used for professional services when respondents are evaluated based solely on qualifications.

DIR Purchases

The following are purchasing rules for the procurement of information technology-related products and services using Department of Information Resources (DIR) contracts. [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=1&pt=10&ch=212](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=1&pt=10&ch=212)

Texas Government Code § 2257.068.

1. Commodities – Commodities are defined to include hardware, software, and services. Thresholds are:
 - a. \$50,000 or less may be awarded directly to DIR vendor.
 - b. \$50,000 to \$150,000 – At least three DIR vendors must be solicited for pricing, if available.
 - c. \$150,000 to \$1 million – At least six DIR vendors must be solicited for pricing, if available.
 - d. \$1 million or greater – Agencies are required to conduct their own solicitation process and may not use a DIR contract. No DIR approval needed.
2. Additional requirements for deliverables-based information technology services (DBITS) and managed services for information technology, telecommunications, and cloud services contracts greater than \$50,000 but less than \$1,000,000:
 - a. Submit SOW to DIR for review prior to submission to vendor(s).
 - b. DIR approval and signature prior to final execution.

Contract Posting Requirements

1. Agency public website
 - a. For contracts and purchase orders exceeding \$15,000 post:
 - i. Statutory authority under which the contract was awarded
 - ii. Solicitations
 - iii. Responses to solicitations including “no-bids”
 - iv. Signed contract or purchase order
 - b. Less than \$15,000 may be posted monthly; posting related documents is optional
2. CAPPS – Contract documents must be scanned into CAPPS once SOAH is on CAPPS financials
3. Legislative Budget Board website
 - a. Major information systems exceeding \$100,000
 - b. Professional or consulting services exceeding \$14,000
 - c. Contracts over \$50,000
4. Electronic State Business Daily (ESBD)
 - a. Solicitations over \$25,000
 - b. Proprietary purchases over \$25,000
 - c. Purchase awards over \$25,000
 - d. Solicitations of \$25,000 or less are optional
5. Texas Register – Consulting services over \$15,000

Verification of Use of Best Value Standard

In determining the best value for the state, the purchase price and whether the goods or services meet specifications are the most important considerations. However, other relevant factors may be considered, including installation costs, quality, delivery terms, past vendor performance, training costs, and other factors. Texas Government Code § 2155.074.

Texas Government Code § 2155.0755, *Verification of Use of Best Value Standard*

1. The contract manager or procurement director of each state agency shall:
 - a. Approve each state agency contract for which the agency is required to purchase goods or services using the best value standard;
 - b. Ensure that, for each contract, the agency documents the best value standard used for the contract; and
 - c. Acknowledge in writing that the agency complied with the agency’s and comptroller’s contract management guide in the purchase.
2. For each purchase of goods or services for which a state agency is required to use the best value standard, the comptroller shall ensure that the agency includes in the vendor performance tracking system established under Texas Government Code § 2262.055 information on whether the vendor satisfied that standard.

Post-Award Conference

For large scope contracts, the Post-Award Conference is a critical tool for a successful project implementation and is the responsibility of the Contract Manager. This is the first step in monitoring vendor performance. An understanding must be made for the following:

1. Communication plan
2. Signature authority
3. Escalation plan for disputes
4. Discussion of deliverables
5. Standards for monitoring performance
6. Roles and responsibilities for both SOAH and the vendor
7. Invoicing procedure
8. Budget monitoring against deliverables
9. Change orders
10. Final acceptance of deliverables
11. Contract close-out

Monitoring Performance

The SOW and/or the contract are used to guide performance monitoring. The monitoring plan and the communication plan, including the plan for handling the escalation of disputes, should be discussed and decided at the Post-Award Conference, if applicable. Deliverable due dates, the configuration of the deliverable, and the quality must all be monitored. Written acceptance of each deliverable is required.

Change Management

For complex projects, changes may become necessary. Failure to manage and control these changes may result in an unintentional modification to the scope of work, extension of the schedule, increase in the contract cost, circumvention of management controls, and diminished contractor accountability. Formal, written approval of all changes must occur prior to the change taking place, including approval by the General Counsel. The Contract Manager will be the single point of contact to initiate and communicate changes. If the change requires a contract amendment, the CALJ must approve it. Changes in price also require approval from the CFO. Any change needed to a contract must still be within the scope of services solicited.

Vendor Payments

Invoices must be received in accordance with the payment schedule set out in the contract and communicated in the Post-Award Conference. Receipt and inspection of deliverables must be acceptable. Accurate invoices must be approved by the Program Area or Contract Manager (depending on the scope of the project) and will be paid in accordance with the Texas Prompt Payment Act. Texas Government Code Chapter 2251.

Dispute Resolution

Effective dispute resolution is essential to successful contract management. It is best for both parties to attempt to resolve concerns with good communication. In the event a dispute must be escalated, it must be escalated to the General Counsel to identify the concern and notify the contractor in writing. If a corrective action plan is required, the General Counsel will consult with the CALJ to determine the action needed.

Contract Closeout

At the end of the contract period, it is important to close the contract. The Contract Manager will initiate this step, obtaining needed signatures to finalize the contract and informing Purchasing whether any encumbrances remain on the contract to be liquidated. For purchases in excess of \$25,000, a report of the vendor performance is required to be entered into the Comptroller's Vendor Performance Tracking System. 34 TAC § 20.108.

After the contract is closed, the Contract Manager may hold a lessons-learned meeting to improve future procurements.

Records Retention of Contracts

For all contracts entered into on or after September 1, 2015, a state agency shall retain in its records each contract and related documents it enters into for a period of seven years after the contract expires, terminates, or is completed. For all contracts entered into prior to September 1, 2015, the records retention period is four years.

Appendix A

The RAM should be completed for each new solicitation; however, risk should continue to be assessed on an ongoing basis throughout the contract period. A new RAM should be completed when risk conditions undergo a substantial change (e.g., contractor’s management or ownership changes). Contract management and monitoring activities should be adjusted to focus on the riskiest contractors during the entire contract period.

SOAH Risk Assessment Matrix						
#	Risk Factor	Risk Level LOW Score 1-3	Risk Level MEDIUM Score 8-10	Risk Level HIGH Score 8-10	Justification/ Comments	Risk Level Score
Pre-set Risk Factors						
1	Type of Contract Purchase	Interagency, MOU or Interlocal	Contract Less than 25K	Consulting, Emergency, Sole Source, Proprietary, or Construction > \$25K		
2	Payment Type/ Structure	Fixed price or contingency	Rate or Fee for Services	Cost Reimbursement		
3	Total Dollar Amount for FY	Less than \$100K	\$100K to \$1 million	Over \$1 million		
4	Essential Agency Function	Contract services are not critical for meeting SOAH’s mission	Contract services are moderately essential to SOAH’s mission	Contract services are critical to SOAH’s mission		
5	Stability & Experience of Contractor Key Management Staff	No recent change and significant experience	No recent change, but not significant experience; or recent change but significant experience	Recent change and not significant experience		
6	Percentage of Services Performed by Subcontractors	No Subcontractor involvement	Subcontractors account for 50% or less of contract work performed	Subcontractors account for more than 50% of contract work performed		
7	Compliance History	No issues of non-compliance	Moderate instances of non-compliance/ no history with SOAH	Substantial finding of non-compliance		

SOAH Risk Assessment Matrix

#	Risk Factor	Risk Level LOW Score 1-3	Risk Level MEDIUM Score 8-10	Risk Level HIGH Score 8-10	Justification/ Comments	Risk Level Score
8	Past Programmatic Performance	Met or exceeded all output and outcome measures	Met 75% or more of output and outcome measures	Met less than 75% of output and outcome measures		
Risk Factors – Financial						
10	No Audit Outcomes	No audit required or no issues or finding in audit(s)	Moderate issues or findings in audit(s)	Substantial issues or findings in audit(s)		
11	Number of years in business	More than 5 years	1 year to 5 years	Less than 1 year		
Risk Factors - Contract						
12	Performance Measures	Contract contains multiple defined and measurable performance measures	Contract contains at least one clearly defined or measurable performance measure	No performance measures included in contract		
13	Deliverables	Contract contains multiple deliverables that are clearly defined	Contract contains at least one clearly defined deliverable	No deliverables included in contract		
14	> \$1 million - Financial Reports provided?	> \$1 million - substantial financial reports provided	> \$1 million - minimal financial reports provided	> \$1 million - no financial reports provided		
					Overall Risk Score:	
					Low risk procurement:	0 - 48
					Medium risk procurement	49-112
					High risk procurement	113-160

SOAH Risk Assessment Matrix

#	Risk Factor	Risk Level LOW Score 1-3	Risk Level MEDIUM Score 8-10	Risk Level HIGH Score 8-10	Justification/ Comments	Risk Level Score
Summary of Risk Assessment						
Additional Risks						
Risk Mitigation Plan						