



# **Contract Management Guide**

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**State Office of Administrative Hearings**

December 2023

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## INTRODUCTION

The State of Administrative Hearings (SOAH) publishes this Contract Management Guide to aid SOAH procurement professionals in the execution of their duties and to provide step-by-step guidance and a framework for the continued development of public procurement processes and best practices.

This guide adopts statute, rule, and standards contained within the Statewide Procurement Division's State of Texas Procurement and Contract Management Guide, and procedures in this Guide primarily focus on the implementation of Title 10, Subtitle D of the Texas Government Code as well as § 2261 and 2262 of the Texas Government Code. Other procurement authority is addressed in the Guide to provide a broad working knowledge of commonly utilized procurement methods.

The content of this Guide is generally organized to align with the procurement activities specified in the Procurement Cycle. To facilitate a better understanding of the roles performed by SOAH purchasing staff, Contract Management, Executive Management and assigned Program Area staff during the various procurement activities, this Guide differentiates between procurement and purchasing. The term procurement refers to all aspects of the sourcing activities, including drafting and issuing the solicitation, evaluation of responses, selection of successful respondents, the negotiation of contracts, and the actual purchasing of goods or services.

By contrast, the term purchasing refers to the mechanical or administrative process of how goods and services are ordered. Purchasing can usually be described as the transactional function of the procurement process, whereas procurement is, essentially, the overarching or umbrella activity within which purchasing can be found. Although this Guide serves as a reference manual for implementing the requirements of the State of Texas procurement laws included within it, this Guide is not an exhaustive compilation of every statute, rule, and standard that may pertain to a particular transaction.

Furthermore, this Guide is not intended to be a manual on the law of contracts or constitute legal advice. SOAH staff is expected to be knowledgeable about legal requirements within the agency enabling statutes and any federal law associated with their operations.

# ETHICAL STANDARDS AND CONFLICT OF INTEREST

## OVERVIEW

Public procurement professionals are the gatekeepers for the proper expenditure of the government's limited financial resources. They are entrusted to uphold the highest ethical standards and be good stewards of public funds with every purchasing decision they make. Ethical behavior and integrity are fundamental tenets of the public procurement profession that derive from values like "fairness," "honesty," and "accountability." When an individual's official duties clash with the individual's personal interests, a "conflict of interest" may occur; this conflict may impair one's judgement when trying to determine the proper course of action. Any erosion of public trust or perception of impropriety is detrimental to the integrity of the procurement process; therefore, all state employees involved in procurement activities must act in an ethical, impartial, transparent, and professional manner.

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.

## STATE ETHICS POLICY

It is the policy of the State of Texas that a state officer<sup>1</sup> or state employee<sup>2</sup> may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur an obligation of any nature that is in substantial conflict with the proper discharge of the officer or employee's duties in the public interest.<sup>3</sup>

## STATE STANDARDS OF CONDUCT

The Legislature has established standards of conduct for state officers and employees. A state officer or employee should not:

- accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties, or that the officer or employee knows or should know is being offered with the intent to influence the officer or employee's official conduct;
- accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
- accept other employment or compensation that could reasonably be expected to impair the officer or employee's independence of judgment in the performance of the officer or employee's official duties;
- accept other employment or compensation that could reasonably be expected to impair the officer or employee's independence of judgment in the performance of the officer or employee's official duties;
- intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer or employee's official powers or performed the officer or employee's official duties in favor of another.<sup>4</sup>

A state employee who violates the state standards of conduct or the agency's ethics policy is subject to termination of employment or another employment-related sanction, and any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule.<sup>5</sup> Additionally, agencies may not use appropriated funds to compensate a state employee who violates the state standards of conduct.<sup>6</sup>

## REPORTING ETHICS VIOLATIONS

Employees shall report any conduct or activity they believe to be in violation of the ethics policy to the General Counsel. Employees may also seek the guidance of the General Counsel for any ethics-related concerns or questions.

## CONFIDENTIALITY

All employees and independent contractors must sign a Project-Specific Procurement Conflicts of Interest & Non-Disclosure certification ("Nondisclosure Agreement"). The Nondisclosure Agreement requires employees and independent contractors to agree not to disclose or otherwise divulge any confidential information gathered during any solicitation process.

## RISK ASSESSMENT

Risk is the possibility that an event will occur and adversely affect the achievement of objectives. Risks are inherent in all the stages of the procurement process. Appropriate planning and effective risk assessment are components of successful contract management.

## **POTENTIAL RISK FACTORS**

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

The risk factors may 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 a weighted factor.

## **RISK ASSESSMENT MATRIX TOOL**

The Department of Information Resources (DIR) has developed and included in its Procurement and Contract Management Guide an example Risk Assessment Matrix, see Appendix A at the end of this document. The agency has elected to utilize this Risk Assessment Matrix as well.

The Risk Assessment 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.

The ultimate goal is to mitigate risk to the agency and the state. In addition to preventing disruptions to services to our constituents (the public), it provides stability in business transactions between the agency and the vendor community.

## **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.

### **PROGRAM AREA**

- Completes Statement of Work (SOW)
  - unbiased and non-prejudiced toward respondents
  - clearly defined
  - contractually sound
  - encourages innovative solutions to the requirements described
  - allows for clear, open, and constructive communication
- Develops evaluation criteria
- Follows purchasing and contracting rules and regulations
- On evaluation team to score vendor proposals
- Makes award recommendation to executive sponsor and CALJ
- Understands the contract
- Works with Contract Manager and vendor during implementation
- Maintains communications logs and meetings notes

### **INFORMATION TECHNOLOGY PROJECTS**

- Coordinates with DIR and seeks approval using the Project Delivery Framework from Quality Assurance Team (QAT) for major IT projects.
- Assigns a Project Manager
- Assembles team of subject matter experts
- Assigns tasks to team and solicits input from team
- Completes Statement of Work (SOW)
  - unbiased and non-prejudiced toward respondents
  - clearly defined
  - contractually sound
  - encourages innovative solutions to the requirements described
  - allows for clear, open, and constructive communication
- Develops evaluation criteria
- Follows purchasing and contracting rules and regulations



- On evaluation team to score technical elements of vendor proposals
- Makes award recommendation to executive sponsor and CALJ
- Understands the contract
- Works with Contract Manager and vendor during implementation

## **CONTRACT MANAGER**

- Works with Program Area to complete SOW and evaluation criteria
- Provides required documents to oversight agencies
- Follows purchasing and contracting rules and regulations
- Facilitates evaluation team's deliberations
- Understands the contract
- Facilitates the post award conference as needed
- Approves invoices for payment
- Initiates and manages contract amendments and change orders
- Performs risk analysis throughout the contracting process
- Monitors funding with CFO
- Monitors HUB Subcontracting Plan
- Monitors vendor performance, alerts executive sponsor as needed, and monitors corrective action plan
- Provides vendor performance to Purchasing for input into CPA portal
- Maintains communications logs and meetings notes

## **GENERAL COUNSEL**

- Provides review and edits for legal content of SOW and procurement documents
- Negotiates contract and contract amendments
- Negotiates escalated vendor performance issues
- Maintains communications logs and meetings notes

## **PURCHASING**

- Facilitates procurement following purchasing and contracting rules and regulations
- Works with Program Area, Contract Manager, and General Counsel to create the procurement documents, such as requisitions and solicitations
- Screens vendor proposals to ensure insurance, bonding, and financial statement requirements are met

- Completes HUB Subcontracting Plan review
- Scores pricing and compiles overall scoring
- Facilitates vendor demonstrations
- Serves as contact with potential vendors during procurement process
- Processes purchase order and amendments as required by contract
- Attach contract to purchase order in the Centralized Accountings and Payroll/Personnel System (CAPPS)
- Retains contract documents according to records retention contract requirements
- Inputs vendor performance into Comptroller portal
- Maintains communications logs and meetings notes

## **BUDGET AND REPORTING**

- Verifies funding and ensures proper coding of contract transactions in CAPPS.
- Reports to LBB contracts greater than \$50,000.
- Helps facilitate any monthly reporting for contracts less than \$50,000.

## **CHIEF FINANCIAL OFFICER (CFO)**

- Provides guidance and oversight over Contract process and negotiations.
- Helps facilitate risk and scoring matrixes to ensure consistency and mitigate risk in contract process.
- Ensures adequate funding is in place for contracted services.
- Approves vendor selection
- May sign contracts, as delegated by the CALJ.

## **CHIEF ADMINISTRATIVE LAW JUDGE (CALJ)**

- Approves vendor selection
- Signs contracts

## **CONTRACT MANAGEMENT CYCLE**

Before engaging in any public procurement and contract management activities, it is important to understand that there are common characteristics between all procurements and contracts. Following each of the processes outlined below ensures that the procurement is conducted in a transparent and efficient manner.

The Procurement and Contract Management Cycle identifies the steps performed by public procurement professionals for all procurements.

The steps of the Procurement Cycle are summarized as follows:

1. Planning: Define the business need and establish the procurement objectives. The planning stage any procurement is critical in that this is the time to identify what is needed and to ensure what is needed is adequately requested in the solicitation. The request and solicitation must align or vendors will not be able to respond or you may receive responses that aren't what is needed. Ensure to provide any criteria matrix for weighted scoring to ensure the vendor's response aligns to the request. For example, if you issue a solicitation, it could be possible that vendor response time be weighted higher as determination factor when scoring. You must provide the % scoring or weight so vendors understand what higher priority for the request is. This may not always apply, for example, in some scenarios, it may just be price or value to the agency that determines which vendor is selected. Determine the contract value and work with Budget and CFO to ensure financing is available and meets the requirements of the request.
2. Scoring Criteria: Define any criteria matrix for weighted scoring to ensure the vendor's response aligns to the request. For example, if you issue a solicitation, it could be possible that vendor response time be weighted higher as determination factor when scoring. You must provide the % scoring or weight so vendors understand what higher priority for the request is. This will ensure that vendors align their responses to that, otherwise they will not know how the agency plans to score and may not align to the needs of the agency. In many instances, this may not apply, for example, in some scenarios, it may just be price or value to the agency that determines which vendor is selected. That is acceptable too, but it must be mentioned that you are only requesting the price of their services. This indicates that other attributes are negligible since generally you are targeting a vendor pool that's in the business of what you are seeking.
3. Procurement/Solicitation Method Determination: Identify the appropriate Procurement Method and, if applicable, issue a solicitation.
4. Contract Drafting: Based on the planning request and method determinations, draft the solicitation and post according. All solicitations that are \$25,000 or greater must be posted to the Electronic State Business Daily (ESBD). Keep in mind that IT solicitations may work slightly differently such as those that are less than \$50,000 can be processed through seeking a single quote. Be cognizant of what is needed, how much, and the mechanism for which you are seeking goods or services.
5. Vendor Selection: Fairly and objectively select the vendor that provides best value to the State.
6. Contract Formation & Award: Ensure that the awarded contract complies with applicable procurement law and contains provisions that achieve the procurement objectives.
7. Contract Oversight and Management: The Program Area (Contract Manager) generally oversees the contract on a day-to-day basis and acts as the contractor's primary point of contact once the contract is executed. Purchasing provides assistance and oversight.
8. Administer and enforce the terms of the contract: Should issues arise, working with Purchasing and general counsel, the agency will enforce the terms of the contract.

## **DETERMINE CONTRACT VALUE**

For Non-IT Contracts, the value is the first year, plus any optional renewal year(s) that may be included in the contract. For Non-IT Contracts valued \$50,000 or more for good or \$100,000 or more for services, CPA must review the solicitation before posting in TxSmartBuy.

For IT Contracts, the value is the first year only and does not include any optional renewal(s). For IT Contracts valued \$5 million or more, CPA/DIR review is required prior to posting. Additionally, a Statement of Work is required with DIR. Please see Information Technology/DIR Projects below.

## **INFORMATION TECHNOLOGY/DIR PURCHASES**

The following are purchasing rules for the procurement of information technology-related products and services using Department of Information Resources (DIR) contracts. [Procurement Professional's Guide to DIR | Texas Department of Information Resources](#) Texas Government Code § 2157.068.

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. More than \$50,000 but not more than \$1 million– At least three (3) DIR vendors must be solicited for pricing, (or all vendors in a category with less than three (3) vendors)
  - c. More than \$1 million but not more than \$10 million – At least six (6) DIR vendors must be solicited for pricing, (or all vendors in a category with less than six (6) vendors)
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:
  - a. Submit SOW to DIR for review prior to submission to vendor(s).
  - b. DIR approval and signature prior to final execution.

The SOW Review Process has four phases: Draft Submission, Draft Review, Final Submission, Final Review and Execution. Submission of draft SOWs to DIR for review is required before offering SOWs to vendor(s).

DIR will review the SOW and consult with the agency as necessary to ensure the scope of the SOW aligns with the Master Contract being solicited. Comments, findings, and determination (approval/rejection) will be by email for record purposes.

## **CONTRACT TERM**

Determine the length of service that is required. Most contracts align with the Fiscal Year, example: September 1, 20YY to August 31, 20YY. In some instances, there may be optional renewal years as part of the contract. Following the best practices of the Texas Comptroller, all contracts will have terms lasting no more than 4 years, including all renewals. Emergencies being the exception.

## **TERMS AND CONDITIONS (T&Cs)**

Standard agency terms and conditions apply to all contracts and must be included in the Solicitation package and become part of the signed contract. This mitigates risk to the agency and the state. General Counsel will make any updates/edits to the T&Cs but a standard set shall be included.

## **DETERMINE PROCUREMENT/SOLICITATION METHOD**

The procurement method used will be in compliance with the State of Texas Procurement and Contract Management Guide:

<https://comptroller.texas.gov/purchasing/publications/procurement-contract.php>

When identifying the appropriate procurement method, including relevant exclusions and exemptions, public procurement personnel will need to know the following for each purchase: procurement type, cost estimate, and purchasing entity.

An Invitation for Bids (IFB) uses competitive sealed bids. This is used when requirements are clearly defined and price is the determining factor. When the value of the anticipated contract, including option years or amendments, is greater than \$100,000, the IFB must be submitted to CPA for review prior to posting solicitation. This is done through TxSmartBuy.

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. When the value of the anticipated contract, including option years or amendments, is greater than \$100,000, the RFP must be submitted to CPA for review prior to posting solicitation. This is done through TxSmartBuy.

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.

## **CONTRACT POSTING REQUIREMENTS**

### **ELECTRONIC STATE BUSINESS DAILY (ESBD)**

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

## **CENTRALIZED MASTER BIDDERS LIST (CMBL)**

The Centralized Master Bidders List (CMBL), maintained by SPD, is an online directory of vendors registered to receive bidding opportunities from State of Texas purchasing entities. Agencies, colleges, universities and local governments use the CMBL to find vendors for products and services. For purchases between \$10,000 but not more than \$25,000, the agency must solicit from a minimum of three active vendors on the CMBL including two current Texas-certified HUBs. For procurements exceeding \$25,000, an agency must use the CMBL to solicit from each eligible vendor on the list that serves the agency's geographic region a copy of the bid list (with date) must be placed in the procurement file. If agencies are required to use the CMBL, they must send a copy of the solicitation to all vendors on the CMBL bid list for the advertised commodity code(s). There may be several hundred vendors associated with a particular commodity code.

## **SUPPLEMENTING THE CMBL**

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

## **AGENCY WEBSITE REPORTING**

For contracts not posted to the LBB contracts database, an agency must post the following information about each private vendor contract to the agency's website:

For contracts and purchase orders not exceeding \$50,000 post to the agency's website:

- Purchase Order and Contract (if applicable),
- Contractor
- Amount, and
- Legal Cite for purchase.

Expressly excepted from the agency website posting requirement are contracts posted to the LBB contracts database, memoranda of understanding, interagency contracts, inter-local agreements, and contracts for which there is not a cost.

## LBB CONTRACT REPORTING

The chart below shows the reporting requirements for contracts that exceed certain dollar thresholds:

LBB Reporting Requirements			
Dollar Threshold	>\$50,000	>\$1M	>\$10M
Type	<ul style="list-style-type: none"> <li>All Contract Types<sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li>Non-Competitive/ Sole Source<sup>2</sup></li> <li>Emergency<sup>3</sup></li> </ul>	All Contract Types <sup>4</sup>
Deadline	Within 30 days of award or modification	<ul style="list-style-type: none"> <li>Due within 15 days of contract award</li> <li>Due within 5 days of contract award (Emergency)</li> </ul>	Within 15 days of contract award

## HISTORICALLY UNDERUTILIZED BUSINESS (HUB)

The solicitation documents also include information regarding Historically Underutilized Business (“HUB”) requirements. Agencies must make a good faith effort to utilize HUBs in state contracts in accordance with the agency’s HUB goals. This requirement may be fulfilled by using good faith efforts to contract directly with HUBs or indirectly through subcontracting opportunities in accordance with Texas Government Code, Chapter 2161, Subchapter F and Texas Administrative Code, Title 34 Part 1, Chapter 20, Subchapter D. Specific HUB procedures are detailed in the Comptroller’s Statewide Procurement Division Procurement and Contract Management Guide at:

<https://comptroller.texas.gov/purchasing/publications/procurement-contract.php>

SOAH’S HUB Goals align to the State’s goals, when applicable. Current goals are as follows:

<b>Procurement Category</b>	<b>Goals</b>
Heavy Construction	N/A
Building Construction	N/A
Special Trade Construction	N/A
Professional Services	23.70%
Other Services	26.00%
Commodities	21.10%

N/A – the agency does not procure goods or services in these categories.

## SCORING MATRIX TOOL

Prior to opening any solicitation, the agency must finalize its scoring matrix tool to evaluate responses to solicitation. This ensures each respondent is treated the same. You may have initial qualifiers that are not part of the scoring matrix or weighted. Example: the vendor must provide documentation requested, or by a specific date/time. The response must be signed. Should a respondent not meet these initial qualifiers, they can be disqualified prior to scoring them on the weighted matrix. Otherwise, the scoring matrix should align to your solicitation scoring, i.e. % of weight or price value. The main thing to remember is to review each response and treat each respondent the same objectively.

## 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.

## **CONTRACT DRAFTING**

The last step before awarding the contract is drafting the official contract. The contract drafted should include the solicitation, the agency's terms and conditions, and any other appendices or documents. Final contract draft should be reviewed and approved by the CFO, and General Counsel. Once final, provide to the vendor's representative to sign, then the Chief Administrative Law Judge. The agency always signs last in order to prevent the vendor from introducing conflicting language or terms. This mitigates risk to the agency and the state.

## **PURCHASE ORDER**

A requisition must be approved in CAPPs during the time the contract is being drafted. Once the requisition and contract are approved, purchasing staff will issue a Purchase Order to the vendor along with the signed contract. A valid purchase order must be in place to encumber funds and to pay an invoice.

## **POST-AWARD**

### **POST-AWARD CONFERENCE**

A post award conference is a meeting scheduled by the Contract Manager which includes the contractor and agency stakeholders. Conducted soon after the contract is awarded, the conference is an orientation for the contractor to ensure a clear and mutual understanding of all contract terms and conditions, and the respective responsibilities of all parties. Although the contractor and the agency personnel should already be fully aware of the contract requirements, the post award conference ensures that anyone involved directly in the contract administration process understands all contract performance requirements. Not every contract requires a formal post award conference, but there should be some form of discussion between the contracting parties after award to ensure that all parties are aware of the performance requirements and administrative procedures agreed in the contract. Care should be taken to ensure that discussions that occur during the post award conference do not result in performance expectations that do not align with the terms of the contract. The Contract Manager should decide if a post award conference is necessary. For less complex, low risk, low-dollar value contracts, a telephone call

with the contractor may be sufficient. Factors used to determine whether a post award conference is appropriate include:

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

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:

- Communication plan
- Signature authority
- Escalation plan for disputes
- Discussion of deliverables
- Standards for monitoring performance
- Roles and responsibilities for both SOAH and the vendor
- Invoicing procedure
- Budget monitoring against deliverables
- Change orders
- Final acceptance of deliverables
- 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.

Communications between the vendor, including phone call logs and meeting notes, should be maintained in the procurement file.

Should the performance of the contract vendor deviate from established deliverables and timelines, corrective actions should occur. This can include the following:

- Informal verbal corrective actions
- Formal verbal corrective actions in meetings
- Formal corrective actions through electronic communications
- Escalation to Management
- Formal corrective actions through contact notices
- Contract Termination

## **ENHANCED CONTRACT MONITORING**

The purchasing staff determine which contracts require enhanced monitoring through the use of a risk assessment matrix (Appendix A). In making the determination, the matrix considers factors such as:

- The contract type;
- The contract amount;
- Risk;
- Special circumstances of the project; and
- Scope of goods or services provided.

Enhanced contract monitoring may be requested by Executive Management or the Contract Manager as well. Reports or results of enhanced monitoring will be provided to the Chief Financial Officer.

## **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 Business Owner. The Contract Manager will be the single point of contact to initiate and communicate changes. If the change requires a contract amendment, the General Counsel and CALJ must approve it. Changes in price and milestone payments 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, which generally indicates that the invoice is paid 30 days after whichever is later: Good(s) Received, Service(s) Completed, or Invoice receipt. Reference Texas Government Code Chapter 2251. All approved invoices should be sent to [Finance@soah.texas.gov](mailto:Finance@soah.texas.gov). Invoices are only paid if a Purchase Order is in place.

## **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, depending on the type of issue, be escalated to the either the Program Area or Contract Manager to identify the concern and notify the contractor in writing. If a corrective action plan is required, the Program Area or Contract Manager will consult with Purchasing. Should the need to escalate further, Program Area, Contract Manager, and Purchasing will consult with the CFO, General Counsel and 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 in accordance with Texas Government Code §2155.089(c). After the contract is closed, the Contract Manager may hold a lessons-learned meeting to improve future procurements.

## **RECORDS RETENTION**

Aside from the responsibility of maintaining the contract file, the Program Area/Contract Manager, or designated responsible agency employee, is also responsible for ensuring that contract documents are retained by the agency for seven years after contract close-out as determined by applicable law and the agency's records retention schedule.

In accordance with Texas Government Code §441.1855, SOAH shall retain each contract entered into and all contract solicitation documents related to the contract, and shall not destroy such

documentation before the seventh anniversary of the date (a) the contract is completed or expires; or (b) all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents are resolved. Specific questions regarding records retention should be directed to the Records Management department.

## APPENDIX A - RISK ASSESSMENT MATRIX

A Risk Assessment should be completed for each new solicitation. Risk assessments are not required with contracting with another state agency or government or when using a CPA or DIR solicited contract. Risk should continue to be assessed on an ongoing basis throughout the contract period, when applicable. A new risk assessment 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.

<b>Risk Assessment Matrix</b>						
<b>Number</b>	<b>Risk Factor</b>	<b>Low Risk Score 1 -3</b>	<b>Medium Risk Score 4 - 7</b>	<b>High Risk Score 8 - 10</b>	<b>Comments</b>	<b>Risk Level Overall Score</b>
<b>General Risk Factors</b>						
1	Type of Contract	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	Less than \$100K	\$100K to \$1 million	Over \$1 million		
4	Essential Agency Function	Contract services are not critical for meeting agency's mission.	Contract services are moderately essential to agency's mission.	Contract services are critical for agency mission.		
5	Stability & Experience of Contractor's Key Management Team	No recent change and significant experience	No recent change, but not significant experience; or recent change but significant experience	Recent change and not significant change.		
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 performed.		
7	Compliance History	No issues of non-compliance	Moderate instances of non-compliance/no history - never contracted with agency	Substantial finding of non-compliance.		

<b>Risk Assessment Matrix</b>						
<b>Number</b>	<b>Risk Factor</b>	<b>Low Risk Score 1 -3</b>	<b>Medium Risk Score 4 - 7</b>	<b>High Risk Score 8 - 10</b>	<b>Comments</b>	<b>Risk Level Overall Score</b>
			before.			
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.		
<b>Financial Risk Factors</b>						
9	Audit Outcomes	No audit required or no issues or findings in audit(s)	Moderate issues or findings in audit(s)	Substantial issues or findings in audit(s)		
10	Number of Years in Business	More than 5 years	1 year to 5 years	Less than 1 year		
<b>Contract Risk Factors</b>						
11	Performance Measures	Contract contains multiple defined and measureable performance measures	Contract contains at least one clearly defined or measureable performance measure	No performance measures included in contract.		
12	Deliverables	Contract contains multiple deliverables that are clearly defined	Contract contains at least one clearly defined deliverable	No deliverables included in contract.		
13	Financial Reports Greater than \$1 Million	Greater than \$1 Million Financial reports required	Greater than \$1 Million Financial reports required	Greater than \$1 Million No Financial reports required		
<b>Overall Score</b>						
Low Risk						0 – 39
Medium Risk						40 – 91
High Risk						92 – 130

## **Risk Assessment Summary**

## **Risk Mitigation Plan**