TEXAS DEPARTMENT OF LICENSING AND REGULATION

PROCUREMENT AND CONTRACT MANAGEMENT HANDBOOK

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Procurement and Contract Management Handbook

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Introduction

Purpose

The Texas Department of Licensing and Regulation (TDLR) Procurement and Contract Management Handbook (Handbook) is the primary agency reference for procurement and contract development, management, and oversight. The Handbook establishes consistent practices to ensure all agency procurement and contract activities are managed ethically, efficiently, and in full compliance with state laws, regulations, policies, and procedures.

The Handbook provides foundational guidance through every phase of the procurement and contract life cycle – from planning and award to administration and closeout—promoting accountability, transparency, and sound stewardship of public resources. Procurement and contract outcomes are critical and key components of the mission of the agency and thefore, the Handbook helps promote uniformity throughout each office, division, and department within the agency.

Audience

All TDLR staff involved with procurement and contracts must adhere to the State of Texas Procurement and Contract Management Guide (Guide) published by the Texas Comptroller of Public Accounts (CPA) along with the Handbook. The Guide provides a statewide framework for procurement and contracting, and the Handbook further promotes use of best practices as an extension of the Guide.

Because contract management directly supports TDLR's mission and affects the delivery of services to licensees, the public, and agency staff, all staff are expected to comply with the Handbook. Any request or directive that conflicts with state laws, regulations, policies, and procedures must be reported immediately to the TDLR General Counsel or Director of Administration as the Agency Procurement Director.

Scope

The Handbook is not intended to describe every step for procurement and contract activities and instead, extends and aligns with the Guide and all related agency procedures. The Handbook:

- Describes ethical standards; staff, and vendor conflicts of interests; TDLR staff and vendor relationships; and reporting of ethics violations; defines roles and responsibilities of TDLR staff; and provides an overview of procurement and contract phases.
- Provides a summary of best practices designed to determine where purchasing and contract management programs currently stand in relation to generally accepted and industry best practices.
- Includes recommended models and mandatory contract provisions prepared by the CPA Statewide Procurement Division (SPD) and Contracts Advisory Team (CAT) in the Guide.
- Addresses contract amendments that may be executed to address unforeseen business changes, circumstances, or events.
- Recommends time frames for the solicitation, evaluation, negotiation, and awarding of contracts.
- Establishes a method for attempting to determine why a single response was received in reply to aprocurement solicitation.

The Handbook does not constitute specific legal advice on any and every issue that may arise. TDLR General Counsel and the Agency Procurement Director must be consulted for unique procurement and contract matters that impact the mission of the agency.

The Handbook is revised as needed to reflect evolving business, legal, or regulatory requirements, and is a living document reflective of agency procurement and contract practices. When modifications are made to the Handbook, the version number of the Handbook will be updated and the Version History revised to include a summary of the revisions.

Applicability

The Handbook applies to all procurements:

- over $25,000; or
- that require formal solicitations through a Statement of Work (SOW), Request for Proposals (RFP), Request for Qualifications (RFQ), or Invitation for Bid (IFB), regardless of dollar amount as formal procurements.

Procurements that fall below $25,000 and do not require formal procurement are procured on a purchase order following TDLR purchasing procedures and the Guide.

The Handbook also applies to management of the following types of contracts:

- Professional Services Contracts including Consultant Contracts;
- Interagency Cooperation Contracts;
- Sole source, proprietary, and emergency purchase contracts;
- Purchase orders greater than $25,000;
- Statewide term contracts;
- Department of Information Resources (DIR) cooperative and staff augmentation contracts;
- Memoranda of Understanding;
- Service agreements;
- Revenue generating contracts; and
- Other binding obligations of any kind.

Appendices

The Handbook has three (3) appendices, A through C as follows:

Appendix A: Abbreviations

All abbreviations (acronyms; initialisms; abbreviated words) used in the *Handbook* are included in Appendix A: Abbreviations which is alphabetically ordered.

Appendix B: Terminology

All words and definitions are included in Appendix B: Terminology which is alphabetically ordered.

In the event words or terms defined in the Handbook conflict with or differ from definitions established by laws, administrative rules implementing laws, or guidelines, such words of phrases have the meaning assigned therein.

Appendix C: Statutory Authorities

All related statutory authorities (laws, acts, legislation, and so forth) referenced in the body of the *Handbook* are included in Appendix C: Statutory Authorities.

Appendix D: Revision History

All revisions to the Handbook, including the published date and related revision description, are included in Appendix D: Revision History.

Roles and Responsibilities

Overview

TDLR defines clear roles and responsibilities for staff who are involved with procurement and contract activities. Pursuant to Texas Administrative Code §34.20.560, TDLR designates the Director of Administration as the Agency Procurement Director with responsibility to oversee and be primarily responsible for the procurement of goods and services for the agency. The Director of Administration reports directly into the Chief of Staff of Agency Operations and Outreach who directly reports into the Executive Director as appointed by the TDLR Commission (Commission) and performs all duties assigned by the Commission and other duties specified by law to administer and enforce all agency programs.

The Agency Procurement Director, at a minimum:

- Oversees the procurement cycle for the agency, from business needs assessment to contract closeout
- Ensures compliance with Texas Government Code and TAC procurement rules
- Determines appropriate procurement methods and ensuring proper delegation of purchases
- Manages contract formation, execution, and monitoring
- Coordinates with CPA SPD and other statewide oversight bodies, and
- Maintains agency procurement plans and reporting on procurement activities

Within the Administration Division procurement and contract responsibilities are performed within two separate departments – Purchasing Management and Contracts Management. The Purchasing Management Department includes Purchasers, and the Contracts Management Department includes Contract Specialists who may be referred to as Contract Managers.

Specifically, Purchasing Management and Contracts Management are responsible for the following functions, tasks, and responsibilities:

- Oversee TDLR purchasing and contract management functions;
- Manage agency-wide contracts which includes purchasing contracts;
- Support agency staff managing or monitoring specialized contracts;
- Maintain procurement/contract records;
- Develop acquisition plans and quality assessment plans, for example, in consultation with the Office of General Counsel and Program Staff;
- Facilitate routing and approval of contracts and amendments;
- Develop procurement and contracting policies and procedures;
- Receive contract monitor reporting as defined by the contract administration plan;
- Review contract monitoring reports to identify potential issues or unanticipated risk and report such findings to executive management;
- Support Contract Governance Committee;
- Provide technical assistance to TDLR offices, divisions, departments, and programs; and
- Provide purchasing and contract management training.

Key Procurement and Contract Roles

Effective procurement and contract management depends on each key role knowing and responsibly performing all responsibilities in a timely and proactive manner. Key roles include End User, Purchaser, Contract Developer, Contract Manager, Project Manager, and General Counsel. TDLR staff that play a role in procurement and contract management activities may be responsible for more than one role. For example, a Contract Specialist may perform responsibilities as a Contract Developer, Contract Manager, and Project or Program Manager. In addition, depending on the contract type, other roles such as the Chief Information Security Officer (CISO) or Data Management Officer (DMO) may be involved with procurement and contracts.

Key procurement roles from a high-level perspective within TDLR are defined as:

Procurement Roles	
End User	User of procured goods and services for which the agency contracts, development of specifications, development of scope of work, and verification of the inspection of goods or receipt of services.
Purchaser	Receives requisitions and issues purchase orders against existing cooperative or agency contracts. In contrast to the Guide and within TDLR, the role includes development of IFB solicitations and contract awards that must be posted to the *Electronic State Business Daily* (ESBD), as well as Information Technology Staff Augmentation Contracts (ITSACs).
Contract Developer	Includes actions taken prior to contract execution, including the assessment of business need, development and review of specifications, development and review of scopes of work, identification and selection of procurement methods, identification and preparation of evaluation criteria, preparation and advertising of solicitations, tabulation of respondent proposals, evaluation of respondent proposals, negotiation of proposals, and the preparation and completion of contract award documents. Contract Developers do not perform invoice management or audit functions. In contrast to the *Guide* and within TDLR, the Contract Developer role and responsibilities prior to contract execution are performed primarily by Contract Specialists within the Contracts Management Department.
Contract Manager	Includes actions taken following contract execution, including the assessment of risk, verification of vendor 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 laws, rules, and *Guide*.
Project or Program Manager	Manages complex or high-risk procurement projects and/or performance of the contract. Closely monitors procurement and contract deliverables and outcomes based on business risks.
Legal	Provides legal assistance, guidance, and review throughout the procurement life cycle based on contract type and business needs.

Every team member involved in a key procurement role must sign and return a *Non-Disclosure and Conflict of Interest Statement* as requested at the beginning of the procurement. Each key procurement role within TDLR has additional specific responsibilities defined as:

End User

TDLR staff perform program responsibilities across the agency and as End Users play a critical role in each phase of the procurement life cycle. End Users may be responsible for more than one role. For example, End Users may assist in developing the statement of work, then provide technical assistance to the vendor, and finally, assist with contract closeout procedures.

End Users coordinate and collaborate closely with the Purchaser or Contract Manager as applicable to:

- Gather requirements and provide end user support;
- Complete verification of the inspection of merchandise or receipt of services by the agency;
- Process receipts for applicable purchasing contracts;
- Assist with contract development, including statement of work;
- Ensure Contract Developer has easy access to information about the contract;
- Assist with contract waivers, amendments, renewals, and extensions;
- Request any changes to the statement of work, including changes to the service requirements or deliverables;
- Assist in the development of the Acquisition Plan and Quality Assessment Plan, and other procurement and contract monitoring deliverables;
- Serve as an operations liaison with vendor to ensure participation is consistent with program requirements, including leading

and convening kick-off meetings following contract award and orientation with vendor;

- Submit monitoring reports to applicable Administration Department with findings about vendor performance and information on risk or operational issues; and
- Participate in contract closeout procedures, including assessment of vendor performance and effectiveness of purchasing or contract management activities.

Purchaser

Purchasers coordinate and collaborate closely with End Users and Contract Managers as applicable to:

- Access requisitions and issue purchase orders;
- Assist End Users with development of specifications;
- Assist End Users with development of statement of work;
- Procures IFBs and ITSACs

Contract Developer

Prior to contract execution, Contract Developers coordinate and collaborate closely with the Contract Manager when the Contract Developer is not the Contract Manager to:

- Conduct the assessment of business needs;
- Obtain cost estimates;
- Develop the Acquisition Plan;
- Develop and review specifications;
- Develop and review scopes of work;
- Identify and select the appropriate procurement method;
- Identify and prepare evaluation criteria;
- Prepare and advertise solicitations or coordinate procurement kick-off meetings with key stakeholders to vet requirements for administering the contract;
- Tabulate respondent bids;
- Evaluate respondent proposals;
- Negotiate proposals; and
- Prepare and complete contract award deliverables.

Contract Manager

The Contract Manager is responsible for ensuring the contract requirements are satisfied; the goods and services are delivered in a timely manner; and TDLR's financial interests are protected. The Contract Manager must have a thorough understanding of all components of the solicitation and contract as acquired through active engagement in the contract formation phase.

The Contract Manager must be experienced with the type and size of the procurement. Required contract expertise is not the same for all contracts and must be consistent with the complexity and level of risk of the contract, the contract term, and dollar value.

The primary responsibilities of the Contract Manager include, but are not limited to, the following tasks:

- Participate with development and review of contract deliverables;
- Lead and convene contract orientation with vendor to ensure that all parties are aware of contract, performance, and administrative requirements agreed in the contract;
- Assessment of risk associated with each contract and with each deliverable;

- Implement the Quality Assessment Plan and the Acquisition Plan;
- Serve as the primary point of contact for agency communication with the vendor;
- Monitor compliance with deliverable and reporting requirements;
- Manage state property used in contract performance (*e.g.,* computers, TDLR office space, telephones,identification badges);
- Enforce contract terms;
- Ensure that contract performance and practices are consistent with applicable rules, laws, and the Guide;
- Monitor vendor's progress and performance to ensure goods or services conform to the requirements and maintain timely records of findings;
- Submit monitoring reports to applicable Administration Department for findings about contract performance and information on risk or operational issues;
- Consult with General Counsel to address legal concerns and issues;
- Manage, approve, and document changes to the contract through amendment activities;
- Inspect and approve the products or services by: (1) submitting a written document accepting the deliverables;or (2) obtaining documentation from the End Users confirming inspection and approval have been completed;
- Identify and resolve vendor disputes timely;
- Recommend appropriate remedies for performance deficiencies;
- Maintain records to comply with TDLR records retention schedule;
- Confirm all goods or services have been delivered before contract expiration; and
- Perform contract closeout activities by ensuring the contract file contains complete and accurate contract documentation, vendor performance reports, and document lessons learned.

Contract Managers are not authorized to allow vendors to:

(1) start work before the contract is fully executed;

(2) change the scope or extend the term of the contract without complying with formal amendment practices as specified in the contract and amendment;

(3) authorize contractors to perform work outside the scope or statement of work;

(4) allow contractors to recover costs incurred before the effective date of the contract; or

(5) recover costs above the contract amount.

Project or Program Manager

A Project or Program Manager may be assigned to complex or high-risk procurements to manage the project and/or performance of the contract and may be required to:

- Manage the procurement project following the methodology established by the Project Management Institute (PMI) and agency project management practices;
- Lead the planning and development of project deliverables;
- Monitor progress and quality of project tasks and deliverables;
- Verify accuracy of invoices and authorize payments based on contract terms;
- Monitor the contract budget to ensure funds are available through the term of the contract;
- Submit contract monitor report required by the contract administration plan;
- Identify and resolve project problems and conflicts, escalating to the Contract Manager when necessary;
- Communicate project status, issues, and risks to TDLR Management and Contract Manager; recommends corrective action when necessary;

- Manage and coordinate project activities with project team members; and
- Monitor and manage procurement and contract risks.

Legal

The Office of General Counsel may provide legal assistance and consultation during various phases of the procurement life cycle based on contract type and business needs. For example, the Office of General Counsel may develop contract deliverables or contract language for competitive and spot purchase procurements, or provide legal assistance, guidance, and review.

Office of General Counsel is responsible for the following:

- Provide input on the proposed procurement method and approach;
- Assist in development contracts for complex purchases of services or purchases of $25,000 or more;
- Assist in the development of solicitation documents;
- Review solicitation terms and conditions;
- Interpret and advise on applicable state contracting laws and regulations;
- Advise a Purchaser or Contract Specialist, agency staff, and management on contracting issues;
- Support or facilitate dispute resolutions, including mediation with contractors;
- As applicable review draft notice of deficiency and related deliverables required to remedy contract underperformance;
- Assist a Purchaser or Contract Specialist with contract termination or suspension; and
- Review of any procurement-related document.

Required Procurement and Contract Management Training

TDLR certified Purchasers and Contract Managers must complete and satisfy all State of Texas continuing education requirements as provided through CPA. Staff must be certified as a Contract Manager if contract management duties comprise 50% or more of the job, or if managing a contract more than $5,000,000. Staff performing contract management functions within agency programs must be certified as a Contract Manager and satisfy all State of Texas continuing education requirements through CPA.

TDLR staff must be certified as a Contract Developer if performing contract development functions and must satisfy all State of Texas continuing education requirements through CPA. In addition, TDLR may designate and require additional staff to complete training and may include those with:

- Procurement and contract approval authority, including executive management, financial, and legal staff;
- Contract management, oversight, and support responsibilities; and
- Decision-making responsibility to select services.

Administration Contracts Management is responsible for providing TDLR staff appropriate training and oversight to mitigate risks and monitor all procurement and contract outcomes so that procurements achieve ***best value*** for TDLR and the State. TDLR provides annual training to all staff that are engaged and involved in procurement and contracts management, including purchasing, competitive procurement of goods or services, or administration and management of competitive procurement contracts. The training covers topics related to, at a minimum:

- Fair and objective selection and negotiation with the most qualified vendor;
- Purchase request through a purchase requisition;
- Inclusion of provisions in a contract that hold the vendor accountable for results;
- Monitoring and enforcing a contract;
- Making payments consistent with the contract; and

- Compliance with the requirements of the Handbook.

Ethics and Professional Standards

All personnel engaged in procurement or contract management must uphold integrity, impartiality, and transparency. Ethics requirements apply to all phases of the procurement and contract life cycle.

Conflict of Interest and Non-Disclosure Agreements: TDLR distributes and collects annual forms, and General Counsel certifies compliance.

Training and Certification: Applicable staff certify and complete State of Texas continuing education training, and TDLR maintains verification logs.

Fair and Open Conduct: Staff may not accept gifts, favors, or outside compensation, and unauthorized vendor contact is prohibited.

Post-Employment Restrictions: Former employees may not represent vendors before the agency for two years (Gov't Code § 572.069).

Oversight and Enforcement: Shared by General Counsel and Executive Leadership, and supported by audits and training verification.

Reporting and Accountability

TDLR maintains documentation of milestones, approvals, and conflict verifications. TDLR staff must report suspected violations to General Counsel, Internal Audit, or the Executive Director. General Counsel reviews violations within ten business days, issues findings, and coordinates corrective or disciplinary recommendations. TDLR records follow-up actions within thirty days. Executive Leadership reviews quarterly compliance reports, tracks resolution, and directs updates. All procurement and contract records – including solicitations, evaluations, legal reviews, and ethics certifications—must be retained in compliance with Gov't Code § 441.1855.

Vendor Conflicts of Interest

TDLR employees are prohibited from entering into employment, professional services, or consulting services contracts with former or retired employees before the first anniversary of the last date on which the individual was employed by TDLR.

All contracts must contain contract terms and conditions that relate to organizational conflicts of interest restrictions,and:

- Warrant that providing services will not constitute an actual or potential conflict of interest nor will reasonably create the appearance of impropriety;
- Disclose any current, former, or proposed employees who are current or former employees of TDLR;
- Disclose proposed personnel who are related to current or former employees of TDLR; and
- Warrant that they have not given, nor intend to give, any gift or thing of value to employees participating in thesolicitation.

TDLR Staff and Vendor Relationship

All TDLR staff involved in procurement and contracts must perform all responsibilities in a transparent and ethical manner, and in turn vendors must ethically perform all contractual obligations. Maintaining cooperative relationships with contractors is important to successful contracting outcomes. However, TDLR staff must maintain an ethical arm's-length business relationship with contractors. In doing so, TDLR must be recognized as the final authority and decision maker on all matters concerning the contract.

Resolving Ethical Dilemmas. An ethical dilemma may often be resolved by following this simple rule of thumb: If a situation feels wrong, it probably is wrong. When faced with an ethical dilemma, TDLR staff are required to seek advice from the Agency Procurement Director or the Office of General Counsel.

Ethical behavior and integrity require values such as fairness, honesty, and accountability.

Communication with Potential Vendors

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

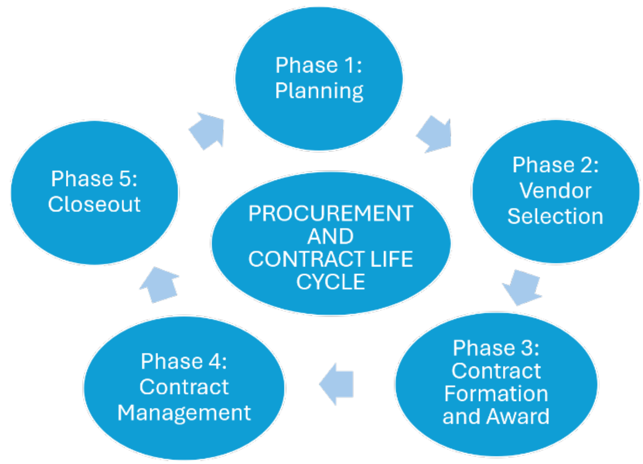
TDLR staff must cease communications with vendors and coordinate procurement efforts through the applicable Administration Department sole point of contact. If there is any doubt about appropriate communications with vendors, consult with the Agency Procurement Director, a manager, or agency Chief Ethics Officer.

Refer to the TDLR Vendor Communications Procedure for guidance and limitations for vendor communication. Following is a summary of guidelines for communicating with vendors during various phases of the procurement and contract life cycle.

Solicitation Development Phase	Communication with Vendors
Pre-Solicitation Fact Gathering	Allowed. Refer to the TDLR Vendor Communication Procedure for important guidelines to avoid the appearance of favoring one vendor over others.
Solicitation Drafting	As a “Quiet Period” where all communications with vendors cease.
Solicitation Publication	Allowed only with or through the designated point of contact identified in the solicitation and at certain points of the procurement.
Evaluation and Negotiation	Allowed only with or through the designated point of contact identified in the solicitation and at certain points of the procurement.
Contract Formation	Allowed only through a point of contact or the assigned Contract Developer for the period prior to contract execution and during contract development.
Contract Award	Allowed for any staff as it relates to the executed contract. Communications with current vendors pertaining to ongoing solicitations are not allowed except through an Agency Procurement Director point of contact.

Procurement and Contract Life Cycle

The TDLR Procurement and Contract Life Cycle consists of the following five phases:



1. Planning – Identify objectives and strategy for the procurement, including developing a business needs assessment, a cost estimate, and an Acquisition Plan when applicable. Planning includes determining which procurement method best delivers the business requirements and procurement objectives.

2. Vendor Selection – Prepare vendor selection deliverables based on the procurement method and select the vendor using the procurement method for purchasing, renting, leasing, or in any way acquiring goods or services; including:
   - Confirm business requirements and specifications
   - Prepare the solicitation
   - Advertise the solicitation
   - Evaluate responses and award

3. Contract Formation and Award – Ensure the contract contains provisions that hold the vendor accountable to the specifications and all required terms and conditions consistent with the approved and mandatory or recommended provisions authorized by the Guide.

4. Contract Management – Following the award of a contract, the management actions ensure the contract is performed satisfactorily and the responsibilities of both parties are properly performed to ensure full compliance with all the terms and conditions in the contract.

   After contract execution, the procurement transitions to contract management, also referred to as contract administration in the Handbook, and involves working with End Users, Project or Program Manager when applicable, and the vendor to oversee all contract management activities through contract closeout.

5. Contract Closeout - Perform final review of the procured goods or services, confirm the receipt of all deliverables, and finalize payment(s).

The Handbook describes each of the five phases to ensure consistency in the procurement of goods and services resulting in contracts that are performed satisfactorily with the responsibilities of both parties – TDLR and the vendor – properly carried out through each of the five phases. The nature and level of risk associated with each life cycle phase vary depending on the type and dollar value of the contract.

The ***best value*** standard requires fully implemented procurement and contract management practices that effectively coordinate each of the life cycle phases. In addition to the five phases, the life cycle also involves coordination of multi-disciplines and roles across the agency, including:

- Executive Management;
- Project Management;
- End Users;
- Subject Matter Experts;
- Contract Administrators;
- Administration Purchasing Management and Contracts Management; and
- General Counsel.

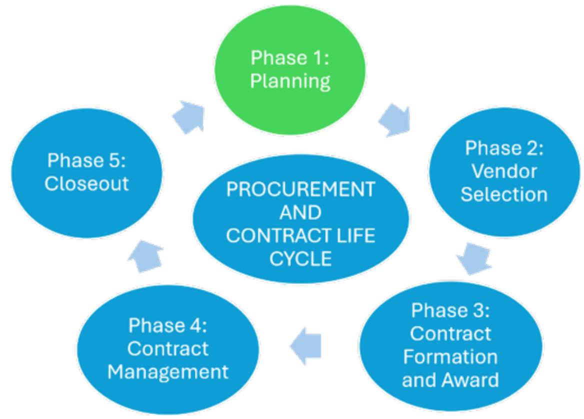
The Contract Manager or Project or Program Manager is responsible for assuring all necessary disciplines are actively engaged and work, with respect to the contract, is coordinated across the life cycle to comply with the Handbook. Different types of contracts are subject to different statutory standards, practices, processes, and strategies for successful implementation. Except for mandatory requirements, the suggestions, comments, techniques, examples,and recommendations included in the Handbook are not appropriate for every contract type. Therefore, the proper and appropriate legal standard, practice, and strategy applicable to each procurement is made in consultation with the Office of General Counsel through General Counsel and Legal roles.

Following are high-level primary responsibilities for key roles during each life cycle phase:

Life Cycle Phase	Primary Responsibility
Planning	**End User**: Provides procurement planning deliverables (e.g., purchase requisition; needs assessment, and cost estimate). **Finance**: Identifies funding source and availability based on business needs. **Administration Purchasing or Contracts Management:** Develops and assists with planning deliverables including determination of procurement method; assigns a Purchaser or Contract Specialist, creates the procurement record. **Legal:** Consults on legal matters. **CISO and DMO:** Consults, if needed.
Vendor Selection	**End User:** Develops the business specifications or statement of work; serves on the evaluation committee and may serve as chair, drafts responses to vendor questions, and selects vendor. **Purchaser or Contract Specialist:** Guides End Users and procurement and contract team as applicable; provides technical assistance, develops schedule, conducts kick-off meetings as necessary, and post applicable solicitation notices and solicitations. **Legal:** Assists with solicitation, including risk mitigation measures such as insurance, payment or performance bonds, liquidated damages, and other issues in collaboration with the procurement and contract team as applicable; and reviews responses to vendor questions and provides legal advice. **Finance:** Assists with determining and assessing financial requirements performs reviews for financial soundness. **CISO and DMO:** Provides technical assistance, if needed.
Contract Formation and Award	**Contract Manager:** Creates contract record; develops contract; routes contract for signature. **End User:** Reviews draft contract documents, if necessary. **Legal:** Reviews draft contract deliverables and provides recommendations for revisions. **Purchaser:** Issues PO following contract execution. **CISO and DMO:** Consults, if needed.
Contract Management	**Contract Manager:** Ensures vendor accountability and responsibility during the contract life by monitoring and assessing risks; manages contract deliverables against contract requirements; works with vendor, End User, and other necessary staff to resolve contract issues and disputes; and stores and maintains required contract deliverables in the agency's centralized repository during the contract life. **End User:** Closely collaborates with the Contract Manager to ensure sound contract management; escalates contract issues to the Contract Manager immediately. **Legal:** Consults on legal matters. **CISO and DMO:** Consults, if needed.
Contract Closeout	**End User:** Provides vendor performance report assessments; confirms all goods and services are delivered and accepted, and monitors payments and confirms final invoice is paid. **Contract Manager:** Verifies financial activity has been completed, ensures the contract file is complete and accurate, reports vendor performance, and concludes the contract. **Finance:** Releases remaining funds on purchase order and closes purchase order.

Phase 1: Planning

The first phase in the Procurement and Contract Life Cycle is planning which is crucial to achieving a successful outcome. Planning aids TDLR in determining the business need for the procured goods or services, preparing the specifications and budget, choosing the appropriate procurement method, negotiating and developing a contract, and evaluating the necessary level of contractor monitoring and oversight. Proper planning reduces *risk* in the procurement. Planning activities must include, at minimum, a needs assessment, a cost estimate, and as needed, an Acquisition Plan.



During the planning phase, procurements are considered proposed and are only classified as agency approved once the following criteria are met:

- Needs Assessment is complete;
- Cost Estimate is complete;
- Acquisition Plan (as needed) is completed; and
- Purchase requisition is approved.

Needs Assessment

The needs assessment describes the business requirements with sufficient detail to identify the key business specifications. As part of planning, The Contract Developer may conduct market research, study historical spending, use benchmarking, and issue a Request for Information (RFI) to the vendor community. However, if a particular vendor receives compensation from TDLR to participate in the preparation of the specifications or solicitation for a particular procurement, the agency will not accept a response or award a contract for the procurement to that same vendor. The Contract Developer may collaborate with the End User to develop the needs assessment.

Cost Estimate

After the assessment of need for a good or service, the Contract Developer may collaborate with the End User to develop a cost estimate and an initial determination of the funding source. Staff with knowledge in the subject area may assist with the cost estimate. The cost estimate will be used not only in the selection of the procurement method, but also for compliance with statutory requirements and therefore must be performed in good faith.

Acquisition Plan

Using the needs assessment and the cost estimate, the Contract Developer with the End User will work on the Acquisition Plan based upon the complexity of the procurement or for procurements of $100,000 or more, unless exempted by other requirements. The objective of the Acquisition Plan is to ensure the procurement is solicited, negotiated, executed, and managed in a way that delivers ***best value*** to TDLR and the State. The Acquisition Plan identifies all procurement roles and responsibilities, the schedule of events, and the activities necessary to ensure the contract requirements are satisfied, the goods and services are delivered in a timely manner, and the financial interests of TDLR are protected.

As the procurement progresses, the Acquisition Plan is continually assessed to ensure the procurement remains on track When applicable, Administration Contracts Management is responsible for managing the Acquisition Plan and ensuring the Acquisition Plan reflects up-to-date procurement and contracting activities accurately.

Procurement Planning Steps

Procurement planning may consist of the following eleven steps which are: (1) general planning, (2) risk assessment, (3) risk management, (4) communication plan, (5) determining procurement method, (6) exempt purchases, (7) planning contract content, (8) technique, (9) solicitation research, (10) cost estimate, and (11) procurement lead time. During the procurement planning phase TDLR considers various factors and impacts as a result of procurement activities during each of the eleven steps.

1. General Planning

Planning starts at the division level. The End User assigns staff to the proposed procurement and gathers relevant facts supporting the need assessment, prepares a cost benefit analysis, and as needed, collaborates on the Acquisition Plan. The End User consults with the assigned procurement or contract staff early in the planning phase to ensure planning activities do not compromise a procurement.

Depending on the complexity of the procurement and the level of risk determined the assigned procurement or contract staff collaborates with the End User throughout general planning activities and seeks assistance from the Office of General Counsel and other divisions as necessary. End Users may provide information related to the marketplace or possible sourcing strategies gathered through fact-finding but cannot assign a vendor to award or negotiate a statement of work or proposal with a vendor.

2. Risk Assessment

Risks are inherent in all stages of the procurement and contract life cycle. Depending on the complexity of the procurement and level of risk, TDLR performs an initial risk assessment for the procurement itself to ensure the procurement goals are achieved while providing ***best value*** to the State. In addition, risk factors are identified to focus monitoring resources on contractors with the highest risk of noncompliance with contract terms and on contracts that pose the greatest risk to TDLR. Risk factors are indicators that assess the risk of the contract or project objectives not being achieved.

Risk assessment is a dynamic practice that is continually performed to reflect the results of monitoring, reviews of payment vouchers, desk reviews, etc. For example, if the vendor has fallen significantly behind schedule in delivering goods or services, the risk assessment is updated to indicate the elevated risk, which impacts how the contract is monitored in the future.

During contract negotiations but prior to execution, a preliminary risk assessment is performed to make an initial determination about the level, type and amount of management, oversight and resources required to plan and implement the from contract start to finish using a Contract Administration Plan. As risk associated with a contract increases, the level and degree of oversight should increase.

3. Risk Management

Risk management follows risk assessment and includes identifying specific risks of a procurement or contract and seeks to minimize the risks to TDLR through contract terminology, ensuring the risk, managing the risk at an appropriate level, or risk avoidance. There is not an objective or mathematical formula that can be used to identify or quantify the risk imposed by a contract. Risk determination is based on both objective and subjective experience.

4. Communications Plan

Purchasers or Contract Specialist must manage both internal and external communications effectively. After identifying internal and external stakeholders including executive management, Purchasers or Contract Specialists provide guidance to all stakeholders regarding how communications will be delivered and acceptable content. Procurement and Contract team members must sign a non-disclosure agreement if participating in any pre-award activities. Communication responsibilities are documented in the Acquisition Plan and Contract Administration Plan.

5. Procurement Method Determination

Procurement methods are numerous and are subject to varying rules and regulations, contracting programs and exempted methods allow for direct awards without competitive bidding. If the procurement of goods or services requires a solicitation, the Contract Developer consults with procurement and contract team to determine the appropriate method of solicitation.

A key component of determining the appropriate procurement method is assessing whether the procured services are professional or consulting services. The selection of a vendor or award of a contract for professional services is based on two criteria:

1. The demonstrated competence and qualifications to perform the services; and
2. A fair and reasonable price.

When a contract involves both consulting services and one or more other services, TDLR complies with consulting services requirements when the *primary* objective of the contract is the purchase of consulting services. For instance, if a vendor proposes to analyze TDLR's information systems needs and develop and implement an automated information system, the primary objective of the contract is not the analysis provided, but rather the delivery of a data information system. The contract is therefore not a consulting services contract and the requirements for consulting services contracts do not apply.

TDLR uses the following solicitation methods:

1. Invitation for Bids (IFB) - The IFB method may be achieved by formal or informal procedure. The formal IFB uses the competitive sealed bid method and must be used for procurements exceeding $25,000. The informal IFB may be used for purchases with a total value between $10,000 and $25,000. This method is used when requirements are clearly defined, negotiations are not necessary, and price is the major determining factor for selection.

2. Request for Information (RFI) - Requests for Information are used primarily as a planning tool. The RFI is an optional method that may be used to gather information when necessary to have the necessary information to prepare a complete and accurate solicitation document. RFIs are used to identify industry standards, best practices, potential performance measures, or to generally ascertain the level of vendor interest. A preliminary solicitation document which provides an initial description of the program objectives and SOW usually accompanies an RFI for review by vendors. TDLR may use, but is not required to incorporate, information contained in a response to an RFI.

3. Request for Offers (RFO) - The RFO method is a direct purchase or lease method used after receiving a DIR exemption for procuring IT goods or services; after obtaining express approval from LBB for the expenditure necessary for the purchase; if DIR has certified in writing that the item is not available under an existing DIR contract; or if otherwise exempted from the requirements of Section 2157.068 of the Texas Government Code. The procuring entity evaluates written offers received in responseto an open and competitive solicitation in accordance with the solicitation to result in best value. Under the RFOmethod, agencies must solicit, evaluate, select, negotiate as appropriate, and contract directly with one or more qualified vendors in accordance with the open and competitive solicitation.

4. Request for Proposals (RFP) – Used when competitive sealed bidding is not practicable or advantageous, such aswhen factors other than price are to be considered or when objective criteria cannot be defined. One of the key differences between an IFB and an RFP is that negotiations are allowed in an RFP. Discussions are allowed with proposers and best and final offers are solicited.

5. Request for Qualifications (RFQ) – Generally used to select a provider for Professional Services under the Texas Government Code, Chapter 2254. Professional Services Procurement Act. Selection and award are based solely on demonstrated competence to perform the services; and for a fair and reasonable price. § 2254.003. Price is negotiated after the selection based on qualifications.

6. Request for Pricing – A bid method used for purchases made through DIR Commodity Contracts over $50,000 but not more than $1 million. A Request for Pricing is also the informal bid for purchases costing $10,000.01 - $25,000 for all non-IT purchases, as determined by the Purchaser, to obtain quotations from potential vendors for the purchase of goods or services. Quotes are obtained for small dollar transactions and governed by the purchase order terms and conditions.

6. Exempt Purchases

Some procurement transactions may be exempt from competitive procurement requirements. Purchasers or Contract Specialists in consultation with the Office of General Counsel makes the final determination whether a procurement is exempt from competitive procurement requirements.

Examples of exempt purchases include; but are not limited to:

Emergency Purchases
An emergency purchase results from unforeseeable circumstances and may require an immediate response to avert anactual or potential public threat. If a situation arises in which compliance with normal procurement practice is impracticable or contrary to the public interest an Emergency Purchase may be warranted to prevent a hazard to life, health, safety, welfare, property or to avoid undue additional costs.

Proprietary Purchases

A Proprietary Purchase precludes competition because an attribute of the purchase limits consideration to only one product or supplier and may be categorized in or sole source or competitive. A sole source proprietary purchase is when the good or service proposed to be purchased is only available through a single vendor. On the other hand, a competitive proprietary purchase refers to a specific product or service that is available for purchase through more than one vendor *e.g.*, brand-specific replacement parts or a specific software that is available through multiple resellers.

A Proprietary Purchase is justified only when an equivalent good or service is not available or not suitable or when is only available through a single vendor. A written justification must be provided by the originating division (End-User) when a specification requirement limits consideration to one supplier, one good(s), or one service provider and the amount of the purchase exceeds the informal bid threshold (either in a one-time purchase or repetitive purchases of the same goods or services during a fiscal year). Price and personal preferences are not acceptable as determining factors. Purchasers may request additional quotes or bids for proprietary or sole source purchases.

The written justification must include:

- Description of the proprietary product or service and an explanation of why a unique SOW for a good or service is required;
- Statement regarding the business need and planned use;
- Statement whether same of similar goods or services acquired in preceding [3] years;
- Reason that competing goods or services are not satisfactory and provide examples of what would occur if competitive products or services are selected;
- Specify whether the purchase is sole source or competitive; and
- Signature of the person with delegated authority listed on the Proprietary Purchase Letters (Form.

Other Exempt Purchases

Certain goods or services are considered exempt from the competitive procurement rules, either by statute or if an exemption is in the best interest of the public. Bids or proposals are not required when procuring exempt goods or services but may be requested to confirm Best Value for TDLR and must have a valid business purpose.

7. Contract Content Planning

Clearly identifying procurement objectives, assumptions, and constraints is an important step in contracting. This step may seem obvious, but when a contract fails, it often fails because the expectations were not met and there was not atrue meeting of the minds. A clear understanding of the contracting objectives is essential to success. Typically, a contract will be part of a larger initiative or vision such as TDLR's strategic plan. How objectives, assumptions, and constraints integrate into the larger initiative or vision is a key consideration. Potential integration risks are identified so that a strategy for mitigating or managing those risks will be developed in the planning phase.

8. Statement of Work Technique

Defining the contract objectives, assumptions, and constraints may sound simple and straightforward, but definition can be complex. The Contract Developer may find that members hold different views about the procurement's objectives.

Each procurement is different; therefore, the description of the objectives, assumptions and constraints will vary. A good way to measure the quality of the SOW is to ask whether the contract objectives, assumptions, and constraints make sense. Are the objectives, assumptions, and constraints described too broadly or too narrowly?

9. Solicitation Research

The procurement or contract team may seek input across divisions and other agencies who have developed solicitations,drafted contracts, and engaged in contractor oversight like the solicitation that is being planned.

Recommended methods of research include:

- Use the internet to search for similar solicitation documents, contracts, and oversight documents;
- Review websites of potential vendors for useful information;
- Check with trade associations and professional organizations to identify industry standards;
- Publish a Request for Information (RFI).

While researching, the procurement or contract team may contact potential vendors to discuss the business need for goods or services and is an acceptable practice if:

- the procurement or contract team obtains information from more than one vendor;
- documents the contacts in the purchasing or contract file; and
- advises the vendor up front that TDLR's interest at this point is strictly for informational or research purposesand that any formal requests for pricing or other information will be made through the solicitation process.

Recommended Vendor Script:

This meeting is for informational purposes only. TDLR has not made a commitment to obtain any of the itemsunder discussion, and this meeting should not be considered an offer, acceptance, commitment or as authorization to incur any cost for which reimbursement would be required or sought.

1. *TDLR follows all Texas state contracting statutes, rules, and policies of the Texas Comptroller of Public Accountants.*
2. *This is no guarantee of business.*
3. *You are welcome to discuss capabilities and demonstration of other work – but we cannot discussor talk about specific needs or allow this meeting to become a requirement gathering session.*

10. Cost Estimates

An estimated procurement cost is required for all purchases and is intended to provide an idea of the range of goods or services to be included in the SOW.

Best Practices:

- Assign End Users with knowledge in subject area to procurement or contract team to assist with cost estimate.
- Contract Developers should be requesting and receiving quotes, but if vendors are contacted by non-certified staff, *be sure* to say you are obtaining price estimates for information purposes only and the estimate is not a formal solicitation or procurement.
- When getting price estimates check with your contract developer prior to contacting a vendor to ensure any information shared does not result in an unfair competitive advantage, which couldcause procurement delay or cancellation.

11. Procurement Lead Time

To execute a contract before the anticipated need for the goods or services, the Contract Developer uses the following lead times as an initial guide when establishing a procurement schedule and includes each step in solicitation planning*:*

TASK	**SUGGESTED LEAD TIME FROM CONTRACT START DATE**
Begin Preparation of Solicitation Documents– Program staff works	180 days
Solicitation Documents Completed	150 days
Advertise and Issue Solicitation	145 days

Receipt of Responses	115 days
Evaluation of Responses	60 days
Contract Negotiation (if allowed) and Formation	50 days
Contract Execution – All signatures are obtained	15-50 days
Performance Begins (effective date)	0 days

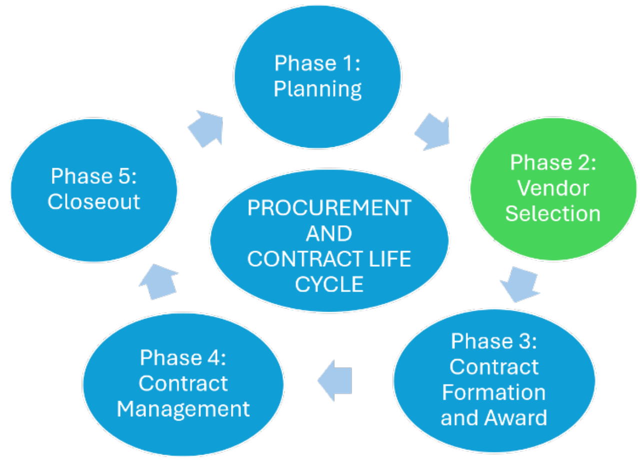
Lead times are recommendations only and may vary depending on the specific requirements, the complexity of the contract, and the workload of procurement and contract resources. Less complex procurements may be accomplished in less time, while more complex procurements may require more time.

If the procurement is complex, requires exemptions or approval by other state agencies, or requires a proposer submitsignificant documentation and/or complex pricing, additional time for the solicitation should be given.

- Evaluation of the bids or proposals may take more or less time depending on the size of the evaluation team and the complexity of the evaluation. The evaluation period could also increase if oral presentations, discussions, or best and final offers are planned.
- Contract negotiation and formation timeframes may vary depending on the complexity of the procurement.
- Depending on the approval and signature requirements the contract execution lead time may need adjusting.

Phase 2: Vendor Selection

After the appropriate solicitation method is determined during Phase 1: Planning, solicitation specifications and deliverables are prepared in order for a vendor to be selected in Phase 2: Vendor Selection. Development of specifications and selection of a vendor are crucial for achieving fair and objective procurements.



Vendor selection is a highly structured approach that involves identifying, assessing, and choosing vendors that are capable of delivering goods or services essential for TDLR's business operations. Selection focuses on reliability, quality, compliance, cost, and strategic business alignment and fit. Effective vendor selection reduces operational risks, ensures timely delivery, and supports long-term business objectives.

Solicitation Specifications

A solicitation specification must include, at a minimum, the following:

1. Table of Contents
2. Definitions
3. Introduction
4. Background Information
5. Schedule of Events
6. Response Procedures
7. Vendor Questionnaire
8. Evaluation and Award Process
9. Solicitation Requirements
10. Terms and Conditions
11. Subcontracting Requirements and Small and Disadvantaged Business Requirements
12. Statement of Work
13. Preferences
14. Execution of Offer
15. Affirmations and Conflict of Interest
16. Cost Proposal
17. Attachments

The specifications for a Request for Proposal or a Request for Qualification will be much more comprehensive than the specifications for an Invitation to Bid or a Request for Quote.

Characteristics of Effective Specifications

A specification is a description of the requirements for a good or service that the requesting division seeks to procureand is also a description of what a vendor must submit to be considered for an award. Specifications should be:

1. **Simple**: Avoid unnecessary detail but be complete enough to ensure that requirements will satisfy the intended purpose.
2. **Clear**: Use consistent terminology that is understandable to End Users and to potential vendors. Usecorrect spelling and appropriate sentence structure to eliminate confusion. Avoid legalese type language andjargon whenever

possible.

3. **Accurate**: Provide accurate units of measure compatible with industry standards and that are specific to thegoods or services being requested.
4. **Competitive**: Draft specifications that encourage competition and provide opportunities for cost savings. Avoid additional requirements that could reduce or discourage vendors.
5. **Flexible:** Avoid inflexible specifications that prevent acceptance of a Response that could offer greater value.

Specification Types

Some of the most common specification types are: Performance-Based Specifications, Design-Based Specifications, and Mixed.

Performance Based Specifications

Performance-based specifications focus on outcomes or results rather than the process by which goods or servicesare produced. Performance-based specifications allow vendors to bring their own expertise, creativity, and resources to the procurement process without restricting them to predetermined methods or detailed processes. Performance-based specifications are fashioned, so that vendors are allowed maximum flexibility when satisfying the requirements of a solicitation. These specifications, however, must be reasonable and measurable.

Design-Based Specifications

Design specifications focus on resources and outline exactly how the vendor must perform the services or how the goods are made. Design specifications limit flexibility. Design-based specifications are appropriate for the purchase of low cost and low risk goods or services and must describe the activities that are in place to properly inspect and test compliance against the specifications.

Mixed Specifications

Mixed specifications are an amalgamation of performance-based and the design-based specifications.

Solicitation Preparation

Statement of Work Organization

The Statement of Work (SOW) is very important as it forms the basic framework for the resulting contract as a detailed description of the conceptual requirements for the procurement of goods or services. The SOW is included in the specifications. The success or failure of a contract can usually be linked to the adequacy of the planning, analysis, and thoroughness of the SOW. Time spent planning, analyzing, and drafting the SOW will improve the quality of the goods or services provided. If it's not in the SOW, it's not under contract.

The SOW must:

1. Secure the best economic advantage using Best Value Standards;
2. Be clearly defined;
3. Be contractually sound;
4. Be unbiased and non-prejudiced toward potential proposers;
5. Encourage innovative solutions to the requirements described, if appropriate; and
6. Allow for free and open competition to the maximum extent reasonably possible.

Elements of a Deliverable

Deliverables defined in a solicitation may include the following elements:

1. A description of the work;
2. A standard for performance;
3. Test conditions, methods, or procedures to verify that the deliverable meets standards;
4. A method or process to monitor and ensure quality in the deliverable;
5. An acceptance process for each deliverable;
6. A compensation structure that is consistent with the type and value of goods or services provided; and
7. A contractual remedy, if appropriate.

The information provided by the End User in the Needs Assessment is used by the Contract Developer to draft the SOW. The SOW is logically organized and tailored to TDLR's business needs, and provides a clear and thorough description of the goods or services to be provided. If appropriate, the environment where the goods or services will be used is provided. In certain types of procurements, it may be important to describe the business processes and related operating policies and procedures. If existing business processes will change because of the procurement, then business processes after the procurement objectives are completed are included and defined. If the procurement requires the vendor to recommend new business processes, this information is included in the solicitation.

Contract Term

The maximum contract term must be established prior to solicitation and must be included in the solicitation document. All Contracts must have an effective date and an expiration date. Options for renewals must be clearly defined as to the number and length of each potential renewal. Automatic renewals are not encouraged. Failure to timely renew will result in termination of the contract and loss of the goods or services under contract.

Veterans Heroes United in Business Requirements

TDLR is required to make a good faith effort to utilize Historically Underutilized Businesses (HUBs) as established through the Veterans Heroes United in Business (VetHUB) program for service-disabled veterans. The obligation can be achieved through contracting directly with VetHUBs 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 B.

The Purchaser or Contract Specialist must determine whether subcontracting opportunities are probable under a contract with an expected value of $100,000 or more over the life of the contract (including any renewals) pursuant to Texas Administrative Code, Title 34 Part 1, Chapter 20, Subchapter B, Rule § 20.285 (a).

For solicitations and contracts with an estimated value of or greater than $100,000 in which tit is determined there are subcontracting opportunities, TDLR must state this determination in the solicitation and require a Subcontracting Plan (SP) to be submitted with the response or the response will be considered non-responsive pursuant to Texas Administrative Code, Title 34 Part 1, Chapter 20, Subchapter B, Rule § 20.285 (b).

Payment Types

The method of payment has a direct impact on how the SOW is written and how a contract is managed. The Contract Developer must measure or verify that the SOW is complete and states how much and how often TDLR will pay the contractor.

As with specification types, there are also various payment types. Payments should be consistent with the type of goods or services delivered. Payments should be structured to fairly compensate the contractor and encourage timelyand complete delivery of the goods or services. As a rule, payment should be approximately equal to the value of the delivered goods or the completed services. The following are the reimbursement methodologies:

1. Cost Reimbursement- Payment to vendor of direct and indirect costs actually incurred. The use of this method is

recommended when the project scope cannot be precisely defined, and costs cannot be accurately determined.

2. Cost Plus Incentives – Contractor's costs plus a percentage of cost or cost plus a fixed fee. This type of payment is usually discouraged as there is no incentive for the Contractor to minimize the cost to the Institution. Example: Construction Projects.
3. Fee for Service – A specific fee for a unit of Service. Payments are made for each unit of Service completed. Example: Providing Flu shots.
4. Firm Fixed Price – A firm fixed price is defined at the time the contract is awarded for a well-defined product or service. Recommended for when the requirements are precisely defined. Contractor carries all risk as the payment does not change, regardless of how much it costs the Contractor to provide the goods or services. Example: procurement of furniture.
5. Firm Fixed Price with Escalator – Similar to the Firm Fixed Price except that it includes a provision for price escalation. Escalators are usually based on the Consumer Price Index.
6. Progress – Payment is based on pre-established Deliverables. The Deliverables must be measurable.Example: A search firm agreement.
7. Time and Materials – Payment is a pre-determined amount per unit. This method is recommended when the project scope cannot be precisely defined and when off-the-shelf products or standard services are required, but the quantity is uncertain. Example: Services of an electrician.

Other Payment Provisions

Travel and payment discounts are additional considerations for payment provisions as follows:

Travel – The reimbursement of travel expenses should generally be limited to the rates allowed by the General Services Administration (GSA) or the State of Texas unless otherwise agreed to in writing.

Payment Discounts – A best practice is to request respondents to indicate in the response whether any payment discount is offered to TDLR for early payment. However, an early payment discount and the terms presented in the response are not considered in the evaluation.

In addition, the agency may obtain cost savings by requiring electronic invoicing and payment. All incentives or requirements are defined in the SOW.

Quantity

The solicitation must quantify the amount, frequency, and/or location required to meet performance.

Quality

The solicitation must identify the level of quality required for acceptable performance.

Established Standards

If established standards (international, national, State, local) are available, they can be used to assist in defining the contract performance requirements.

Examples of national and international standards include American National Standards Institute (ANSI), American Society for Testing and Materials (ASTM), and International Organization for Standardization (ISO).

Using established standards provides consistency in measuring acceptability, quality, or accuracy of the performance of one or more parties to the contract. If an industry standard is used, specifically identify the standard.

Warranties

A warranty is an assurance that specific facts or conditions are true or will happen. Consider including warranty language as a contractual standard of performance. An express warranty and an implied warranty are technically different. However, each standard works to describe a type of contractually-based performance.

Unless excluded or modified by the language in the contract, warranties or standards may be implied or imposed intoa contract by a statute or case law. For example, in the sale or lease of some types of personal property or goods theremay be statutory warranties implied into a contract, such as: a warranty of title, a warranty that the goods must be merchantable, or a warranty that goods are fit for a particular purpose.

Best practice is to include clear standards for the contractual performance or an express warranty describing the objective expectation of performance rather than relying on an implied warranty.

Generally, it is not necessary to the creation of an express warranty that the seller use formal words such as “warrant”or “guarantee” or that the seller have a specific intention to make a warranty. However, a mere affirmation of the valueof the goods or a statement of the seller’s opinion or commendation of the goods or services does not create a warranty.

Vendor Qualifications

The SOW should specify the minimum qualifications required of the vendor. At a minimum, the SOW should require that the vendor have a specified level of experience, certification, or training in the type of goods or services to be delivered as determined by the Contract Administration Team.

Insurance Requirements

The Contract Developer must evaluate risks associated with each solicitation and include any insurance or bond requirements in the specifications or SOW to mitigate or eliminate the risks. Consult with the State Office of Risk Management when necessary.

Evaluation Criteria

The solicitation must inform vendors how a solicitation response will be evaluated. The evaluation criteria must reflect the essential qualities or performance requirements necessary to achieve the objectives of the contract.

The criteria must allow fair evaluation of technical responses. Evaluation criteria may include factors such as:

- Respondent qualifications specified in the written response;
- Respondent experience and references relevant to the solicitation;
- Financial capability;
- Oral presentations;
- Documented past performance of the Respondents;
- Respondent’s price;
- Reciprocal preference; and
- Respondent’s proposed scope of work.

Specific portions of the required response should directly relate to the evaluation criteria. To ensure fairness in evaluation, the evaluation criteria are to reflect only those requirements as specified in the solicitation.

The language within the solicitation will determine the scope of the evaluation criteria and the flexibility for evaluating proposals.

Evaluation criteria are not unduly restrictive. Vendors must have notice in the solicitation of all requirements.

Criteria not included in the solicitation may not be used in the selection or ranking of a proposal. For example,if proposers receive additional points for possessing a national accreditation, or meeting the unique needs of the agency, such criteria are included in the solicitation so that proposers know there is an opportunity to score higher by providing additional options. Likewise, if certain information is not requested in the solicitation, proposers who fail to submit the additional options cannot be penalized.

Best Value Considerations

Best Value considerations must be proactively addressed during solicitation development. The lowest cost is not necessarily the Best Value for all procurements. For example, a good or service of higher quality for reasons such as operational complexity or longer life span, may be a better value and investment for TDLR, even if the initial cost is more. The procurement or contract team must:

- strategically assess business operational needs,
- analyze whether repetition of the same contractor decreases quality of services, and
- consider long term business needs.

If factors other than price are considered in determining the Best Value for the State, those factors are specified in the solicitation. In determining Best Value, the following factors are considered depending on the type of procurement:

1. Installation costs;
2. Long-term cost to TDLR of acquiring the goods or services;
3. Quality and reliability of the goods or services;
4. Delivery terms;
5. Vendor's past performance and experience;
6. Reputation of the Vendor and of the Vendor's goods or services;
7. Extent to which the goods or services meet the TDLR's needs;
8. Vendor's past relationship with TDLR;
9. Impact on TDLR to reach HUB goals and procure goods or services from service-disabled veterans;
10. Cost of employee training;
11. Effect of the procurement on strategic initiatives and long-term planning;
12. Vendor's anticipated economic impact to the region;
13. Other factors relevant to determining the Best Value for TDLR; and
14. Any relevant factor that a private business entity would consider in selecting a Vendor.

Response Submission Requirements

The solicitation must include a listing of all the required information that vendors must submit with their response to assist in submitting a complete response.

Additionally, recommended or required response formats must be specified in this section, such as order of information, page number limitations, and electronic format.

Monitoring

The SOW must set deadlines for completion of tasks and a schedule for submittal of deliverables, required meetings, presentations, or other activities. Deadlines and completion definitions must be clear, measurable, and allow for monitoring of vendor performance. Monitoring methods are critical for ensuring the contractor performs as specified in the SOW.

The methods used to monitor contractor performance must be clearly stated in the solicitation to give contractors notice if

requirements include producing time-consuming reports or maintaining stringent testing requirements outside normal industry parameters. The Contract Developer may develop and include a monitoring strategy in the solicitation. The amount of monitoring should be balanced and adequate to meet the need, but limited in type, scope, and frequency sufficient to achieve the desired result without unnecessarily increasing costs. Overly restrictive oversight can interfere with the contractor's ability to accomplish the work and may unnecessarily and inadvertently increase the cost of the work.
These deadlines and completion definitions must be clear, measurable, and allow for monitoring of vendor performance.

Reporting

Status reporting describes information that a contractor must provide to show evidence of the performance of a contract. Status reporting must be defined in the SOW and should include content, frequency, and audience for each report. A status report describes the level of completion of the work and/or the cost of the contract. Percent complete is often used todescribe status. For the report to be useful, a baseline should be established for timelines and budgeting.

If deliverables are specified, include the format of the deliverable and the quantity required. For example, if a deliverable is a final project report, state how many copies of the report are needed and specify the format of the report. Provide details of all items that must be included in the report. These requirements are usually addressed in the SOW within the solicitation

If contractor provided information is anticipated to be reported as part of the performance measures, ensure that there are requirements that allow for data verification and that the data corresponds with the data required for the performance measures.

Inspection and Testing

The SOW must provide any requirements for inspection and testing, and must describe any provisions for inspection and testing of goods or services purchased under the contract.

Tests may be performed on samples submitted from regular shipments.

All external costs of inspection and testing should be borne by the contractor. In the event inspected and tested goodsor services fail to meet or exceed all conditions and requirements of the contract, the goods or services should be rejected in whole or in part and must be replaced at the contractor's expense.

Latent defects can result in cancellation of a contract. "Latent defects" are those that are not known by or expressly disclosed to TDLR or not discoverable by a reasonably prudent inspection.

Final Acceptance

The SOW must clearly define how TDLR will determine that a contract has been satisfactorily completed. The SOW sets a standard for acceptance of goods or services and establishes a procedure to accept or reject the goods or services based on specific factors. A formal acceptance process for each requirement in a contract allows the contract manager and a contractor to monitor contract performance.

Additional Considerations

Following are additional considerations for SOW preparation that may affect costs:

- Licenses or permits required;
- Use of TDLR equipment;
- Storage space for Contractor materials or supplies;
- Intellectual property or copyright issues;
- Subcontractor requirements; and
- Conflict of interests and other organizational restrictions.

Advertising, Communication, and Recommendation

When marketing or posting solicitations, consideration is given to the type of procurement method used. Appropriate statues and

Advertising Solicitation and Communicating Content with Eligible Vendors

When marketing or posting solicitations, consideration is given to the type of procurement method used. Appropriate statues and rules are referenced to ensure adherence to correct advertising or posting procedures.

Typical methods for communicating or advertising solicitations include: (1) Centralized Master Bidders List, (2) Electronic State Business Daily, (3) Texas Register, (4) Required Posting of Certain Contracts, (5) Pre-Proposal Conferences, (6) Communication with Respondents, (7) Written Questions, (8) Ineligible Barred Vendors, and (9) Solicitation Submission and Opening.

Centralized Master Bidders List

The Centralized Master Bidders List (CMBL) is an online directory, administered by CPA, of vendors registered to receive bidding opportunities from the State. TDLR must use the CMBL to select vendors for competitive bids or proposals and may use it for purchases exempt from SPD's purchasing authority.

Electronic State Business Daily (ESBD)

The ESBD is an internet-based resource used for posting procurement opportunities and is administered by the Office of the Comptroller. TDLR must use the ESBD to post procurements with a contract value of more than $25,000.The ESBD is available at https://www.txsmartbuy.gov/esbd.

Texas Register

The Texas Register is used to advertise various types of procurements as required by statute; such as major consulting contracts. This is also dependent on the program that requests the procurement. The Texas Register is administered by the Secretary of State's Office and the posting requirements are in addition to ESBD posting requirements.

Required Posting of Certain Contracts

For each contract for the procurement of goods or services from a private contractor, TDLR must post on its websites:

1. Each contract TDLR enters into until the contract expires or is completed, including contracts entered without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor;
2. For contracts that are not competitively bid or are entered into without compliance with competitive bidding procedures, the statutory or other authority under which the contract was awarded and executed;and
3. For Contracts that were the subject of competitive procurement, the Request for Proposal or Invitation for Bid until the contract expires or is completed.

These requirements will not apply to a memorandum of understanding, interagency contract, interlocal contract, or a contract for which there is not a cost.

Pre-Proposal Conferences

TDLR conducts mandatory or non-mandatory pre-proposal conferences. Careful consideration is given to the use of a mandatory conference because it may limit competition. Conferences are mandatory only if an on-site visit is required to have a full understanding of the procurement or if the solicitation is so complex and attendance is critical for potential respondents to fully understand the procurement.

Pre-proposal conferences provide a forum for the agency to respond to questions regarding a solicitation. The benefits from conducting pre-proposal conferences include:

1. Establishes a consistent forum for TDLR to inform vendors about applicable State of Texas and TDLR procurement and contract laws, rules, and policies.
2. Allows potential respondents to address specific questions or concerns with the solicitation. If any issues are identified at the conference or throughout the procurement, the Contract Developer will publish an addendum to the solicitation.
3. Provides an opportunity to describe the solicitation activities and detail the solicitation requirements.
4. Provides additional clarifications especially when there is a need for on-site visits by respondents prior to submitting responses.
5. Establishes a forum to provide additional information, schematics, plans, reports, or other data that is not easily transferable or distributed.
6. Engages vendors regarding subcontracting relationships that may form through information shared at the conference..

Communication with Respondents

All communication with potential respondents comes through the Contract Developer or other designated procurement staff as stated in the solicitation document. The solicitation must identify a single point of contact for the procurement and describe all applicable forms of communication such as telephone, email, etc.

Should a potential respondent contact other TDLR personnel, they must politely decline to discuss the procurement and advise the respondent to contact the appropriate person. While the Contract Developer or other designated personnel may not be able to answer all of the technical questions posed by potential respondents, they will post the information online and distribute it to all registered potential respondents.

A respondent that contacts someone other than the authorized Contract Developer or other designated procurement personnel regarding a solicitation may be disqualified.

Written Questions

The solicitation document may invite respondents to submit written questions concerning a solicitation. This option may be in addition to or in lieu of a pre-proposal conference.

The date and time for submission of written questions must be specified in the solicitation document, if applicable. Written questions must be submitted by email. The questions and answers are posted as an addendum.

Ineligible Barred Vendors

Pursuant to Texas Government Code § 2155.077, the Comptroller may bar a vendor from participating in State contracts.

If a vendor is barred from participating in State contracts, the Comptroller must determine the period of Vendor Debarment. The period for vendor debarment must be commensurate with the seriousness of the vendor’s action and the damage to the State’s interests.

Evaluation Team

The recommended size of an Evaluation Team is three to five scoring members. However, some projects may require additional members or additional teams due to the nature of the procurement. To avoid potential bias, an Evaluation Team must not be less than three members.

All team members must fully understand the requirements of the solicitation, be able to critically read and evaluate responses, and to document independent judgments concisely and clearly in accordance with the evaluation criteria. Being part of an Evaluation Team involves a significant time commitment, therefore care should be taken to ensure that each scoring member is able to attend the meetings, oral presentations, and site visits, if needed.

Before evaluating responses, the Contract Developer will meet with the Evaluation Team and outline the team's duties and responsibilities, specifically including the critical nature of confidentiality to the integrity of the evaluation process. Each Evaluation Team member must sign and provide a Non-Disclosure and Conflict of Interest Form as requested prior to any activity as a team member.

The Contract Developer will review all evaluation criteria with the team members and describe how evaluation activities are conducted. Each solicitation response is evaluated individually against the requirements of the solicitation only and is considered independently of all others. The Contract Manager may participate as a non-scoring member.

Evaluation and Contract Award

The Evaluation Team must conduct evaluations in a fair and impartial manner consistent with Texas law governing procurement, purchasing, and contracts.

The purpose of an evaluation is to identify solicitation responses that are responsive and to have sufficient and accurate information to make a sound decision about the vendor's ability to provide quality and timely goods and services within the statement or scope of work.

As previously described in the Procurement Phase, the Request for Proposal and Request for Qualifications solicitation documents will include a general description of the evaluation process, the predetermined evaluation criteria, and therelative weights to be assigned to each evaluation criterion.

The responses will be evaluated on written criteria in addition to cost. In the RFP process, the Evaluation Team will determine the best overall value to TDLR. In the RFQ process, the Evaluation Team will determine the best qualifiedresponse(s) in accordance with the specifications.

In an IFB process, the Evaluation Team will evaluate if the bidder is (1) responsive in accordance with the requirements and (2) if a response complies with the specifications. A contract will be awarded to the bidder who meets the specifications and provides the lowest overall cost to TDLR.

Scoring Matrix

A Scoring Matrix is used by the Evaluation Team members to score individual responses based on the specifications and evaluation criteria defined in the solicitation document. A Scoring Matrix must be completed prior to the evaluation and posted in the solicitation. The Contract Developer must provide instructions and guidance for completing the Scoring Matrix.

Responsive Submissions

After all Responses are opened and recorded, the Contract Developer makes an initial administrative review to determine if the responses submitted are compliant. At a minimum, this review must include confirmation of the following:

- signed affirmation and Conflict of Interest disclosure, if required ,
- Subcontracting Plan,
- bonds and evidence of insurability, if required, and

- any other required documentation in accordance with the specifications.

Only those responses deemed responsive and in compliance with the mandatory requirements of the solicitation will be evaluated.

Fewer than Two Responses

If TDLR receives less than three responses to a solicitation, TDLR may elect to:

a) accept the responses,

b) extend the due date for the responses, or

c) cancel and reissue the solicitation.

The Purchaser or Contract Specialist includes language in the solicitation which defines TDLR's rights to manage the procurement. Proper documentation as contract records must be retained to fully support all actions leading to cancelling and reissuing the solicitation.If TDLR elects the reissue the solicitation, the specifications are reviewed for any unduly restrictive or burdensome requirements.

Proposal and Qualification Evaluations

The Evaluation Team will be provided with responses that have been reviewed and found responsive and minimally qualified by the Contract Developer. When possible, evaluations should be conducted in the same room at the same time. This will facilitate communication between the team members and provide a controlled environment for the evaluations. If not feasible, the evaluation can be conducted via electronic communications with key team members available to answer questions. All written and oral evaluation questions should be presented to the Contract Developer to seek answers to such questions.

Once evaluations are complete, the Contract Developer will collect the evaluation Scoring Matrix from each team member. The Contract Developer will review the Scoring Matrix and verify the accuracy of calculations for input into the final evaluation summary.

If it is apparent that one or more team members' evaluations differ significantly from the majority, the Contract Developer should verify with all team members that the criteria were clear, and that information was not overlooked or misunderstood. If after this discussion, a team member feels that the member did not understand the criteria, the requirement, or missed information that was included in the Response, the evaluator, at the evaluator's discretion, may revise their evaluation score.

Under no circumstances must any team member attempt to pressure other members to influence evaluation scores.

References, Background, and Financial Soundness

The Contract Developer may verify references included in the response and conduct any other reference, financial soundness, or background check deemed appropriate. The Contract Developer may also use the Comptroller's Vendor Performance Tracking System (VPTS) in evaluating a vendor's past performance.

All reference, financial soundness, or background checks are documented in writing. Best Practice requires Staff performing reference, financial soundness, or background check use a consistent *script* to provide a fair process to all respondents. Also, the list of reference check questions are prepared prior to the solicitation closing date.

Sometimes it is difficult to obtain information from the references provided, either because the references have a policy of not providing reference information or because vendors cannot be reached in a timely manner.

Oral Presentations and On-Site Visits

Oral presentations or on-site visits with respondents are conducted at the discretion of the Evaluation Team. If pral presentations are conducted, notices are provided to respondents with fair and equal time to prepare according to an established agenda, time and date of presentation.

Oral presentations and on-site visits provide an opportunity for respondents to highlight the strengths and unique aspects of responses and to provide answers to questions the Evaluation Team may have regarding the response. Demonstrations of product functionality are recommended when appropriate, such as information technology procurements or solution-based procurements.

Oral presentations and on-site visits are scheduled for all respondents or limited to the top ranked respondents in the competitive range of the evaluation. The competitive range must consist of those responses determined to be reasonably considered for award selection. Oral presentations and on-site visits must be fair to all parties. The time allowed and the format is consistent for all presenters. A prepared script is used to help ensure consistency.

Best and Final Offers

Contract Specialists may request Best and Final Offers (BAFOs) from the respondents to a Request for Proposal. The BAFO serves as an official revision of the RFP response. A provision for the BAFO is included in the solicitation.

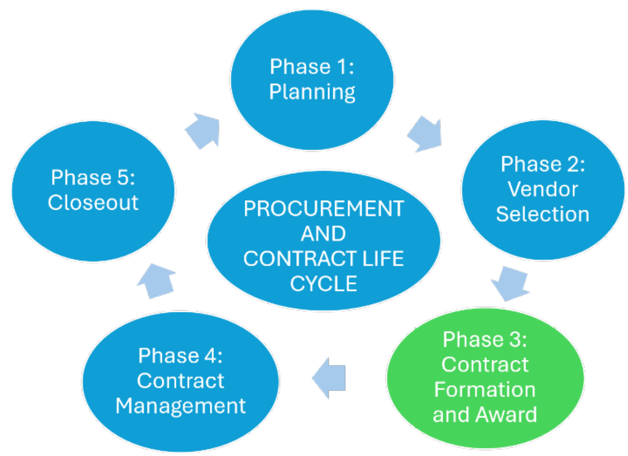
Revisions of responses are normally accomplished by formally requesting BAFOs after the initial evaluation or at the conclusion of oral presentations and on-site visits with a deadline set for receipt of BAFOs, including instructions as to exactly what is to be submitted in response to the BAFO. After consideration of all BAFO responses, the Evaluation Team may recommend the best value respondents with which to start negotiations.

Award Recommendation

The Evaluation Team recommends award of a contract for goods or services that provides the Best Value to TDLR in compliance with the specifications and statement of work.

As a result of a fair and objective procurement, the Evaluation Team confirms the highest scoring respondent is selected based on the criteria specified in the solicitation.

Phase 3: Contract Formation and Award



Contracts are formed and awarded in Phase 3: Contract Formation and Award. There are many variations, exceptions, and factors that impact contract formation and therefore, the Office of General Counsel is consulted as necessary for any questions about applicable statutes, regulations, policies, and procedures.

Approach to Contract Formation

The purpose of a written contract is to document the agreement of two or more parties to prevent misunderstanding and conflict. If properly formed, a contract creates a legal, binding, and enforceable set of obligations for the contracting parties. Without a clearly formed contract, conflicts may arise well into the contract period.

Therefore, it is important that all parties document clear terms and address potential issues as completely as possible. The Contract Developer must understand the subject matter and concerns of the parties well enough to anticipate potential areas of disagreement and specifically address in the contract. Once signed, it may be difficult to amend unclear terms or add terms to address issues since all parties must agree toany changes.

Negotiations

In every contract, there are usually terms or conditions that each party may be willing to negotiate. The first step in negotiation is determining the best value responses. Then, the Purchaser or Contract Specialist must identifythe terms and conditions that are essential, desirable, or subject to negotiation.

The Purchaser or Contract Specialist may negotiate terms and conditions in some solicitations and not in others. For example, the Invitation for Bid method does not allow negotiations unless only one (1) Bidder submitted a bid, while the RFP method does allow negotiations.

Other competitive processes generally contemplate and allow a certain amount of negotiation. Whether or not the solicitation permits negotiations is determined by the Agency Procurement Director.

A request for a respondent to clarify an Offer is not the same as negotiating about specifications or terms and conditions so long as the request to clarify does not provide one respondent an advantage over another.

TDLR prohibits technical leveling or technical transfusion techniques as follows:

- Technical leveling is helping a respondent to bring their response up to the level of other responses throughsuccessive rounds of discussion, usually by pointing out response weaknesses.
- Technical transfusion is the disclosing of technical information or approaches from one response to other competitors in the course of discussion. Prohibited disclosures include:
    - disclosing competing respondents' cost or prices (even if the disclosure is made without identifying the other respondent by name); and
    - advising a respondent of its cost or price standing relative to other respondents.

TDLR avoids inadvertently changing specifications that may result in an advantage to one or more respondents.

Negotiation Strategies

Negotiation strategy is tailored to the facts and circumstances of the solicitation. In the event of unsuccessful negotiations, the procurement and contract management team may continue negotiations with the next Best Value Respondent until the best interest of TDLR is achieved, which may result in either an award or termination of negotiations.

Like other parts of contract development, planning is essential to conducting a successful negotiation. The procurement and contract management team determines which business terms and conditions are essential and those that may be negotiated. The procurement and contract management team in collaboration with the Office of General Counsel identify the terms and conditions that are essential to the contract or mandated by law, regulation, or best practice. Some terms or conditions are unable to be negotiated or compromised.

Negotiations can reach an impasse over conflicting terms thought to be essential to each party. The three-question approach may be useful to assist all parties with clarifying and harmonizing potentially divergent objectives and interests. The three questions are:

1. What does TDLR want, specifically? Can it be obtained without undue risks?
2. What will the term or condition, specifically, do for TDLR? Examining this aspect may provide common ground to explore options that meet the needs of both parties.
3. How will the procurement or contract management team know specifically, when TDLR has received what it wants?

If the parties cannot reach an agreement, negotiations begin with the next respondent.

Award

Following negotiations, TLDR awards a contract for goods or services by fully addressing all conflicting specifications. Award is the act of accepting an offer to enter into a contract with the agency.

When authorized and applicable, Purchasers may issue a Purchase Order to serve as the agreement between the parties. The terms and conditions of the Purchase Order state the Purchase Order governs over a response, a quote and any other document or deliverable provided to or by a respondent. After award of a contract, the Purchaser or Contract Specialist notifies all respondents.

Elements of a Contract

The basic and essential elements necessary to form a binding contract are:

Offer

The present intent and willingness to enter into a bargain. A party must show the following to prove that an offer was made:

- The offeror intended to make an offer;
- The terms of the offer were clear and definite; and
- The offeror communicated the essential terms of the offer to the offeree.

Acceptance

Once there is a valid offer, there must then be acceptance of that offer. A valid acceptance must show the following:

- The acceptance was made before the offer lapsed or was revoked by the offeror;
- The manner which the acceptance was made strictly complied with the terms of the offer;
- The acceptance was communicated to the offeror; and
- The form of the acceptance was clear and definite.

Also known as a "meeting of the minds" - requires "a mutual understanding and assent to the expression of the parties' agreement." The parties must agree to the same thing, in the same sense, and at the same time; their agreement mustbe based on “an objective standard, considering what the parties did and said, not their subjective states of mind.”

Legal Purpose
The purpose of the contract must be within the agency’s statutory authority and be legal for it to be binding to the parties. A contract is **not** formed if the underlying purpose of the agreement is illegal.

Communication
Ensures that each of the parties has consented to the terms of the contract.

Execution and Delivery
Evidence of intent that the document become mutual and binding on the parties.

Consideration
Also known as “mutuality of obligation” -- is a present (not past or future) bargained-for exchange of promises. It canconsist of a benefit to the promisor or a loss or detriment to the promisee.

NOTE: A contract is **not** formed if a party is legally incompetent, which would negate elements of formation.

Developing the Contract

Contracts typically include standard terms and conditions, often referred to as ‘boilerplate’ or ‘standard’ terms and conditions. This chapter provides reference to standard terms and conditions.

Appropriate terms included in a contract will fully describe and memorialize the actual agreement of the parties. Some provisions that are typically included in Contracts include, but are not limited to:

1. Administrative provisions;
2. Financial provisions;
3. Provisions that allocate risk and specify remedies;
4. The SOW;
5. Provisions relating to the contract term, termination, governing law, and dispute resolution;
6. Provisions relating to the identification and safeguarding of confidential information and data security; and
7. Provisions that relate to rights and ownership of work product and intellectual property.

Planning for the Contract

Purchasers or Contract Specialists plan for developing contracts by allowing adequate time to prepare and review the final contract. A best practice is to include a draft of the standard TDLR contract in the solicitation document which allows the respondent to make an offer with knowledge of the proposed contractual terms and conditions.

Some recommended planning steps are:

- Collect and review similar contracts. Before adopting terms and conditions from another contract, a thorough and independent legal review of how the terms and conditions relate to the current procurement should be conducted. Studying risks, contracting objectives, assumptions, and constraints in other contracts may behelpful.
- Prepare an outline containing headings for the major terms and conditions. This makes it easier to group related terms and conditions. An outline will also illustrate gaps in the structure of the contract.

Form of the Contract

An agreement can be in the form of a contract, with recitals, negotiated terms, and signature blocks, but Purchase Orders are also considered contracts. Each of these forms has advantages and disadvantages. Determining which format is appropriate should be based on an assessment of the risks involved.

Formal Contract

A formal contract offers the greatest opportunity to avoid conflicting provisions, because all the terms and conditions are negotiated, contained in one document and both parties sign the document. Contract Management is sometimes easier when all the provisions regarding the duties, obligations, and responsibilities of each party can be logically organized and easily found. On the other hand, formal contracts require more time to plan, prepare, and review.

Purchase Order

A Purchase Order uses a layered approach, i.e., the Purchase Order usually relies on several documents that in combination, constitute a contract. Applying the formation rules in a simple manner, a contractor delivers an offer, in a form of a quote or a solicitation response, and TDLR indicates acceptance of the offer by issuing a Purchase Order with standard terms and conditions attached. Together these various documents comprise the offer and acceptance and evidence of the basis of an agreement.

There is potential for conflicting or additional terms among the various documents. When used properly, a PurchaseOrder is quick and efficient, but TDLR standard terms and conditions need to clarify which document governs in theevent of conflicting language. When using a Purchase Order as evidence of a contract, the Purchaser will use its terms, rather than accepting terms a contractor proposes.

Contract Terms

There are certain terms and conditions that are essential and many that must be included in all Contracts. TDLR specifies specific terms and conditions through consult with the Office of General Counsel, including questions related to the applicability of contract terms and development of standard terms and conditions.

Binding Signatures

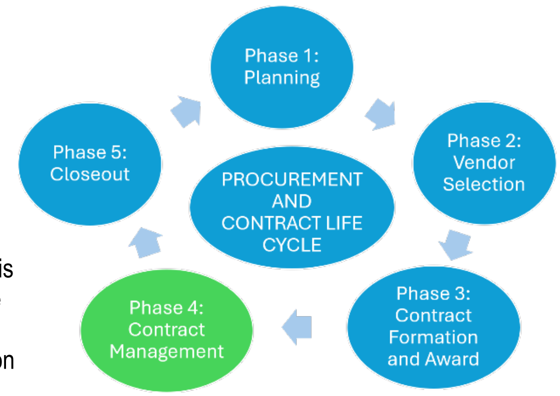
A threshold issue in government contracting is whether an agency has statutory authority to contract. Do not presumeor rely on the implied authority of an officer or agency to contract. Only persons having actual authority to act on behalf of TDLR can bind the agency in a contract. The powers of all state officers are set by law. All persons dealingwith TDLR must know the limits of their authority and determine if the contemplated contract is within their statutory authority.

Section 51.103(b) of the Texas Occupations Code states:

[t]he executive director may delegate any power or duty assigned to the executive director unless prohibited bystatute or rule.

Consistent with Section 51.103(b), the Executive Director executed Delegation Memos authorizing the execution of certain contracts by the Deputy Executive Directors and other members of staff. Purchasers or Contract Specialists confirm that each contract is signed when applicable by an authorized signatory.

Phase 4: Contract Management



After the contract execution and staff involved in the solicitation are briefed on events preceding the contract award, the Contract Developer transfers the procurement to the Contract Manager in Phase 4: Contract Management. Throughout the contract management phase, the Contract Manager ensures the contract is performed satisfactorily and the responsibilities of each party are properly discharged. For contract management to be successful, the Contract Manager is involved throughout the Procurement and Contract Life Cycle.

As part of contract management, the End User implements the Risk Assessment Analysis (Analysis) and Acquisition Plan (if necessary) developed by the Contract Developer. The Analysis assists the Contract Manager in the assessment of risk and the monitoring of deliverables, using contract monitoring schedules and findings reports, after the execution of the contract.

If needed, an Acquisition Plan is the roadmap for achievement TDLR's business needs. The Acquisition Plan is meant to be a first-line resource for the Contract Manager. The Acquisition Plan is initiated during the Planning phase of the procurement and then referenced after contract award.

Contract management and oversight include, at a minimum, the following seven (7) general activities:

1. Planning
2. Monitoring Performance
3. Change Management
4. Payment Approval
5. Dispute Resolution
6. Termination
7. Contract Close-out

The primary tasks of Contract Manager include:

- Verifying contractor performance for purposes of payment;
- Determining if there needs to be any changes in the scope of work, or length of contract, or costs;
- Identifying any material breaches of the contract by assessing the difference between contractor's actualperformance and contract requirements;
- Contract management, and dispute resolution;
- Determining if corrective action is necessary and taking action, if required; and
- Developing a completion plan for contractor exit requirements, including acceptance of the goods/services,final payment, and contract close-out.

Planning

Effective contract management helps to minimize (or eliminate) problems, disputes, and claims. To properly plan for contract management, the Contract Manager must thoroughly understand all of the components of the solicitation and the contract. Examples include:

- Proposed contract outcomes and related performance measures.

- Scheduling for deliverables, if applicable.
- Links between the payment schedule and significant deliverables.
- Total contract cost, including any indirect cost allocation for the goods/services to be provided under theSOW.
- Identification and management of potential contract risks.
- When, where, and how the contract is to be performed, including delivery of goods/services.
- TDLR's right to inspect and accept or reject the goods/services, as well as any conditions related toacceptance or rejection.
- Effective date, completion date, contract term extension options, and other dates applicable to contractperformance.
- Contractor's contact information for correspondence, payment, and notice (including address, email,telephone and other contact information).

Communication

Communication is a critical factor in successful contract management. It is essential to (1) understand the provisions of the contract, (2) communicate contractual obligations to all parties involved, and (3) closely monitor contract performance over the entire term of the contract. The Contract Manager's role includes ensuring, to the extent possible, that the contract requirements are satisfied, that the goods/services are delivered in a timely manner, and that the financial interests of TDLR are protected.

Familiarity with Contracting Principles

Contract Managers must be aware of and understand general contracting principles because those principles impact responsibilities for administering the contract.

Risk Management

To help manage contract risks, End Users complete the Analysis as a preliminary risk assessment to (1) document the initial perception of the level of risk, (2) identify specific risks, (3) determine the level, type and amount of management oversight and resources needed to plan and implement the contract from beginning to end, and (4) identify and assign experienced staff to assist with contract management activities. As risks associated with a particular contract increase, the level and degree of executive management sponsorship,participation and oversight increase by a corresponding level.

Risks are inherent in all the stages of the contract. Limited resources (time and money) necessitate the use of contractual risk assessment tools because there is not sufficient time to oversee all aspects of every contract. An effective risk assessment model will help focus contract monitoring resources on contractors with the highest risk of noncompliance. Assessing the contract risk requires two estimates: 1) estimating the likelihood of the event and 2) estimating the consequence of the event.

The Analysis serves as a tool to assist the Contract Manager in the assessment of risk and the monitoring of deliverables. Contract risk assessment is dynamic and the Analysis is updated regularly to reflect the actual results of the contract monitoring program. For example, if a contractor has fallen significantly behind schedule in delivering goods/services, the risk assessment should be updated to indicate that elevated risk. The elevated risk should be incorporated into the Analysis. Likewise, if a contractor is well ahead of schedule in delivering goods/services, the Analysis is updated to indicate that lower level of risk.

Monitoring Tools

The Contract Developer should establish expectations so the Contract Manager and contractor personnel understand (1) the contract requirements that will be monitored, and (2) the evaluation criteria for each contract requirement. Monitoring tools include desk reviews, and expenditure document reviews, as well as independent monitoring by a third party, telephone calls, and spot audits.

Desk Review

Include a review of reports that are tailored to the contract requirements and submitted by contractor to TDLR. A desk review includes, at minimum:

- Comparison of contractor's actual performance against contract requirements to confirm contractor is performing in accordance with the contract requirements.
- Comparison of contractor's actual expenditures to the approved budget helps confirm whether the contractor is complying with the approved budget.
- Comparison of the current reporting period to prior reporting periods to identify any unexplained trends anddetermine whether contractor is performing work significantly different during this reporting period than during the prior reporting period.
- Comparison of contractor's reports to reports from other contractors performing similar work.
- Comparison of relationships between key components of the reports such as:
- Cost per unit of goods/services against percentage of fees charged to the contract;
- Change in variable costs for each unit of goods/services; and Reported salaries against the contract staffing plan; and
- Comparison of the report to known elements of contractor's operating environment to determine, for example, if a weather emergency in contractor's geographic area increased the cost of supplies or causeda temporary reduction in units of goods/services provided.

Expenditure Document Review

An expenditure document review includes analysis of contractor invoices (including fees for goods/services and expenses) to determine:

- if the fee rates and expenditure items are permitted under the terms of the contract, and
- if the supporting documentation (including cost reports, third party receipts for expenses, and detailed clientinformation) adequately support the invoice.

If contractor consistently provides improper invoices or supporting documentation is insufficient to support the invoices, consider implementing additional monitoring.

Use of Contract Monitoring Findings

End Users in collaboration with Contract Specialists use monitoring tools that include appropriate steps for monitoring contract findings. Monitoring reviews, audits, and investigations are routinely used to:

- Ensure contractor takes corrective action;
- Notice of Cure;
- Identify common problem areas for training opportunities; and
- Improve future procurements.

Follow-up helps bring contractor back into compliance with contract requirements and is essential since problems will not self-correct through identification and reporting alone.

Contract monitoring findings are also used to improve contract requirements for future procurements. Unnecessary constraints or inadequate specifications are noted for incorporation into future solicitations.

Status Reports

If the End User chooses to require status reports, then status reports which describe achievement or current standing, may be created. The content of the status report aligns with the organizational structure of the SOW (i.e. phases, segments, deliverables and products). A status report describes the status of completed work and pending work. The reported status is compared to the contract schedule. Only work that has been verified as completed and accepted should be categorized as complete. If there are any unresolved issues, the issues are included in the status report and a resolution is requested by a due date. If the SOW was amended in accordance with the terms of the contract, status reports track the original contract schedule unless the amendment included a revised contract schedule. Status reporting may include onsite visits.

If the contract does not require the contractor to provide periodic status reports, the Contract Manager routinely confirms that sufficient progress on the work is being made by the contractor. Confirmation of work status may be accomplished by requesting a status update from contractor or a progress report, which describes what has been accomplished over time.

Activity Reports

Activity reports describe all activity on the project. Project activity is not the same as work status. A project may have a great deal of activity without making substantive progress. Note that activity reporting may also be a core feature of managing certain contracts. For example, contractor payments for outsourcing contracts may be based on the number of completed transactions. In that situation, activity reporting would be critical to contract payments. The End User determines when Activity Reports are needed and include related requirements in the solicitation.

Enhanced Contract and Performance Monitoring

The Enhanced Monitoring Method is required for high dollar and high-risk contracts. The increased level of monitoring may include, but is not limited to, contractor meetings and documentation requirements deemed necessary to assess the progress of the contractor toward meeting the identified goals and outcomes established in response to assessments of unsatisfactory performance.

The Contract Manager follows the contract reporting requirements established by contract for a value that exceeds $1 million. Such reporting requirements provide information on the following:

- Compliance with financial provisions and delivery schedules under the contract;
- Corrective action plans required under the contract and the status of any active corrective action plan; and
- Any liquidated damages assessed or collected under the contract.

As part of the Enhanced Monitoring Method, the Contract Manager must also verify (1) the accuracy of the information reported that is based on information provided by a contractor, and (2) the delivery time of goods or services scheduled for delivery under the contract.

Invoices

At the time of the receipt of goods or services contracted, the End User must (1) inspect and evaluate the goods or services to determine they comply with the contract under which they were purchased, and (2) certify, if true, that the goods or services comply with the contract requirements and that the invoice received for them is correct.

Invoices submitted by a contractor must comply with the contract rate schedule. Invoices should be reviewed by the End User with guidance from the Contract Manager, as needed, to ensure that contractor's invoices correspond with contractor's progress on the work. Contractor's progress should be measurable because cost incurred, or invoices submitted, in and of themselves, are insufficient indicators of contractor's progress. In addition, invoices must be reviewed to verify compliance with CPA invoicing standards.[1]

If the invoice exceeds contractor's progress or is otherwise incorrect, the End User or Contract Manager should request and receive contractor's explanation prior to approval of the invoice for payment. *Payment should be withheld pending approval of contractor's progress.*

End Users in collaboration with the Office of the Controller and Office of General Counsel as applicable, give contractor written notice of invoice deficiencies not later than 21 calendar days after receipt as required by the Texas Prompt Payment Act, Section 2251.042(a), Government Code.

[1] *See* 34 Tex. Admin. Code §20.487.

Payments

Payments must be made in accordance with applicable laws, including the Texas Prompt Payment Act, Chapter 2251, Texas Government Code. The Texas Prompt Payment Act requires that correct invoices be paid within 30 calendar daysafter the date the correct invoice was received or services were performed and goods received, whichever is later. Under some circumstances, TDLR may be obligated to pay contractor interest on late payments.

Contract Amendments

During the term of the contract, it may be necessary to amend the contract. Possible modifications include changes to vendor addresses, pricing, or delivery schedule. Purchasing Management or Contracts Management, in consultation with the Office of General Counsel when necessary, will determine if the agreement needs to be amended. Only a person with delegated signature authority can amend an agreement or contract.

There are two types of amendments to a contract: (1) bilateral, and (2) unilateral. A bilateral amendment requires the agreement of all parties to amend the contract. A unilateral amendment requires only the agreement of one party to amend the contract. The terms and conditions in the original contract may specify when a bilateral (agreement of all parties) or a unilateral (agreement of one party) amendment is required. If the contract is silent, then bilateral amendment (agreement of all parties) is required.

Purchasers and Contract Specialists implement effective change management and document all contract amendments appropriately. Failure to manage andcontrol contract changes can result in *unintentional* modification of the SOW, extension of the schedule, increase in contract cost, circumvention of management controls, or decrease of contractor accountability.

Impact of Substantial Changes to Solicited Scope of Work

The contract resulting from a solicitation must be consistent with the specifications and requirements of that solicitation. The procurement and contract management team can make changes to the terms of the contract in negotiation as long as the resulting contract is consistent with the specifications and requirements of the solicitation. Contracts that are not consistent with the related solicitation may violate competitive procurement principles, and applicable laws.

If a contract or SOW change is needed, the change must also be consistent with the specifications and requirements set out in the original solicitation. A significant difference between the revised SOW and the solicited SOW would be a material or substantial change to the scope of the solicitation and may not be allowed because the revised scope was not originally subjected to fair competition.

To permit such a change would go against the ideas of competition and a fair playing field for all vendors. Transparency in government procurement is a key government and business responsibility. As a result, applicable laws require that agencies conduct competitive procurement before making substantial contract changes. The specific method of competition may vary based on the type of goods and services needed. Contract amendments as applicable must not be implemented without first consulting with the Office of General Counsel. By way of example, if a contract to buy 10 desks is amended to include 300 file cabinets, the change is outside the scope of the original contract solicitation because vendors did not previously have an opportunity to compete for the sale of 300 file cabinets. Additional vendors may have competed if aware that file cabinets were being solicited. The large volume of file cabinets (as compared to desks) may also have had an impact upon which vendors submitted offers and competed for the opportunity. Vendors not interested in the smaller solicitation may have been interested in the larger solicitation.

In determining whether a proposed amendment constitutes a significant change in scope of the original solicitation, the primary issue is generally whether the proposed change is a material and/or substantial change. Material or substantial changes are not measured by the number of changes made to the original specifications. Rather,material or substantial changes are measured by whether the proposed changes would so substantially alter the original solicitation specifications that, if the procurement and contract management team does not re-advertise the revised specifications, a procurement opportunity would be denied to a vendor who may have been able to respond, or who may have been interested in responding, to the revised specifications. If the proposed changes are material or substantial, then the proposed changes will be treated as a new procurement, and a new solicitation is needed to ensure compliance with applicable laws related to competitive procurement.

Dispute Resolutions

Appropriate dispute resolution is an essential contract management skill. Early identification of issues, effective communication with contractor, and providing contractor with written notice of issues raised by the Contract Manager or End User (including a formal request to cure or a less formal written process) is crucial. To avoid escalation of contract issues and to ensure the Contract Manager does not alienate contractor representatives, it is imperative that a Contract Manager responds promptly to all contractor inquiries. Initial steps to be taken are: identify the contested issue, research the facts, and evaluate the issue and the facts. The End User must alert the Contract Manager whenever a possible dispute occurs or is expected to occur. The Contract Manager should review all the factual information and the contract requirements. After assessing with management and the Office of General Counsel when necessary, the Purchaser or Contract Specialist determines an appropriate course of action.

Termination

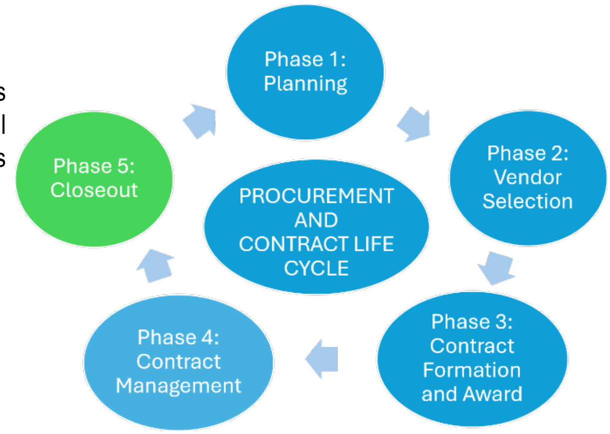
Contract termination prior to completion of the contract is the last resort and should be rare. When the contract terms permit termination, the parties are no longer obligated to continue performance of duties and obligations under the contract. Depending on the specific contract terms, parties may terminate without cause or, with cause, or for force majeure. If the contract permits, a recommendation may be made to the Agency Procurement Director to terminate the contract with or without cause.

Notice

When terminating, the agency must comply with the contract terms which requires the agency to provide the contractor written notice specifying the date of termination. The termination notice is provided to contractor in accordance with the contract terms.

TDLR may not be able to terminate a contract for cause when contractor's failure to perform is the result of force majeure or other excusable causes. To qualify as an excusable cause, the cause must be beyond the control of and without the fault or negligence of contractor.

Phase 5: Contract Closeout



Contract closeout is the final phase of the procurement and contract life cycle and is completed once the contract is terminated. Contract closeout is a detailed, critical set of activities and the complexity of each closeout depends on factors such as whether:

- the contract is competitively or noncompetitively procured
- the contract is for goods or services; and
- the status of the contract deliverables at the time of contract termination.

Closeout Initiation

Purchasers and Contract Specialist initiate closeout when there is reasonable certainty the terms and conditions of the contract have been met, and the contract will not be renewed or extended. Unless otherwise stated in the contract, closeout activities are completed within 90 calendar days of contract termination unless documented, extenuating circumstances exist.

Documentation

Detailed documentation of contract closeout is critical with an intentional focus on completeness. Contract closeout includes:

- Completion of all administrative actions, including invoices and supporting documentation;
- Settlement of all contract disputes, claims, and agreements;
- Protection of any agency confidential information;
- Settlement of financial claims;
- Auditing of any records or payments;
- Cancellation of any goods or services not yet received;
- Transferring of "working" documents;
- Transferring of equipment, hardware, software and goods;
- Transferring access to any information or reporting systems;
- Disposition of equipment;
- Vendor performance;
- Lessons learned; and
- Contract document closure and retention.

Reimbursement of allowable expenses: When applicable, the contractor must be reimbursed for all allowable expenses incurred or services provided under the contract up to the termination date. TDLR is only obligated to pay for goods or services that are authorized and meet applicable contract standards. Under termination for cause, TDLR may not be liable for the contractor's costs on undelivered work and is entitled to repayment of any advance or progress payments.

Contractor obligations: The contractor is responsible for the prompt resolution of any claims for its subcontractors and vendors. A subcontractor may have no contractual rights against the TDLR on termination because the contract is between the agency and the contractor. Each claim must be documented by the Contract Manager. The contractor may submit bills, records, affidavits, audit reports, and other documents to support contract invoices within a reasonable period, up to 90 calendar days after termination.

Appendices

Appendix A: Abbreviations

Abbreviation	Description
BAFO	Best and Final Offer
CAT	State of Texas Contract Advisory Team
CFR	Code of Federal Regulations
CISO	Chief Information Security Officer
CPA	Texas Comptroller of Public Accounts
CTCM	Certified Texas Contract Manager
DMO	Data Management Officer
ESBD	Electronic State Business Daily
IAC	Inter-agency Contract
IFB	Invitation for Bid
ITSAC	Information Technology Staff Augmentation Contracts
PCMG	State of Texas Procurement and Contract Management Guide
PMI	Project Management Institute
RFP	Request for Proposal
RFQ	Request for Qualifications
SOW	Statement of Work
SPD	CPA Statewide Procurement Division
TAC	Texas Administrative Code
TDLR	Texas Department of Licensing and Regulation
TGC	Texas Government Code

Appendix B: Terminology

Addendum: A written addition, change, or supplement to a solicitation issued prior to the submission due date.

Advertise: A public announcement of the intention to purchase goods or services.

Amend or Amended: Status change to an RFP, ITB, RFI, RFQ, RFO, or contract that indicates a modification to that document.

Amendment: Written addition or change to a contract, including modifications as approved the appropriate signatory.

Best Value: Factors to be considered in determining best value include: (1) the purchase price; (2) whether the goods or services meet the specifications; (3) the reputation of the vendor and of the vendor's goods or services; (4) the quality of the vendor's goods or services; (5) the extent to which the goods or services meet TDLR needs; (6) the vendor's past relationship with TDLR; (7) the impact on the ability of the vendor to comply with laws and rules relating to historically underutilized businesses and to the procurement of goods and services from persons with disabilities; and (8) the total long-term cost to TDLR of acquiring the vendor's goods or services.

Bid: An offer to contract with the state, submitted in response to an invitation for bid (IFB).

Bidder: An individual or entity that submits a bid. The term includes anyone acting on behalf of the individual or entity that submits a bid, such as an agent, employee and representative.

Bond: Note or other form of evidence of obligation issued in temporary or definitive form, including a note issued in anticipation of the issuance of a bond and renewal note.

Business Entity: An entity (other than a governmental entity or state agency) through which business is conducted regardless of whether the entity is a for-profit or nonprofit entity.

Competitive Sealed Bid or Proposal: Advertising a request for proposal (RFP), the evaluation of submitted bids or proposals, and awarding of the contract in accordance with state law.

Consultant: A person who provides or proposes to provide the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. The term includes a political subdivision but does not include the federal government, a state agency, or a state governmental entity.

Consulting Services: The service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. (ref. Texas Government Code, §2254.021 Definitions).

Contract: A legally enforceable agreement between two or more parties.

Contract Administration: Following the execution of the contract, the division level actions and activities to oversee full compliance with all the terms and conditions contained within the contract.

Contract Developer: A state agency employee, certified as a Certified Texas Contract Developer, to engage in contract development functions on behalf of a state agency and issues a solicitation or contract award required to be posted to the Electronic State Business Daily or in the Texas Register. The contract developer is responsible for ensuring the solicitation documents are complete, allow for competition, and follow all applicable statutes, rules, and procedures. A certified Texas Contract Developer may conduct purchasing functions.

Contract Development: The term applies to actions taken prior to contract execution, including the receipt and processing of requisitions, assessment of need, development and review of specifications, development and review of scopes of work, identification and selection of procurement methods, identification and preparation of evaluation criteria, preparation of and advertising solicitation documents, tabulation of respondent bids, evaluation of respondent proposals, negotiation of proposals, and the preparation and completion of contract award documents. The term does not include invoice or audit functions.

Contract Management: Actions taken after 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 Guide.

Contract Manager: A state agency employee that performs contract management functions on behalf of a state agency and is responsible for monitoring all provisions, terms and conditions in the contract and managing all aspects of the contract. Must be certified as a Certified Texas Contract Manager to perform contract management functions on behalf of a state agency if the employee has certain job titles, performs contract management activities as fifty percent (50%) or more of their job activities, or manages any contract in excess of $5,000,000.

Contractor: A business entity or individual that has a contract to provide goods or services to TDLR.

Deliverable: A measurable good or service specified by contract or purchase order.

Electronic State Business Daily (ESBD): An online application, administered by Statewide Procurement Division of the Texas Comptroller of Public Accounts, that publishes solicitations for the purpose of informing vendors of procurement opportunities and provides public notice of contract awards.

Emergency Purchase: A purchase made when the agency must make the procurement quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state. Emergencies occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat or to avoid undue additional cost to the state.

End User: The section or division requesting the goods or services. This may be used interchangeably with Program Staff.

Evaluation Committee: Comprised of individuals who are stakeholders in the goods or services being procured and/or individuals who have the necessary technical or program expertise. The committee includes the Purchaser or Contract Specialist who guides the team as a non-voting member.

Extension: As a specific type of amendment, extends the term of the contract and may modify the scope and dollars.

Goods: Supplies, material, or equipment, including a transportable article of trade or commerce that can be bartered or sold. Goods do not include construction services or real property.

Informal Solicitation: An unsealed, competitive solicitation used to obtain offers submitted verbally or in writing or purchases with a value of $25,000 or less.

Invitation for Bids (IFB): A written solicitation requesting the submission of bids; also referred to as a bid invitation. The primary characteristics of an IFB are lowest price, meeting specifications, and no opportunity for negotiation.

Negotiations: A consensual bargaining process in which the parties attempt to reach agreement on terms and conditions or disputed or potentially disputed matter. In a contractual sense, negotiation means the “dealings conducted between two or more parties for the purpose of reaching an understanding.”

Payment Bond: A deposit, pledge or contract guaranty supplied by a contractor to protect the State against loss due to the contractor’s failure to pay subcontractors and material suppliers.

Performance Bond: A deposit, pledge, or contract of guaranty supplied by a contractor to protect the State against loss due to the contractor’s inability to complete the contract as agreed. The amount for the performance bond is based on the value of the contract.

Pre-Proposal Conference: A meeting chaired by a Contract Specialist designed to help potential bidders, proposers, and respondents understand the requirements of a solicitation. Also known as a pre-bid conference.

Professional Services: Services directly related to professional practices as defined by the Professional Services Procurement Act (Texas Government Code, §2254.002). These include services within the scope of the practice of: accounting; architecture; optometry; medicine; land surveying; and professional engineering. Services provided by professionals outside the scope of their profession (for example, management consulting services provided by accounting firms) are not considered professional services. Contracted services provided by professionals that fall outside their scope of practice are governed by the Best Value Statutes applicable to the purchase of goods or services.

Proposal: An executed offer submitted by a vendor in response to a Request for Proposal (RFP) and intended to be used as a basis to negotiate a contract award.

Proposer: An entity submitting a proposal in response to a solicitation. The term includes anyone acting on behalf of the individual or other entity that submits a proposal, such as agents, employees, and representatives.

Proprietary Purchase: Purchase of goods or services where the specifications or conditions of the proposed purchase are proprietary to one vendor and do not permit an equivalent product or service to be supplied and that exceed the authorized direct procurement dollar threshold ($10,000) from a single vendor, without soliciting competitive offers or proposals. The term includes competitive and sole source purchases.

Purchaser: A state agency employee who completed the Texas Purchasing Course to engage in purchasing functions on behalf of TDLR.

Purchasing: The receipt and processing of requisitions, development of specifications, development of scope of work, the issuance of purchase orders against existing cooperative or agency contracts, and the verification of the inspection of merchandise or receipt of services by TDLR. The term does not include the development of solicitations and contract awards that must be posted to the ESBD or in the Texas Register.

Renewal: Extends an existing contract for additional time in accordance with the terms and conditions of the original or amended contract. Does not modify the existing contract scope, dollars, or term.

Request for Information (RFI): A general invitation to the vendor community requesting information that may be used in a potential future solicitation. The RFI is not a competitive solicitation, and a contract may not be awarded as the result of an RFI. An RFI is typically used as a research and information gathering tool for preparation of a competitive solicitation.

Request for Proposal (RFP): A written solicitation requesting submittal of a proposal in response to the required specifications and SOW and usually includes some form of a cost proposal. The RFP process allows for negotiations between a vendor and TDLR.

Request for Qualifications (RFQ): A written solicitation requesting submittal of qualifications or specialized services. It is typically used for the procurement of professional services. No pricing is solicited with an RFQ.

SOW/Statement of Work (SOW): An accurate, complete, and detailed description of the products and services to be provided by the vendor. The information provided in the SOW will depend upon the complexity of the contract.

Service: The furnishing of skilled or unskilled labor or professional work by a contractor which may not include the delivery of a tangible product. In some cases, services and goods may be combined (such as film processing). In these instances, determine whether labor or goods is the primary factor. In the case of film processing, the labor to process the film is the primary factor, therefore film processing is considered a service.

Solicitation: A publicly posted document requesting submittal of bids, proposals, quotes, or qualifications for goods or services in accordance with the advertised specifications. The term also refers to the process of obtaining responses from vendors to provide specified goods and services.

Solicitation Documents: Documents that have been publicly posted on the internet for a specific formal solicitation and provide potential respondents with information about the procurement (IFB/RFP document, pre-proposal sign-in sheet, addenda, etc.)

Vendor: A potential provider of goods or services to the State.

Veteran Heroes United in Business (VetHUB): State of Texas program that focuses on certification of service-disabled veterans to facilitate growth and development and increase VetHUB contracts and subcontracts as defined by Texas Government Code, Title 10, Subtitle D, Chapter 2161.

Appendix C: Statutory Authorities

TDLR procurement and contract activities function within the mandates of federal and state statutory authority. Appropriate law, federal regulation, state regulation, and TDLR policies govern the agency's procurement and contract practices. State and federal statutes are written laws or acts enacted by the Texas Legislature or the U.S. Congress, and administrative rules are adopted in response to these written laws or acts as follows:

- Texas Government Code (TGC) is a record of laws passed by the Texas Legislature governing all state agencies
- Texas Administrative Code (TAC) is a record of administrative rules that state agencies have adopted for implementing certain statutes set forth in the TGC and Texas Transportation Code which have the force of law

Following is a table that identifies TGC citations as applicable to the agency's procurement and contract practices:

Citation	Description
TGC 2254	Professional and Consulting Services, also known as Professional Services Procurement Act
TGC 2155	Purchasing: General Rules and Procedures
TGC, Chapter 2161	Historically Underutilized Businesses
TGC, 466.105	Applicability of Other Law

Following is a table that identifies TAC citations as applicable to the agency's procurement and contract practices:

Citation	Description
TAC, Title 34 Part 1, Chapter 20, Subchapter B	Statewide Procurement and Support Services, Public Procurement Authority and Organization
TAC, Title 16 Part 4, Chapter 140, Subchapter A	Lottery, Procurement Procedures, Protest of Contract Award, Contract Monitoring Roles and Responsibilities, Major Procurement Approval Authority, Responsibilities and Reporting

Appendix C: Revision History

Version	Date	Description
1.0	January 14, 2019	Initial release.
2.0	June 30, 2026	Substantially revised the TDLR Procurement and Contract Management Handbook to reflect current agency practices and organizational structure.