



TEXAS STATE
LIBRARY
AND
ARCHIVES
COMMISSION

Contract Management Handbook

December 1, 2020

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1 INTRODUCTION

Section 2261.256 of the Government Code requires each state agency to publish a contract management handbook that establishes consistent contracting policies and practices to be followed by the agency and that is consistent with the contract management guide published by the Texas Comptroller of Public Accounts. The Texas State Library and Archives Commission (TSLAC) Contract Management Handbook (handbook) contains the contract management policies and procedures for TSLAC employees and Commission Members involved in procuring and managing contracts. There may be policies contained in this handbook that are not found in this document. These standardized processes are intended to promote the efficient use of resources and to provide transparency and accountability into the TSLAC's expenditure of public funds.

This handbook supplements and does not replace existing statutory requirements. It is intended as guidance to TSLAC employees and their role during the lifecycle of the contract.

This handbook applies to the management of the contracts into which TSLAC enters, including but not limited to:

- Purchase Orders (POs)
- Procurement Contracts
- Statewide Term Contracts
- Interagency Contracts
- Inter-local Contracts
- Sole Source or Proprietary Contracts
- Memorandum of Agreements (MOA)
- Memorandum of Understanding (MOU)
- Revenue Contracts
- Emergency Contracts
- Professional Services Contracts
- Consulting Contracts
- Cooperative "Piggyback" Contracts
- Construction Contracts

State law governs several different aspects of procurement for state agencies, and the Comptroller of Public Accounts (CPA) has provided guidelines for state agencies. This handbook is not intended to cover all requirements or processes but rather documents TSLAC's guiding principles for procurement and contracting functions. In compliance with state laws and CPA guidelines, the handbook includes information adapted from the Comptroller's guide and should be used with all applicable TSLAC policies, state and federal statutes, laws, rules, policies, and best practices. The CPA has compiled the relevant statutes and procedures on its website: <https://comptroller.texas.gov/purchasing/>.

The contents of this handbook are subject to change and are not intended in any way to grant any entitlement or right to any individual or entity. The contents do not constitute a basis for contesting any agency procurement processed or any bid, offer, or proposal received, granted, or awarded by TSLAC.

Any suggestions regarding the contents of this handbook should be directed to TSLAC's Purchasing Department.

1.1 Glossary

The terms below will have the following meaning when used in this manual unless the context clearly indicates otherwise:

CAPPS	Centralized Accounting Personnel and Payroll System; a system used by the agency to submit and record financial documents for procurement
Commission	The seven-member governing body of the Texas State Library and Archives Commission

The terms below will have the following meaning when used in this manual unless the context clearly indicates otherwise:

Contractor	A business entity or individual that has a contract to provide products or services to TSLAC
CPA	Texas Comptroller of Public Accounts, the oversight agency for procurements and contracts
DIR	Texas Department of Information Resources, the oversight agency for the procurement of IT related products or services
Division	Employees in the TSLAC program division involved with the contract
OMR	Open Market Requisition, a division of the Texas Comptroller of Public Accounts
SPD	Statewide Procurement Division, a division of the Texas Comptroller of Public Accounts
TSLAC	Texas State Library and Archives Commission, the agency
TFC	Texas Facilities Commission, the oversight agency for construction or facility management services
Vendor	A potential provider of products or services to TSLAC

2 TSLAC ROLES AND RESPONSIBILITIES

The key participants in TSLAC's procurement and contracting processes are the Purchasing Team, the Division, General Counsel, Executive Management, and the Commission Members, when necessary. This section provides an overview of the roles and responsibilities of the Purchasing Team, Division employees, and the General Counsel. Additional guidance and support for the Project Team may include the Information Technology Services Team, Support Services Team, and Accounting Team.

2.1 Purchasing Team – Administrative Services Division

At TSLAC, the Purchasing Team works together during the planning phase of the procurement, including solicitation and/or contract development. After the contract has been awarded or executed, it is the responsibility of the Division's Project Manager in conjunction with the designated Contract Coordinator to administer the contract. The Purchasing Team's responsibilities include:

- Facilitating and providing technical assistance on state procurement law, agency policies and procedures, and contract options for TSLAC employees
- Providing guidance to Division during the solicitation process through the contract closeout process
- Receiving and processing of requisitions
- Developing and reviewing specifications and scopes of work
- Identifying and selecting procurement methods
- Identifying and preparing evaluation criteria
- Preparing and advertising solicitation documents
- Tabulating respondent bids
- Reviewing respondent proposals and/or offers
- Receiving and responding to communications between the agency and the vendor as needed during contract formation/development
- Negotiating contract terms

- Preparing and completing contract award documents
- Working with the Division and General Counsel to create procurement documents, such as solicitations and contracts
- Reviewing and approving potential Historically Underutilized Business (HUB) subcontracting opportunities for contracts prior to solicitation
- Reviewing and approving HUB Subcontracting Plans (HSP) and HSP amendments
- Reviewing and tracking monthly HSP Prime Assessment Reports (PAR)
- Receiving and responding to communication between TSLAC and the Contractor, when appropriate
- Processing contract amendments and change requests
- Providing contract oversight to awarded contracts
- Drafting or reviewing and approving corrective action plans
- Exercising state remedies, as appropriate, when a Contractor's performance is deficient
- Maintaining a copy of the submitted Vendor Performance Report into the Vendor Performance Tracking System for the procurement file
- Ensuring Project Manager provides vendor performance documentation, when applicable
- Coordinating legal review and approval of contracts, insurance, and bonding requirements
- Publishing and reporting contract information to the public and state oversight agencies
- Providing training on procurement requirements and contract management functions to TSLAC employees
- Creating and maintaining official procurement file

2.2 The Division

The division may have multiple roles throughout the procurement and contract process.

2.2.1 Purchasing Liaison

The Purchasing Liaison is an individual within the Division who has knowledge of the agency's procurement rules and requirements and works closely with the Purchasing Team. The Purchasing Liaison's responsibilities include:

- Providing limited guidance for procurements under \$5,000 (spot purchases) to Division employees
- Conducting preliminary work for a procurement, such as checking availability of products or services with WorkQuest, TCI, or on Texas SmartBuy
- Consulting with their Division Director concerning funding for the procurement
- Completing and submitting Requisition(s) in CAPPs

2.2.2 Project Lead

During the planning phase of the procurement, the Project Lead is responsible for identifying the need for a particular product or service, and then plays a significant role in the resulting procurement. Tasks include developing the specifications or the Statement of Work, participating in the evaluation of responses, and approving the terms of the drafted contract. The Project Lead's responsibilities prior to execution of a contract include:

- Identifying the needs for products or services to fulfill the agency mandates or goals

- Drafting the project charter and develop a statement of work or specifications, deliverables, performance measures, payment schedule, and special terms and conditions for the procurement
- Researching and determine the budget for the anticipated procurement
- Developing an evaluation team, if required by procurement method
- Participating in the development of the solicitation
- Evaluating responses received from the solicitation
- Working with the Purchasing Team and General Counsel to determine risk factors during the solicitation process and appropriate methods to manage risk during the term of the contract
- Consulting with the Purchasing Team and General Counsel when necessary

2.2.3 Project Manager

After a contract has been awarded, the Project Manager is responsible for monitoring most day-to-day activities related to the services or products provided under the contract. The Project Manager's responsibilities include:

- Maintaining knowledge and understanding of the Contract(s)
- Providing specialized skills, knowledge, and techniques to support division activities related to the contract
- Serving as a point of contact for delivering instructions regarding the work or contract terms to the Contractor
- Receiving and responding to communications between TSLAC and the Contractor
- Monitoring the Contractor's progress and performance to ensure products and services conform to the contract requirements
- Performing enhanced monitoring for high-risk projects
- Assigning monitoring activities when necessary
- Documenting significant events
- Managing state property used in contract performance (e.g., computers, capital equipment, supplies, telephones, etc.)
- Implementing a quality control/assurance process
- Identifying and resolving disputes with Contractor(s) accordingly and in a timely manner
- Maintaining appropriate records concerning the contract, including but not limited to: progress reports, issues, risks, lessons learned, correspondence, and contract closeout
- Notifying the Purchasing Team and General Counsel of performance issues; may draft a corrective action plan with the Contractor and provide to Purchasing Team and General Counsel for approval
- Monitoring corrective action plan(s)
- Identifying and reporting disputes with the Contractor to the Purchasing Team in a timely manner
- Monitoring the budget to ensure costs are within the approved budget and sufficient funds are available
- Verifying accuracy of invoice and approve payments consistent with the contract terms
- Periodically performing risk assessments throughout the life of the contract
- Requesting amendments to the contract when necessary; related to extensions, deliverables schedule, budget, or HSP
- Performing contract closeout process, document formal acceptance, document lessons learned, and enter Vendor Performance Report in VPTS (when applicable)

- Providing all required contract documentation to the Purchasing Team for the procurement file

2.2.4 Project Monitor(s)

After a contract has been awarded, the Project Manager may require assistance from other TSLAC employees in monitoring some day-to-day activities related to the services or products provided under the contract. These Project Monitors will be designated by the Project Manager. The Project Monitor's responsibilities include:

- Receiving and responding to communication between TSLAC and the Contractor
- Monitoring the Contractor's progress and performance to ensure products and services conform to the contract requirements
- Maintaining appropriate records concerning the contract, including but not limited to: progress reports, issues, risks, lessons learned, correspondence, and contract closeout
- Notifying the Project Manager, Purchasing Team, and General Counsel of performance issues; may draft a corrective action plan with the Contractor and provide to Purchasing Team and General Counsel for approval
- Monitoring corrective action plan(s)
- Documenting significant events and report to the Project Manager
- Monitoring the budget to ensure costs are within the approved budget and sufficient funds are available
- Performing enhanced monitoring with Project Manager, as needed

2.3 Legal

During the planning phase of the procurement and after the contract has been awarded, the General Counsel's responsibilities include:

- Providing legal assistance on procurement laws and regulations to the Purchasing Team and TSLAC Division employees
- Assisting in the review and approval of the solicitation, contract, and amendment templates and documents
- Providing legal support for contract negotiations
- Providing legal assistance for vendor performance concerns, including initiating remedies and defending disputes
- Partnering with the Purchasing Team to review and approve insurance and bonding requirements
- Partnering with the Purchasing Team and Project Lead to determine risk factors during the solicitation process and appropriate methods to manage risk during the term of the contract

3 TRAINING AND PROFESSIONAL CERTIFICATIONS

The Texas Comptroller of Public Accounts (CPA) administers a system of training, continuing education, and certification for state agency procurement and contract management personnel.

The Purchasing Team must be certified as a Certified Texas Contract Developer (CTCD) and/or Certified Texas Contract Manager (CTCM) and must maintain their certifications. Individual certifications will depend on the team member's role. These certifications allow the Purchasing Team to engage in contract development, purchasing functions, and contract management on behalf of TSLAC.

The Project Manager must be certified as a CTCM to engage in contract management functions on behalf of the state agency if the employee has the job title of “contract manager” or “contract administration manager” or “contract technician”; performs contract management activities as fifty percent (50%) or more of their job activities; or manages any contract in excess of \$5,000,000.

Definition of Contract Management – The term applies to actions taken following contract execution, including the assessment of risk, verification of contractor performance, monitoring compliance with deliverable and reporting requirements, enforcement of contract terms, monitoring and reporting of vendor performance, and ensuring that contract performance and practices are consistent with applicable rules, laws and the State of Texas Procurement Manual and Contract Management Guide.

4 COMMUNICATION

4.1 Solicitation

Communication between TSLAC employees and potential contractors about a solicitation prior to or during the solicitation process is prohibited. If questions arise about an anticipated or posted solicitation, the Respondent should only communicate with the TSLAC Purchasing Team.

TSLAC employees gathering information while developing their scope of work must review and adhere to the agency’s Vendor Communication Policy before contacting vendors.

4.2 Contract Administration

Communication is an important factor to a successful contract. After the contract has been fully executed, the TSLAC Project Team and the Contractor can communicate about the terms of the contract and to maintain control over the performance of the contract. Good contract management practices include ensuring that the contract requirements are satisfied, that the products or services are delivered in a timely manner, and the financial interests of TSLAC are protected.

It is the Contractor’s responsibility to perform and meet the requirements of the Contract. To do so, Contractors may need technical direction and approval from the TSLAC Project Team. Individuals assigned as the Project Manager and/or Project Monitor(s) must provide this technical direction and approval in a timely and effective manner. All guidance provided to a Contractor must be within the scope of the contract. The Project Manager or Project Team must be careful not to impose additional requirements or deliverables upon the Contract or manage the Contractor’s operations to the extent that the Contract is relieved of their responsibility to perform. It is important to document all communication with your Contractor. If there is an unresolved issue, the Project Team must contact the Purchasing Team and General Counsel for guidance on a resolution with the Contractor.

5 ETHICAL STANDARDS

State employees must uphold ethical values when carrying out their official duties. All TSLAC employees must act in an ethical, impartial, transparent, and professional manner according to State and TSLAC policy. TSLAC employees who participate in procurement and contracting processes are subject to a high standard of ethics and shall perform their responsibilities with the highest integrity throughout the procurement and contract life cycle. To uphold ethical values in carrying out their official duties, TSLAC employees must remain independent and free from even the appearance of impropriety. Erosion of the public trust or even hints of impropriety are detrimental to the integrity of the procurement and contracting process.

5.1 Conflict of Interest

State law specifically prohibits employees who participate in the procurement process from having an interest in or receiving benefits from a contract or solicitation for a purchase of products or services. Agency employees who perform purchasing functions under delegated authority must adhere to the same ethical standards as the Comptroller's employees, and shall avoid all conflicts of interest in their purchasing activities.¹ TSLAC's Purchasing Team and Executive Management annually certify compliance with these provisions on the Conflict of Interest Form, which is maintained by the Purchasing Department. Perception plays a key role in maintaining the highest level of integrity, including avoiding even the appearance of impropriety.

To ensure the integrity of TSLAC's procurement processes, TSLAC employees who are involved in the development, award, and management of contracts must disclose any known or potential conflicts of interest. An employee may not work on a contract knowing that the employee, or member of the employee's immediate family, has an actual or potential financial interest in the contract, including, but not limited to, prospective employment. The term "participate" includes, but is not limited to, decision making, approval, disapproval, recommendation, guidance, investigation, or similar action.

Additionally, state law prohibits contracts with private contractors for products and services where certain agency officials have a financial interest. Accordingly, TSLAC's Commission Members, Executive Director, General Counsel, and Chief Procurement Office will review and disclose any known financial interests with the agency's private contractors on an annual basis and/or as changes to financial interest may occur, to ensure that the agency does not contract with those vendors.

A state agency may not enter into a contract for the purchase of products or services with a vendor with whom any of the following agency employees or officials has a financial interest²:

- TSLAC Commission members (agency's governing body);
- The governing official, Executive Director, General Counsel, Chief Operations and Fiscal Officer or procurement director of the agency; or
- A family member related to an employee or official described by either bullet point above within the second degree by affinity or consanguinity.

A state agency employee or official has a financial interest in a person/vendor if the employee or official:

- Owns or controls, directly or indirectly, an ownership interest of at least one percent in the person/vendor, including the right to share in profits, proceeds, or capital gains; or
- Could reasonably foresee that a contract with the person/vendor could result in a financial benefit to the employee or official.

A financial interest prohibited by this law does not include a retirement plan, a blind trust, insurance coverage, or an ownership interest of less than 1% in a corporation.

5.1.1 Ethics Standards for TSLAC Purchasing Team

All TSLAC employees involved in procurement or contracting activities must act in the best interest of the State and avoid any activity that could potentially impair their ability to carry out their duties with

¹ Gov't Code §§572.051 and 2155.003.

² Gov't Code §2261.252.

independence and objectivity. Failing to abide by these rules or to disclose a potential conflict of interest could result in dismissal.

5.1.2 State Employee Conflict of Interest

TSLAC employees may not accept anything, regardless of value, from contractors or prospective contractors. A contractor or potential contractor must not offer, give, or agree to give an employee anything of value. The solicitation or acceptance of a benefit from a person or entity that a state employee knows is interested in, or may become interested in, a contract, purchase or payment is also prohibited.

State employees are prohibited from accepting employment from a person or entity for two years after leaving employment with the state, if the employee participated on behalf of the agency in a procurement or contract negotiation involving that person or entity.³

5.1.3 Contractor Conflict of Interest

Statute prohibits agencies 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 the agency.

TSLAC contract terms and conditions must contain provisions related to the organizational conflicts of interest, restrictions on recruitment of state employees, and kickbacks.

Respondents must:

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

5.1.4 TSLAC and Contractor Relationship

Maintaining cooperative relationships between TSLAC employees and contractors is important to produce successful contract outcomes. However, TSLAC employees must maintain an ethical arms-length business relationship with contractors.

5.1.5 Reporting Ethical Violations

The Purchasing Team and General Counsel are available to consult and assist with any ethical issues or concerns at any time during the procurement or management of the contract.

All TSLAC employees have a duty to report any potential ethics or standard of conduct violations to the Human Resources Manager. A contract manager has an obligation to remain vigilant for signs of potential violations of ethics rules, policies, and standards of conduct. A contract manager must use the following options for reporting and investigating known, alleged, or suspected fraud or other illegal activities in the agency.

³ Gov't Code § 572.069

- TSLAC employees shall report any potential or known ethical or standard of conduct violations to the immediate supervisor. Contact may be verbal or written and may be made by anyone having knowledge.
- The supervisor must report all allegations to the Human Resources Department for a preliminary review and determination as to the necessity for proceeding with an investigation of the reported fraud or illegal activity.
- The Human Resources Department may consult with General Counsel and other agency employees for advice and assistance.

5.2 Nepotism

Nepotism is a form of conflict of interest that involves an explicit act of using one's position to favor a relative. Relationships between family members are classified by consanguinity or affinity.

- Consanguinity – a relationship by consanguinity is one established through bloodlines. It may either be lineal (persons in a direct line of descent) or collateral (persons not in a common line of descent but with a common ancestor).
 - Examples:
 - Parents, grandparents and grandchildren, great-grandparents and great-grandchildren
 - Children, brothers and sisters, nephew and nieces; aunts and uncles
- Affinity – a relationship by affinity arises by virtue of marriage. It exists between an individual and either the blood relatives of the individual's spouse or the spouses of the individual's blood relatives.
 - Examples:
 - Spouse, spouse's parents, spouse's grandparents, spouse's grandchildren
 - Children's spouses, spouse's children, spouse's brothers and sisters; brothers and sisters' spouses

5.3 Employment Restrictions

A former state officer or employee who during the period of service or employment participated in a procurement or contract negotiation involving a person/vendor may not accept employment from that person/vendor before the second anniversary of the date the contract was signed or the procurement was terminated or withdrawn.⁴

A state agency may not enter into a contract with a person/vendor who at any time during the four years before the date of the contract was the executive head of the state agency, or with a person/vendor who employs a former executive head of a state agency, unless the governing body (1) votes, in an open meeting, to approve the contract, and (2) notifies the Legislative Budget Board, not later than the fifth day before the date of the vote, of the terms of the proposed contract.⁵

A state agency may not enter into an employment contract, a professional services contract under Chapter 2254 of the Government Code, or a consulting services contract under Chapter 2254 of the Government Code with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by the agency, if appropriated money will be used to make payments

⁴ Gov't Code §572.069

⁵ Gov't Code §669.003.

under the contract.⁶ This restriction does not prohibit an agency from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency, provided that the former or retired employee does not perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by the agency.

5.4 Required forms

All TSLAC employees and Commission Members involved in procurement or contract management activities must disclose to the agency any conflict of interest with respect to any contract with a vendor or solicitation for the purchase of products or services. The following forms may be required, depending on their role and expected value of the procurement.

5.4.1 Conflict of Interest and Non-Disclosure Statement

To ensure the integrity of the procurement process, TSLAC employees who are involved in the development, evaluation, award, or management of contracts with vendors must disclose any known or potential conflicts of interest.

To safeguard the integrity of the evaluation process, TSLAC employees serving on an evaluation committee or as advisors on a procurement must sign a non-disclosure agreement prior to receiving the responses or participating in any evaluation committee activities.

5.4.2 SAO Nepotism Disclosure Statement

For procurements with an expected value of \$1 million or more, TSLAC employees involved in the specification development or an award determination must sign a State Auditor's Office State Agency Nepotism Disclosure form before a state agency may award the contract.

5.4.3 Disclosure of Interested Parties

Section 2252.908 of the Government Code prohibits agencies from entering into contracts over \$1 million or contracts that require action by the governing body without submitting a Disclosure of Interested Parties Form (Texas Ethics Commission form 1295). Before fully executing a contract valued at \$1 million or more, TSLAC must obtain a copy of the Disclosure of Interested Parties form from the proposed business entity (vendor). TSLAC must include the form with the procurement file and the vendor must submit the form to the Texas Ethics Commission within 30 days of receipt of the disclosure.

6 CONTRACT MANAGEMENT

Contract management is the coordination and management of the following general processes:

- Planning
- Procurement
- Contract Formation
- Contract Administration
- Contract Oversight
- Change Management
- Records Management

It is important to know that contracting at TSLAC is conducted with a team approach. Different types of purchases and contracts may be subject to different statutory requirements, processes, and strategies. Contract management refers to the entire cycle of the procurement and contracting process, from beginning to end. In general terms, a contract is a written agreement that includes terms and conditions

⁶ Gov't Code §2252.901.

between two or more parties in which there is a promise to do something. Not all contracts include payment. A contract is a formal and legally binding agreement that is enforceable by law. For purposes of this handbook, the term of contract may include grants, interagency contracts, interlocal agreements, and no-cost agreements. Each is considered a legally binding contract if it provides for mutual promises or duties by the parties. However, as also discussed above, different statutes and processes apply to different types of contracts, and not all steps described in this handbook apply to each type of contract.

The objective of contract management is to ensure the contract is performed satisfactorily and the responsibilities of all parties are properly discharged. Effective contract management prevents, minimizes, and resolves problems and potential claims and disputes.

A successful contract is one where the contract is satisfactorily performed, and the responsibilities of all parties are completed by the end of the contract. The success or failure of a contract can usually be linked to the adequacy of the planning, analysis, and thoroughness of the statement of work. Time spent planning, analyzing, and drafting the statement of work will result in saving time, resources, money and will improve the quality of products or services provided.

6.1 Planning

Planning is the first step in contract management. A successful contract begins with the initial plan and a draft statement of work.

6.1.1 Needs Assessment

The Project Lead will complete the appropriate Charter for the project, which includes the Needs Assessment, specifications for the requested good or service, budget, anticipated delivery schedule, and assigned Project Team for the procurement.

The purpose of the Charter is to assist the Purchasing Team in planning for the solicitation and/or contract development required of procurements with an estimated cost of \$25,000 or more. If a procurement is estimated near the threshold of \$25,000, a Charter should be completed. This document provides critical information for the approval of the procurement and drafting and formation of the solicitation and/or contract.

Planning helps employees identify the need for the products or services, identify whether current resources are available to support the project, determine the appropriate procurement method, and provides the statutory authority for the project. The Charter must be reviewed and approved by the Project Lead, Division Director, Executive Director, General Counsel, IT Consultant (if applicable), Chief Fiscal Officer, and Purchasing Team. This will ensure that the resources can be dedicated to the procurement, the implementation of the project, and that the appropriate funds are available.

6.1.2 Statement of Work (SOW)

The initial statement of work is a clear description of products and services that TSLAC will require the Contractor to deliver, the acceptable standards for the products and services, deliverables, and assumptions. The statement of work ultimately becomes the roadmap for managing the awarded contract. Thus, the Project Manager responsible for managing the resulting contract is an important partner in the development of a good statement of work. By participating in planning, the Project Manager knows and understands the contract provisions, can communicate those contract obligations to the Contractor and maintain appropriate monitoring and control over the contract performance.

An important tool in effective contract management is a clearly written and sufficiently detailed statement of work. An effective SOW should be:

- Designed to secure the best value for the State.
- Clearly defined – avoid vague specifications that may result in greater cost to the agency and narrowly defined specifications may limit competition.
- Unbiased and non-prejudiced toward Respondents.

The statement of work should provide a clear and through description of the products and services to be provided. In certain types of procurements, it may be critical to describe the existing business processes. If the existing business process will change as a result of the procurement, then also describe what the business process will be after the procurement objectives are completed.

6.1.3 Specifications

Specifications should be included within the statement of work to help ensure that the agency receives the most value from the SOW. Specifications should include:

- A clear description of the products or services
- Deliverable details
 - Performance – when, where, and how the products and services are to be delivered
- Contract Term(s)
 - Initial Contract Term with the effective date
 - Optional Renewal Terms (number of renewals and the periods), if applicable
 - Extensions, if applicable
- Historically Underutilized Business (HUB) Requirements
- Contractor’s Responsibilities
- Agency’s Responsibilities
- Quantity
- Quality
- Established standards of acceptance
 - An unambiguous standard for performance
 - An acceptance process for each deliverable
 - Acceptance/Rejection Terms; the agency’s right to inspect and accept or reject the products and services and the conditions of acceptance or rejection
- Minimum Contractor Qualifications and Experience
- Bonding Requirements, if applicable
- Evaluation Criteria
- Best Value Considerations
- Response Submission Requirements
- Monitoring
 - A method/process to monitor progress on delivery of the product/service
 - A method or process to monitor and/or ensure quality in the deliverable
 - Identifying and managing potential risks
- Financial Acceptance and required documentation
- Reporting
- Payment Schedule
 - Consistent with type of product delivered or service performed
 - The frequency of payments

- Significant deliverables should be tied to the payment schedule when applicable
- The total cost, including any indirect cost allocation, of the products and services to be performed
- Supporting documents required to be delivered with the invoice
- Inspecting and Testing, if applicable
- Open to allow maximum competition

Additional Considerations that may apply to the procurement:

- Licenses or permits required
- Use of state agency equipment
- Storage pages for Contractor materials/supplies
- Intellectual property/copyright issues
- Subcontractor requirements
- Insurance requirements
- Conflict of interests/organizational restrictions
- Contractual remedy, if appropriate

The statement of work answers the who, what, when, where, why and how. If those questions are clearly answered, it is a reasonable assumption that the SOW is complete.

6.1.4 Pre-Procurement Risk Assessment

The Project Lead will conduct a pre-procurement risk assessment that will be used to determine the risk level, amount of management, and resources required to effectively monitor selected contracts.

6.2 Procurement

The Purchasing Team in the Administrative Services Division is responsible for the procurement of a variety of products and services for TSLAC.

6.2.1 Procurement Method

The Purchasing Team will determine the procurement method for the requested products or services. It is important to determine the procurement method as it will be a major factor in the planning process. Depending on the procurement method selected, a solicitation may be required. If the selected procurement method does not require a solicitation, a contract will be drafted. The assigned Purchasing Team member will develop the appropriate procurement document(s), obtain required approvals and exemptions when appropriate, and request input from the Division's Project Lead or Project Manager.

A solicitation is a document requesting submittal of bids, proposals, or offers for products or services in accordance with the advertised specifications. For procurements valued at \$25,000 and over, the agency must advertise the solicitation on the Electronic State Business Daily (ESBD).

For more information on the solicitation process and other details, refer to the State of Texas Procurement and Contract Management Guide. <https://comptroller.texas.gov/purchasing/publications/procurement-contract.php>.

6.2.2 Intent to Award

After the solicitation process is complete and the vendor is selected, the Purchasing Team will send an e-mail notification to the Project Team with the intent to award a contract. This is the indication that the

procurement process has ended, and contract formation may begin. TSLAC Commission approval may be required before the contract is executed.

6.3 Contract Formation

The purpose of a written contract is to establish the agreement between the parties – it records the terms of the agreement to prevent misunderstanding and conflict regarding the obligations of the parties.

6.3.1 Legal Elements of a Contract

The elements of a binding contract include an offer, acceptance, legal purpose, mutuality of obligation, consideration, and competent parties.

- Offer – an offer is the promise from the involved parties to act or refrain from acting in the future
- Acceptance – this is a company or organization’s assent to the terms required by the offer. Acceptance of the terms must be in the manner specified by the offer.
- Legal Purpose – the contract’s objective must be for a legal purpose.
- Mutuality of Obligation – also known as the “meeting of the minds”; this means the parties understand and agree to the substance and terms of the contract
- Consideration – the exchange of something of value by the involved parties
- Competent Parties – for a contract to be binding, all parties to the contract must be competent and authorized to enter into a contract

6.3.2 Drafting the Contract

The contract will be drafted by the Purchasing Team based on the procurement document with coordination of the TSLAC Project Manager, General Counsel, and Chief Operations and Fiscal Officer to ensure all necessary elements are documented and meet the agency’s needs and the State of Texas contracting laws and requirements. TSLAC will typically use contract templates that include our standard terms and conditions, as well as any relevant or required terms and conditions based on the type of contracted product/service or source of funding.

Final drafts of contracts will be reviewed and approved by all appropriate TSLAC employees, including the TSLAC Project Manager and General Counsel.

6.3.3 Execution of the contract

The contract will be routed for signatures by the Purchasing Team. The fully executed document will be provided to both the Contractor and the assigned TSLAC Project Manager.

6.3.4 Binding Signatures

The agency may use technology and software to obtain electronic signatures from those with the authority to bind the agency to contractual obligations.

6.4 Contract Administration

Once the contract has been awarded, the TSLAC Project Manager should schedule a post award conference with the Contractor. This conference is a meeting between TSLAC and the Contractor to discuss the deliverables and terms of the contract. Participants to the post award conference may include the assigned Purchasing Team member, Project Team, the ITS Team, the Contractor’s Project Manager and key personnel. The conference is an excellent tool to review expectations, review major performance milestones, affirm communication plans, and resolve any potential misunderstandings before work begins.

The primary goals of contract administration are to:

- Determine compliance with the terms and conditions of the contract, including applicable state and federal regulations
- Provide feedback and technical assistance to prevent non-compliance
- Appropriately respond to non-compliance issues
- Assess and evaluate progress toward successful completion of performance requirements and outcomes
- Verify contractor performance for purposes of approving payment
- Identify material breach of contract by assessing the difference between the contract requirements and contractor performance/nonperformance
- Determine if corrective action is necessary and take such action, if needed
- Report vendor performance in the Comptroller's Vendor Performance Tracking System

The level of contract administration required will not be the same for all contracts – it should be consistent with the complexity and level of risk of the contract.

6.4.1 Contract Monitoring

Contract Monitoring begins in the planning phase of the procurement process. Contract monitoring includes planned, ongoing, scheduled, and unscheduled activities that measure and ensure compliance with the terms, conditions, acquisition, service delivery, and related requirements of the contract.

Contract monitoring activities can be conducted in a variety of methods. Methods must be objective, address contract complexity, value, and risk. Monitoring methods must be properly documented for the contract record. Common monitoring areas include: invoices, deliverables, Contractor performance, close-out documentation.

By assessing risk and allocating monitoring resources accordingly, TSLAC can effectively focus limited resources on contracts that pose the highest risk to the State. This approach does not mean that lower risk contracts are not monitored; rather that more complex or high-risk contract may receive enhanced monitoring. If new or greater risks are identified during the term of the contract, the contract's risk level may be re-evaluated, and the monitoring plan may be adjusted.

6.4.2 Post Award Risk Assessment

Upon execution of the contract, the TSLAC Project Manager shall determine the level of monitoring required for the contract by assessing the risk associated with the contract. This risk assessment shall be completed within 30 days of the execution of the contract. The risk score given to the contract will determine the level of monitoring required.

In addition to the Pre-Procurement Risk Assessment, post-award factors may include:

- Deliverables Based
- Number of Qualified Vendors
- Procurement Method
- Vendor Performance

6.4.3 Payment Approval

The costs incurred by the Contractor should be in accordance with the contract payment schedule. Invoices should be reviewed to ensure that the Contractor's billing coincides with the Contractor's

progress. For this reason, the Contractor's progress must be measurable. The receipt of an invoice is not a sufficient indicator of the Contractor's progress or that the invoice should be paid.

Payment will be approved upon satisfactory delivery of products or services from the Contractor and receipt of a correct invoice to the TSLAC Accounts Payable Team. A copy of the invoice may be delivered to the assigned TSLAC Project Manager for review.

The TSLAC Project Manager will review Contractor invoices to determine if:

- The Contractor is billing only for products or services received by the agency
- The products or services have been inspected and accepted
- The invoice is correct and complies with the pricing, terms, and conditions of the contract
- The total payments do not exceed the contract limit

The TSLAC Project Manager may request supporting documents from the Contractor such as cost reports, third party receipts for expenses, detailed client information, etc.

If the Contractor consistently provides incorrect invoices and/or supporting documentation is insufficient to support the request, then additional monitoring may be necessary.

Invoices must be approved by the TSLAC Project Manager and/or Division Director prior to payment. Payments must be made in accordance with the Texas Prompt Payment Act.

6.4.4 Contract Closeout

The purpose of the contract close-out process is to verify that both parties to the contract have fulfilled their contractual obligations and that there are no outstanding responsibilities for either party. A contract can be closed when:

- All contract deliverables, include any reports, have been delivered to and accepted by TSLAC;
- Final payment is issued;
- Any outstanding monitoring issues have been resolved;
- All property inventory and ownership issues are resolved, including disposition of equipment or licenses purchased under the contract;
- The TSLAC Project Manager has indicated the final acceptance of all deliverables (if applicable);
- Any deficiencies identified during the contract close-out process have been documented and communicated to the appropriate parties and documented as a "lesson learned." A Contract Close-Out Checklist will be completed at the close of each contract and maintained as part of the contract administration file.

The TSLAC Project Manager will submit the Vendor Performance Report in the Vendor Performance Tracking System (VPTS) for contracts with an overall value of \$25,000 or more.

6.5 Contract Oversight

Selected TSLAC contracts will be monitored to verify that the contract is performing effectively and efficiently in accordance with contract terms and conditions.

TSLAC Contract Oversight includes the following general processes:

- Random check-ins with the TSLAC Project Manager
- Change management

- HSP monitoring
- Dispute resolution
- Termination
- Contract closeout

TSLAC Project Managers are not authorized to:

- Instruct the Contractor to start work before the contract is fully executed.
- Change the scope, deliverables, pricing or other terms of the contract without coordinating with Purchasing Team to complete the formal purchase document amendment process.
- Direct the vendor to perform work that is not specifically described in and/or funded by the contract.
- Extend the contract term without execution of an approved written amendment.
- Allow the vendor to incur any additional costs over the limit set by the contract.

A key aspect for effective contract management regardless of a contract's dollar value or scope is the ability to manage change and ensure sufficient oversight to prevent scope creep, the performance of unauthorized work, and over-billing.

6.6 Change Management

During the term of the contract, it may become necessary to make changes. These changes can range from simple administrative changes (such as clerical corrections) to substantive changes (such as adjustments to delivery schedules).

The TSLAC Purchasing Team will keep a record of all requested changes for each contract. The change management process should account for evaluation of requested changes and approvals/disapprovals of requested changes, and the date the change was executed, if applicable.

All changes must be within the scope of the original contract/purchase order.

Approved TSLAC Contract Changes:

- Must be addressed in writing (verbal agreements are not binding).
- May require Executive Director and/or Commission approval.

6.6.1 Administrative Changes

Administrative changes are changes to the contract that do not affect the scope of the contract or the rights of the involved parties. Some examples of administrative changes include, but are not limited to:

- Billing instructions and payment address;
- Clerical corrections (i.e., typographical errors, spelling, and grammar);
- Personnel assigned to the contract; and
- Other amendments as permitted by specific contract language.

The assigned Purchasing Team Member may initiate administrative changes to the contract.

6.6.2 Substantive Changes

Substantive changes affect both parties and typically affect the scope of the contract and/or right of the involved parties. Some examples of substantive changes include, but are not limited to:

- Price
- Delivery Schedule
- Specifications
- Terms and Conditions

The TSLAC Project Manager will serve as the point of contact for requesting substantive changes to the contract with the TSLAC Purchasing Team. The TSLAC Project Manager will work with the assigned Purchasing Team Member to ensure that any proposed change to the contract is processed in compliance with the state's procurement and contracting laws, agency policies, terms of the contract, and within the scope of the original solicitation (if applicable).

6.6.3 Substantial Changes

Texas Government Code § 2155.088 states that the performance of a contract must substantially comply with terms included in the written solicitation for the contract including material/labor costs, duration, price, schedule, and scope. To determine whether a contractual change is substantial or material, the change must be measured by whether re-advertising would deny someone who would have been able to respond to the revised specification the opportunity to respond.

6.7 Records Management

The TSLAC Project Manager is responsible for retaining records created during contract administration. These records include, but are not limited to:

- Copies of all Contractor invoices, including backup documentation required to be submitted for Contractor payment or progress payment, and any other supporting documentation
- Copies of all general correspondence related to the contract
- The paper or electronic originals of all Contractor data or report submittals
- A copy of all routine reports required by the contract, such as progress reports, payment schedules, approval requests, and inspection reports

The Purchasing Team will be responsible for keeping an inventory of all TSLAC procurement and contract files. Inventory of procurement contracts will be maintained in CAPPs. Records maintained by the Purchasing Team will include:

- Executed contract and all amendments
- The solicitation documents and list of submittal requirements
- Vendor responses and evaluation determinations
- Best and final offer correspondence and responses, if applicable
- Ethics related forms, such as Non-Disclosures, Conflict of Interests, and Nepotism forms
- Correspondence and corrective action plans issued to the Contractor
- Vendor performance reports

All records related to the contract shall be retained for seven years after the date of completion or expiration of the contract. If any issues arise from litigation, claims, negotiations, audits, open record requests, administrative reviews, or other action involving these documents, the retention period will be extended until the issue is resolved.

7 CONTRACT RISK MANAGEMENT

Risks are inherent in all stages of the procurement process. Appropriate planning and effective risk assessment are components of successful contract management. The purpose of risk management is to help focus limited monitoring resources on contracts with the highest risks.

The TSLAC risk management process includes:

- Risk identification;
- Risk analysis;
- Risk evaluation;
- Risk treatment and contingency planning; and
- Risk monitoring.

The TSLAC Project Manager is typically the first team member to have knowledge and attempt to resolve any issues related to the performance of the contract.

To prevent disputes, TSLAC Project Managers must:

- Maintain regular communication between TSLAC and Contractors, as necessary.
- Respond promptly to all contractor inquiries regarding contract concerns.
- Notify the Contractor promptly of any issues.
- Work with the TSLAC Purchasing Team and Project Team to develop a strategy to resolve disputes and document any issues related to contract performance.
- Thoroughly document all issues and communications pertaining to contract issues.

To comply with CPA and state requirements, TSLAC will develop and comply with a procurement accountability and risk analysis procedure that provides for:

- Assessing the risk of fraud, abuse or waste in the contractor selection process, contract provisions and payment and reimbursement rates.
- Identifying contracts that require enhanced contract monitoring or immediate attention of the contract management Team.
- Establishing clear levels of purchasing accountability and staff responsibilities related to procurements.⁷

Performing a risk assessment helps to determine the level, type, and amount of monitoring, oversight and resources required to plan and implement the contract from beginning to end.

This assessment is completed to anticipate risks, mitigate or manage risks, and avoid or transfer risk in order to protect the agency. Performing risk assessment is an ongoing process throughout the life of the contract/purchase order. The risk assessment is conducted at the time of award, monitored and updated throughout the life of the contract, as needed, based on current circumstances.

Risks to the contract must be reviewed and re-evaluated by the TSLAC Project Manager on a continual basis until the contract/purchase order is completed and final payment has been made. Identified risks or issues must be discussed with the TSLAC Purchasing Team and General Counsel.

⁷ Gov't Code §2261.256.

In addition to the above, TSLAC Project Managers will keep a log of all issues and resolutions. This log should identify all risks to the contract/purchase order, the mitigation plan or strategy for addressing the risk, and the outcome. This log must be available for review upon request by the TSLAC Purchasing Team or other agency employees.

Risk Assessments are NOT required for:

- Contracts that have an overall value of less than \$100,000;
- SPD Term and TXMAS contracts;
- Memorandums of Understanding or agreements that have no monetary value;
- Emergency Contracts, when time does not allow

7.1 Suspected Fraud, Waste, or Abuse

The State Auditor's Office (SAO) investigates allegations of fraud, waste, or abuse. Administrative heads of agencies who have reasonable cause to believe that money was lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred are required to report this information to the SAO. A "reasonable cause" to believe exists when a set of facts would lead a reasonable and prudent person to believe that an offense may have been committed. TSLAC employees and vendors who become aware of a situation that involves suspicious activities or fraudulent acts may also report the allegations to SAO. The Chief Operations and Fiscal Officer serves as the administrative head for TSLAC.

Criminal offenses investigated by SAO include:

- Theft
- Forgery
- Tampering with a governmental record
- Securing execution of document by deception
- Misapplication of fiduciary property
- Conversion of funds
- Abuse of official capacity
- Gift to a public servant by a person subject to his or her jurisdiction
- Bribery

Reports of fraud, waste, or abuse involving state resources may be submitted through the SAO website, by phone at 1-800-TX-AUDIT (892-8348), or by mail to the State Auditor's Office, Attn: IAS, P.O. Box 12067, Austin, TX 78781-2067.

8 ENHANCED CONTRACT MONITORING PROGRAM

Section 2261.253 of the Government Code requires each state agency to establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

Factors that will be considered when assessing risk for TSLAC contracts include:

- Total dollar amount of contract
- Total contract duration
- Vendor past performance
- User and business process impacts of contract failure or delay

- Risk of fraud, waste, or abuse
- Special circumstances of the project
- Scope of products or services provided

Agencies are required to utilize an enhanced monitoring method for high dollar and high-risk contracts. Enhanced monitoring is an increased level of monitoring, beyond the regular monitoring normally used. Such increased monitoring for TSLAC contracts may include:

- Frequency of site visits
- Contractor meetings
- Documentation requirements deemed necessary by the agency to assess progress of the contractor toward meeting the identified goals and outcomes established in response to assessments of unsatisfactory performance.

8.1 Enhanced Guidance for Contracts over \$1 million

For contracts that have a value exceeding \$1 million, TSLAC will develop and implement contract reporting requirements that provide information on:

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

In addition, TSLAC will develop procedures to document and verify (1) the accuracy of any information reported that is based on information provided by a contractor, and (2) the delivery time of products or services scheduled for delivery under the contract.

8.2 Enhanced Guidance for Contracts over \$5 million

If the value of a contract exceeds \$5 million, TSLAC will review the contractor's performance at least once each year during the term of the contract and at each key milestone identified in the contract.

Under section 2261.255 of the Government Code, for all contracts over \$5 million, TSLAC Purchasing Team must verify in writing that the solicitation, procurement methods, and contractor selection process comply with state law and agency policy and submit information to the Commission on any potential issue that may arise in the solicitation, procurement, or contractor selection process.

Under section 2262.101 of the Government Code, all solicitations expected to result in contracts valued at \$5 million and greater must be submitted to the Comptroller's Contract Advisory Team for review before the solicitation can be posted. The contract value is determined without regard to source of funds or payment mechanism.

9 ADOPTION OF TSLAC CONTRACT MANAGEMENT GUIDELINES

The guidelines in this handbook are formally adopted by the Texas State Library and Archives Commission in accordance with the state laws and CPA guidelines referenced throughout this document. The agency will continue to update sections of this handbook as state laws or CPA guideline change to ensure continued compliance.

The effective date of this handbook December 1, 2020.