

# **Texas Education Agency**

## **Contract Management Handbook**

*CONTRACTS AND PURCHASING DIVISION*

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# Table of Contents

Introduction	4
CPD Priorities	4
Purpose of the Contract Management Handbook	4
Ethics and Standards of Conduct	5
Conflicts of Interest	5
Standards of Conduct	5
Gifts, including Meals	5
Risk of Fraud, Abuse, or Waste	6
Training	6
The Contract Management Framework	7
TEA Service Delivery Model	7
Phase 1: Planning	8
The Statement of Work	9
Limited Contact Policy	9
Phase 2: Procurement	9
Solicitations	10
Special Considerations	10
Regional Educational Service Centers (ESC)	11
Outside Counsel Agreements	11
Historically Underutilized Business (HUB) Opportunities	11
Third-Party Review	12
Electronic State Business Daily (ESBD)	12
Proposals	12
Evaluations	13
Evaluation Committee	13
Conflict of Interest Disclosure	13
Evaluation Process	13
Scoring	13
Best and Final Offers (BAFO)	14
Award Memo	14
Phase 3: Contract Formation	14
Standard Terms and Conditions	15
Payment and Reimbursement	15
Funding Out	15
Form 1295 Disclosure of Interested Parties	15

Execution by TEA Signatory	16
Contract Award	17
Third-Party Contracts	17
Phase 4: Monitoring	18
Service Provider Criminal History Reviews and Non-Disclosure Agreements	19
Data Sharing Agreements	20
TEA Project Managers: Overseeing Deliverables	20
Dispute Resolution	21
Change Management/Amendments	21
Renewals	21
Phase 5: Close-out	22
Vendor Performance Reporting	22
Record Retention	22
Glossary of Terms	23

# Introduction

The Texas Education Agency (TEA), led by the Commissioner of Education, oversees primary and secondary public education in Texas. The mission of TEA is to improve outcomes for all public school students in Texas by providing leadership, guidance, and support to school systems.

TEA's Contracts and Purchasing Division (CPD) is responsible for the procurement of goods and services that support the educational, research, and business initiatives of TEA. CPD is the central purchasing and contracting authority of TEA and is the central repository for all contracts created and monitored by the agency, as well as all contracts and agreements to which TEA is a signatory. TEA has delegated purchasing authority from the Texas Comptroller of Public Accounts (CPA) for one-time purchases of goods of \$50,000 or less and for services valued at \$100,000 or less. Purchases above the stated thresholds are subject to review by the CPA Statewide Procurement Division (SPD).

## CPD Priorities

In managing procurement activities at TEA, CPD is guided by four key priorities:

**Compliance:** Ensuring TEA is compliant with procurement standards in the Texas Government Code, Texas Administrative Code, and the Comptroller's *State of Texas Procurement and Contract Management Guide*.

**Service Delivery:** Providing high-quality, professional, and prompt service delivery to TEA staff and external stakeholders.

**Communication:** Effectively communicating the policies, procedures, and timelines, as well as required updates, related to the contract process and specific projects to TEA staff.

**Education:** Providing effective education and training for TEA staff involved in contracting and procurement activities.

## Purpose of the Contract Management Handbook

Pursuant to [Texas Government Code 2261.265](#), the TEA Contract Management Handbook (handbook) establishes contracting policies and practices to be followed by TEA staff that are consistent with the Comptroller's [State of Texas Procurement and Contract Management Guide](#) (PCMG) (June 2018). This handbook is not a substitute for state procurement laws and should be read in conjunction with the PCMG. If a statute, rule, or the PCMG conflicts with any portion of this handbook, the statute, rule, or PCMG, as applicable, prevails to the extent of the direct conflict.

This handbook is intended for TEA internal use only and does not create any rights or responsibilities for contractors, nor does it alter any TEA contract. The Senior Director of Contracts and Purchasing reserves the right to amend or change the handbook, as necessary, to incorporate modifications and additions resulting from changes in statute, rule, the PCMG, best practices, or TEA policies and procedures.

Staff failing to comply with this handbook or the applicable Operating Procedures may subject an employee to disciplinary action pursuant to OP 07-08 and to any applicable civil or criminal penalty, if the employee's noncompliance constitutes a violation of statute or rule.

## **Ethics and Standards of Conduct**

The Texas Legislature has enacted statutes that detail the ethical responsibilities and disclosure obligations of state officers and employees; additionally, it authorized the Texas Ethics Commission to oversee and enforce many of these laws and provide civil and criminal penalties for certain violations of these provisions. The handbook hereby incorporates by reference TEA OP 07-04 – Agency Standards of Conduct and Conflicts of Interest and OP 08-03 – Contracts Administration.

### **Conflicts of Interest**

A conflict of interest potentially exists whenever one has business, personal, professional, or other relationships that could reasonably influence their judgment in the performance of their TEA duties. All TEA staff have an ongoing duty to disclose actual or potential conflicts of interest relating to TEA business opportunities. Staff involved in any phase of the contracting process will identify actual or potential conflicts of interests initially during the evaluation of a new competitive solicitation as described in this handbook. See OP 07-04 for definitions, examples and the procedure for vetting conflicts of interest.

### **Standards of Conduct**

TEA employees must follow the Standard of Conduct outlined in OP 0-04.

### **Gifts, including Meals**

No agency employee shall solicit, accept, or agree to accept *any* honorarium or payment in consideration for services that the employee would not have been requested to provide, but for the employee's official TEA position or duties. TEA employees and officers shall not accept nor solicit any gift, favor, or service that might give the appearance of reasonably tending to influence the individual in the discharge of official TEA duties or that the individual knows or should know is being offered with the intent to potentially influence official conduct.

A TEA employee whose job responsibilities are related to TEA contracts, grants, and purchases, including but not limited to evaluating proposals, awarding grants and contracts, or managing/monitoring contracts is prohibited from soliciting, accepting, or agreeing to accept *any* favor, gift, gratuity, entertainment or service from: 1) an entity seeking or awarded a contract or grant with TEA; or 2) an employee or agent representing the entity seeking or awarded a contract or grant. A general exception to this prohibition is the acceptance of meals and drinks made available to all attendees or participants at a conference or event open to additional non-TEA attendees and participants. Please check with the TEA Ethics Advisor and OP 07-04 for additional guidance.

# Risk of Fraud, Abuse, or Waste

TEA has developed a purchasing accountability process using a risk analysis procedure that accesses risk of fraud, abuse or waste. The risk analysis permits the Agency to identify those contracts that pose greater risk to TEA and therefore require enhanced contract monitoring. Risk is assessed in the planning phase and the monitoring phase contains activities designed to obviate potential fraud, abuse, or waste. (See TEA OPs 02-03, 02-04, 04-02, 07-04, 07-08, 07-15, and 10-03).

TEA staff have a duty to report any suspected fraud, waste, and abuse regarding state resources to the State Auditor's Office telephone hotline (1-800-TX-AUDIT) or online at the State Auditor's Office website for fraud reporting (<http://sao.fraud.state.tx.us>).

# Training

TEA procurement professionals assigned to CPD (Contract Administration Managers, Contract Specialists, and Purchasers) are required to obtain and maintain statutorily mandated procurement and contract management certifications, as developed by the Texas Comptroller of Public Accounts (CPA) Statewide Procurement Division (SPD). These include Certified Texas Contract Developer (CTCD) certification, previously the Certified Texas Procurement Manager Certification (CTPM), and/or the Certified Texas Contract Manager (CTCM).

TEA staff responsible for any of the five phases of the Contract Management Framework as outlined in this handbook must complete the require TEA Ethics training, Fraud training, and TEA-sponsored Contract Administration and Contract Monitoring trainings, as well as any regular updates, as deemed appropriate by the Senior Director of Contracts and Purchasing. The TEA-sponsored Contract Management training is a prerequisite for staff participating in the development of a solicitation or evaluating proposals. TEA staff must also obtain a Comptroller certification to become a Certified Texas Contract Manager if the TEA employee performs contract management activities as fifty percent (50%) or more of their job activities or manages any contract in excess of \$5,000,000 must also complete CPA CTCM certification requirements. (See 34 TAC 20.133)

Staff must register for the TEA Contract Administration and Contract Monitoring classes on the [iTEA HR-Professional Development](#) page. An employee whose job duties include contract-related responsibilities who fails to attend the required contract trainings will receive a rating of "1 - Unacceptable" in the Decision Making and Judgement Competency during the agency's annual Performance Management Cycle (as with other TEA Mandatory Trainings per OP 07-22).

CPD will track and confirm TEA staff who have completed the requisite Contract Management Training and Contract Monitoring Training before they engage in the contracts process. TEA staff must complete the requisite training as identified by CPD before a project advances. Managers have the obligation to identify staff and positions with contract responsibilities.

# The Contract Management Framework

The Contract Management Framework, or procurement lifecycle, identifies the phases performed by public procurement professionals for every procurement. The steps of the Contract Management Framework are:

**Planning:** During planning, program staff identify a need, assess risks, identify sources of funding, establish procurement objectives, and define project requirements.

**Procurement:** Contracts staff work with program staff to identify the appropriate procurement method, issue a solicitation, if applicable; and fairly and objectively select the vendor that provides best value to the TEA.

**Contract Formation:** Contracts and program staff negotiate the terms of the contract as applicable; ensure that the awarded contract complies with applicable procurement laws and contains provisions that achieve the procurement objectives; and execute the contract.

**Contract Monitoring:** Contracts and program staff administer, monitor, and enforce the terms of the contract; and determine acceptance of deliverables or confirm services completed before approving payment of invoices.

**Contract Close-out:** Contracts and program staff ensure contracted goods and services smoothly transition to full TEA control; closeout and follow appropriate processes to end access to confidential data or data systems; collect TEA property and records or ensure proper disposal of property or records; closeout contract funds; and evaluate vendor performance.

This handbook is organized to provide practical suggestions, as well as information on best practices for procurement activities associated with each step of the Contract Management Framework.

## TEA Service Delivery Model

The CPD service delivery approach is structured to align to the five-phases of the Contract Management Framework. Staff are assigned to work on teams focused on one of the five phases but are expected to master and support any phase. Subdividing the process in this manner allows staff to develop expertise within their assigned phase, establishes several natural breakpoints to verify compliance, and enhances general controls through the separation of duties.

To facilitate the ease of communication, please note the email addresses for each phase:

**Planning Phase:** [TEAContractPlanning@tea.texas.gov](mailto:TEAContractPlanning@tea.texas.gov)

**Procurement (Solicitation & Evaluation) Phase:** [TEASolicitations@tea.texas.gov](mailto:TEASolicitations@tea.texas.gov)

**Contract Formation Phase:** [TEAContracts@tea.texas.gov](mailto:TEAContracts@tea.texas.gov)

**Contract Monitoring Phase:** [TEAContractMonitoring@tea.texas.gov](mailto:TEAContractMonitoring@tea.texas.gov)

**Contract Closeout Phase:** [TEAContractCloseout@tea.texas.gov](mailto:TEAContractCloseout@tea.texas.gov)



**FIGURE 1: CPD CONTRACT MANAGEMENT FRAMEWORK**

**Phases:**



# Phase 1: Planning

The first step in the Contract Management Framework is planning. With proper planning, TEA can achieve its procurement objectives in an efficient and timely manner. At a minimum, planning must include assessing needs and potential risks and developing a cost or price estimate. TEA staff must also identify funding for the project in the planning phase.

Program staff identify employees with project responsibilities during the planning phase: A Project Manager, an Evaluation Committee Chairman, evaluators, content developers, etc. Staff are encouraged to conduct extensive research to obtain information relating to the potential vendor pool, pricing, industry standards, market trends, as well as to determine if the item or service is readily available during the planning phase. One option for gathering information is the Request for Information (RFI). Program staff must consult with CPD staff to develop an RFI for posting to the Electronic State Business Daily (ESBD) or submitting it to an appropriate professional or trade organization. By doing so, TEA staff can control and better document research efforts and engage the community of potential vendors, which should have a positive impact on responses to future solicitation.

The CPA suggested procurement lead time is approximately 180 days from solicitation development to contract execution; however, this time will vary depending on the specific requirements of the agency and the complexity of the procurement. Staff must be mindful of this timeline for contract planning to ensure compliance with all required steps in the contract process. See Figure 2: TEA’s Estimated Project Timeline below. The clock does not begin to run until all required and completed documents are submitted to the Contract Planning Team.

**FIGURE 2: ESTIMATED PROJECT TIMELINE**

	Duration	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Estimated Schedule	177d	Estimated Schedule														
Solicitation Development	89d															
Solicitation Publishing	31d															
Evaluation	37d															
Contracting	14d															
Contract Execution	6d															

# The Statement of Work

The success or failure of a contract can usually be linked to the adequacy of time spent planning, analyzing, and drafting the scope of work or project specifications. Adequately developing the statement of work will result in savings of time, resources, and money and will improve the quality of products and services procured.

Program staff must write the scope of work in a manner that provides a clear and thorough description of the products and services to be purchased. It should not be written narrowly so that it limits competition during the procurement process or appears to favor any specific vendor. A scope of work should be logically organized and tailored to TEA's business need by defining objectives, tasks, deliverables, and timelines for the project.

Once program staff completes their research and the decision to proceed with a procurement has been approved, the Project Manager, or responsible program staff must submit a CPD contract planning packet, which includes all required forms and information, to the [TEAContractPlanning@tea.texas.gov](mailto:TEAContractPlanning@tea.texas.gov) mailbox. The Contract Planning Packet is available on the iTEA Contracts and Purchasing Share Point site. Upon receipt of all completed and required forms, CPD planning staff will establish a projected project timeline, invoke the Limited Contact Policy and advance the project to the procurement team.

## Limited Contact Policy

Submission and acceptance of the completed planning packet to the TEA contracts planning mailbox begins the TEA Limited Contact Policy. Program staff must cease communications regarding a planned procurement with potential vendors and the public to ensure the integrity of the project and process and avoid any appearance of favoritism. Once the solicitation is issued, communications between CPD staff and potential vendors must follow the procedure outlined in the solicitation. Vendors not complying with this limited contact policy during an open solicitation will be found non-responsive and ineligible for contract award. (See OP 08-04.) Any doubt about appropriate communications with vendors should be addressed with TEA Ethics Advisor.

Please note, state law does not prohibit the exchange of information between a state agency and a vendor related to future solicitations or as necessary to monitor an existing contract. Effective communication between TEA program staff and vendors for the purposes of market research or contract monitoring is encouraged, but steps must be taken to maintain a fair opportunity to compete for all vendors.



### Compliance Check

Before a project can move from the planning to the procurement phase, the planning team must review the planning packet to ensure accuracy and completeness of all required documents.

## Phase 2: Procurement

The Procurement Phase is a collaborative effort between program and contract staff along with other subject matter experts (legal, IT, etc.), as necessary, to develop the actual solicitation document. Together, this team will ensure all issues and risks are addressed and result in a

solicitation that clearly and accurately captures the needs of TEA, while ensuring compliance with applicable state and federal requirements.

There are two objectives in the procurement phase: 1) to solicit potential vendors for desired goods or services; and 2) to evaluate the responses of interested vendors to determine who can provide best value to TEA.

Texas law mandates that state agencies award contracts to responsive vendors providing the best value to the state. The best value standard may vary depending on the procurement method, therefore public procurement professionals must ensure the appropriate best value standard is used as the basis for a contract award. Best value criteria may include, but are not limited to, assessment of installation costs, life cycle costs, quality and reliability of the goods and services, delivery terms, indicators of vendor performance under past contracts, costs of employee training, the effects of a purchase on agency productivity, the estimated impact of the contract to the state agency or other unit of government, and other factors relevant to determining the best value for the state.

## Solicitations

**FIGURE 2: ESTIMATED TIMELINE, SOLICITATION DEVELOPMENT**

	Duration	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Estimated Schedule	177d												Estim
Solicitation Development	89d												
Planning Packet accepted and assigned to Solicitation team	1d												
1. CPD draft & disseminate "DRAFT v1"	10d												
2. Solicitation kick-off meeting	1d												
3. Drafting/Internal reviews/comments (including IT, HUB & Legal)	33d												
4. CPA review for delegation (or DIR review process)	30d												
5. Finalize solicitation and respond to CPA comments	14d												

The solicitation process begins with CPD and program staff determining the appropriate procurement method to obtain desired goods or services. Except as otherwise provided in statute, TEA must utilize competitive bidding processes. TEA uses the following procurement methods for competitive bidding: Requests for Proposals (RFP), Requests for Offers (RFO), and Requests for Qualifications (RFQ).

Once the appropriate method of procurement is selected, CPD, program, and the various subject-matter experts will work together to develop a well-organized and concise solicitation that clearly articulates TEA procurement objectives. The solicitation must spell out the expected project deliverables, selection criteria, the weight assigned to each criterion and proposal requirements including the specific date, time, and location for submission.

Unorganized and poorly drafted solicitations often result in responses not aligned to TEA desired outcomes. Months of work by both internal and external parties can be lost when no viable response is received and no contract is awarded.

## Special Considerations

Inter-Agency Contracts (IAC) and Interlocal Cooperation Contracts (ICC) are examples of exceptions to the competitive bidding requirement. Although statute allows for expedited

contracting for emergency contracts and in other limited and specific situations, TEA must make every effort to competitively obtain the goods and services when possible.

Consulting services defined as “the service of studying or advising a state agency” (Texas Government Code Section 2254.021) and Proprietary/Sole Source contracts (Texas Government Code Section 2155.067) require enhanced review. Staff must consult CPD and obtain legal review before proceeding with either of these options to ensure compliance with appropriate policies and procedures. For more information, see the Third-Party Review section below.

## **Regional Educational Service Centers (ESC)**

ESCs are statutorily created entities whose purpose is to improve student achievement in Texas by developing high-quality services that enable schools to operate more efficiently and economically and to support educators, as they prepare the future workforce of Texas. ESCs provide services to and support for school districts, schools, and educators that help students succeed. The 20 Regional Education Service Centers in Texas are the technical assistance providers to Local Education Agencies in Texas. As stated in [Texas Education Code 8.012](#), contracts between TEA and an ESC are governed by the statutes, regulations, and procedures outlined in the [State of Texas Procurement and Contract Management Guide](#). Contracts with ESCs must follow requirements for competitive solicitation, unless a statute specifically indicates that TEA may directly contract with an ESC for a specific program.

## **Outside Counsel Agreements**

The Attorney General serves as the State of Texas' legal counsel and therefore represents state agencies and institutions of higher education. Accordingly, per Title 1, Chapter 57 of the Texas Administrative Code, TEA may not retain or select any Outside Counsel without first receiving authorization and approval from the Office of the Attorney General to do so. TEA staff must make a request for Outside Counsel in consultation with TEA's Legal Services Division.

## **Historically Underutilized Business (HUB) Opportunities**

Another significant requirement of the Solicitation Phase is to assess potential HUB involvement in contracting opportunities, as HUB participation is highly encouraged by the State of Texas. For any procurement with an estimated contract value of \$100,000 or more, including all renewals and amendments, TEA must determine whether subcontracting opportunities are probable under the contract. (Texas Government Code 2161.252)

If a HUB Subcontracting Plan (HSP) is required by the solicitation, the completed HSP must be submitted by the date and time published in the solicitation to be considered responsive. By law, a response containing an incomplete or missing HSP must be disqualified. Once accepted by TEA, the HSP will become part of the contract. Vendors must amend their HSP if there is any change in their planned subcontracting during the performance of the contract.

TEA must approve all subcontractors and reserves the right to reject a potential subcontractor. Vendors are responsible for ensuring subcontractors comply with all State of Texas procurement laws and TEA contract terms and conditions.

## Third-Party Review

Most TEA solicitations are subject to third-party review by the CPA.

For the purchase of goods over \$50,000 and services over \$100,000, TEA must submit all solicitation documents to the CPA for review and approval. CPA provides recommendations and later authorizes TEA to publish a solicitation on the Electronic State Business Daily (ESBD).

For purchases of IT related products and services, TEA is required to use contracts established by the Department of Information Resources (DIR), unless the procurement is subject to an exclusion or exemption. TEA staff must submit a statement of work (SOW) to DIR for review when purchasing \$50,000 or more in IT related products and services.

For consulting services contracts over \$15,000, the TEA must follow a very stringent procurement method outlined in the [State of Texas Procurement and Contract Management Guide](#) (PCMG) that includes, among other things, seeking and obtaining a finding of fact from the Governor’s Office of Budget and Planning. In addition to ESBD posting requirements, TEA must also give notice to the Legislative Budget Board (LBB) and publish an RFP for consulting services over \$15,000 in the Texas Register.

CPD and TEA staff should refer to guidance in the PCMG on applicable procedures and best practices to ensure appropriate review of TEA contracts from the CPA, the Governor’s Office of Budget and Planning, the LBB, and from the [Department of Information Resources](#).

## Electronic State Business Daily (ESBD)

The ESBD, managed by SPD, is the State’s online listing of procurement opportunities. TEA must post procurements with a contract value over \$25,000 to the ESBD regardless of the source of funds. The value of the contract for ESBD posting is the estimated dollar amount TEA may be obligated to pay for the life of the contract including amendments and renewals.

The statutory minimum posting period is 14 days; however, best practice is to advertise a contract opportunity for 30 days or more depending on the complexity of the project. (Figure 3 below). Consideration must be given to what affords eligible interested vendors sufficient time to provide quality responses. TEA Contracts and Purchasing Division staff will establish a realistic estimated posting period taking into consideration holidays, the complexity of the project, and any statutory requirements.

**FIGURE 3: ESTIMATED TIMELINES, SOLICITATION PUBLISHING**

	Duration	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Estimated Schedule	177d												Estim.
Solicitation Development	89d												Solicitation Development
Solicitation Publishing	31d												Solicitation Publishing
6. Posting to ESBD	30d												6. Posting to ESBD
7. Proposals received	1d												7. Proposals received

## Proposals

Interested and eligible vendors must submit proposals responsive to a posted solicitation on or before the deadline date and time and at the posted location for receipt. TEA does not reimburse or pay for any costs associated with the preparation of the response. TEA will not accept faxed

responses. All responses are checked-in and evaluated as responsive or unresponsive to minimum criteria published in the solicitation. Unresponsive submissions are automatically disqualified and are not forwarded to evaluators for review.

Note: If a vendor wishes to negotiate TEA's standard contract terms and conditions, the vendor must identify any exceptions at the time the proposal is submitted and provide recommended alternate language. If no exceptions are identified or alternate language is not provided, the vendor is deemed to accept the standard terms and conditions and no negotiation for those terms will be allowed if that vendor is selected.

## Evaluations

### Evaluation Committee

The evaluation committee are identified in the planning packet by the Project Manager from the appropriate program office. The committee is composed of subject matter experts and stakeholders who have taken the required TEA trainings and executed non-disclosure agreements. In addition to Non-Disclosures signed at project planning, evaluation committee members must also complete the Conflict of Interest Disclosure Form prior to receiving proposals for evaluation. Project Managers may also identify alternate evaluation committee members.

### Conflict of Interest Disclosure

Staff and vendors have an ongoing duty to report actual and potential conflicts of interest. CPD staff will rigorously attempt to identify and address any actual or potential conflicts of interest with respondents. This process includes requiring respondents to provide identifying information (*curriculum vitae* or resumes) for owners, executives, board members, and staff with primary responsibilities for the project. In addition, actual and potential conflicts of interest information disclosed using an approved form will be vetted by TEA's Ethics Advisor and documented in the contract file. See OP 07-04 – Agency Standards of Conduct and Conflicts of Interest and OP 08-03 – Contracts Administration for more information.

### Evaluation Process

To safeguard the integrity of the evaluation process, committee members may not communicate with respondents or others outside the committee regarding the responses received or the evaluation process. Each response must be evaluated independently against the evaluation criteria and rubric published in the solicitation. *The evaluation committee members must not conduct independent research.* Each member's evaluation must be based solely on his or her personal review of the response, as submitted, based on the identified criteria.

### Scoring

Evaluation committee members must individually submit their scores to the assigned Contract Specialist who will compile the scores and identify the highest scoring responses. Evaluation committee members then have the option to invite top scorers for oral presentations. Oral presentations are not required and may not be necessary in every situation. Additionally, criteria for selecting respondents for oral presentation must be based on clear and articulable standards (i.e., top three highest scores). Oral presentations are arranged by the Contract Specialist.

It is best practice to provide all respondents the same general questions to be addressed during oral presentations before the oral presentation, as well as any vendor specific questions based on their submitted proposals. This practice will ensure oral presentations produce the information required to effectively evaluate vendors. Evaluation committee members may engage in limited discussions with vendors during oral presentation, with the assistance of the Contract Specialist, to clarify information provided during the presentation only. Evaluation committee members will score oral presentations and submit individual scores to the Contract Specialist who will compile the score totals and identify the top scorer(s).

## **Best and Final Offers (BAFO)**

After any oral presentations or demonstrations are completed, the Contract Specialist may lead discussions between the Project Manager and the respondents. If discussions are held, all respondents must be given equal opportunity to discuss and submit revisions to proposals through a request for BAFO that includes instructions on exactly what should be submitted. The evaluation committee may select a vendor to enter negotiations using the results of the BAFO.

## **Award Memo**

The Project Manager shall make a written recommendation summarizing the procurement process and recommending contract award to a vendor or vendors with the highest score and determined to provide the best value. The memo must be reviewed by the Senior Director of Contracts and Purchasing to ensure it accurately summarizes the process and includes the best value considerations before it is routed through the Project Manager's director and Deputy Commissioner.



### **Compliance Check**

Before a project can move from the procurement to the contract formation phase, evaluation scores must be reviewed by a third-party, non-CPD staff person, and the signed award memo must be sent to CPD.

## **Phase 3: Contract Formation**

The next step in the Contract Management Framework is to enter an enforceable, legally compliant contract that complies with Texas procurement laws, documents agency needs, vendor obligations, the project schedule and cost. During this stage, contracts staff conduct all necessary checks to ensure the vendor is eligible to contract with TEA.

The time it takes to negotiate and execute a formal written agreement varies based on the amount of negotiations necessary. Negotiations are permitted for purchases using the sealed competitive proposal process TEA negotiations team shall consist of the assigned Contract Specialist, the Project Manager, and TEA Legal Counsel, if necessary. The Project Manager, with the guidance of the Contract Specialist, may participate in discussion with the vendor for the limited purpose of negotiating terms of the contract. The Limited Contact Policy, however, remains in effect for all other TEA staff, unless the staff member is designated by the Project Manager as a necessary participant in negotiation efforts.



Once TEA and the vendor reach a final agreement on the substantive terms and conditions of the contract, a second review of the contract document and a pre-signature compliance review will be conducted before presenting the final contract to the Project Manager for approval. Reviews by Legal and IT may be required at this time, as well. Once approved, the Contract Specialist will forward the contract to the vendor for execution.

The Office of Legal Services shall also review all high-risk contracts prior to execution.

## **Standard Terms and Conditions**

TEA's Office of Legal Services has ownership of TEA's contract terms and conditions. All changes are made by TEA contracts attorneys. Staff may not make any changes to the terms and conditions of contracts.

As direct by Section 2262.05d1(d)(1) of the Texas Government Code, the [State of Texas Procurement and Contract Management Guide](#) provides model contract provisions, which distinguish between essential provisions that an agency must include in a contract to protect the interests of the State and recommended provisions that any agency may include in a contract.

Vendors must identify any exceptions to the TEA standard terms and conditions at the time the proposal is submitted and provide recommended alternate language. If no exceptions are identified or alternate language is not provided, the vendor is deemed to accept the contract terms and conditions and no negotiation for those terms will be allowed. If the vendor objects during this stage, TEA will move to negotiations with the next highest scoring vendor.

## **Payment and Reimbursement**

One method of reducing risk is to limit the availability of advanced payments to vendors as a TEA contract term and payment methodology. TEA limits advanced payments to those instances authorized by statute and requires review and approved by the TEA Deputy Commissioner of Finance.

## **Funding Out**

The "funding out" clause must be included in a contract if the contract term will cross fiscal years. This clause allows TEA to terminate a contract for lack of appropriations for the project without being in breach of the contract.

## **Form 1295 Disclosure of Interested Parties**

Texas law prohibits TEA from entering certain contracts over \$1 million with a business entity unless the business entity submits a Disclosure of Interested Parties form to TEA at the time the business entity submits the signed contract. A Form 1295 is also required if, after execution of the original agreement, the terms of the contract change and require an action or vote by the entity's governing body, or if the value of the contract increases by at least \$1 million. Vendors must update the Form 1295 any time there is a change to the information disclosed in the original Form 1295.

Vendors must establish an account and user profile on the [Texas Ethics Commission](#) website and follow instructions provided to create a new certificate. The vendor must print, sign, and return



the form as directed to TEA. CPD staff must acknowledge receipt of the Form 1295 on the Texas Ethics Commission website.

## Execution by TEA Signatory

A contract is not valid until signed by both parties. However, for contracts valued above \$5 million, the TEA Director of Contracts and Purchasing must verify in writing that the solicitation, purchasing methods, and contractor selection process complies with state law and TEA policy and raise any potential issue in the solicitation, purchasing, or contractor selection process with the Commissioner of Education when the contract is routed for signature.

The Director of Contracts and Purchasing must also:

- Approve each agency contract for which TEA is required to purchase goods and services using the best value standard;
- Ensure that, for each contract, TEA documents the best value standard used for the contract;
- Acknowledge in writing that TEA complied with TEA's Contract Management Handbook and the [State of Texas Procurement and Contract Management Guide](#) in the purchase; and
- Ensure sure that the contractor's performance is evaluated based on:
  - Information prepared by TEA in planning the procurement that assessed the need for the purchase together with the specifications for the good or service and the criteria to evaluate the responses resulting in an award and contract;
  - Compliance with the material terms of the contract;
  - Ability to correct instances of contractual non-compliance; and
  - Other evaluation criteria presented in the on-line [Vendor Performance Tracking System \(VPTS\)](#).

Once properly verified, the vendor-signed contract is routed to the appropriate internal signatory. The Commissioner of Education signs contracts over \$1,000,000 and may delegate signature authority for contracts under \$1,000,000 to an identified TEA employee. Information about signature authority and delegated signature authority for TEA is provided to the Comptroller as part of the Agency's Annual Procurement Plan. Currently, authority to sign contracts under \$1,000,000 is delegated to the Deputy Commissioner of Finance.

Upon execution of the contract (signed by both parties) the agency's Limited Contact Policy ceases.

**FIGURE 5: ESTIMATED TIMELINE, CONTRACT FORMATION**

	Duration	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Estimated Schedule	177d												Estim:
Contracting	14d												Contract
12. Contract Formation	5d												12. Contrac
13. Contract Review	3d												13. Contra
14. Program Review	3d												14. Progr
15. Compliance Review	3d												15. Com
Contract Execution	6d												Contr
16. Vendor Signature	2d												16. Ver
17. TEA Signature	4d												17. TE

## Contract Award

After full execution, TEA must post notice of award to the ESBD if the contract is expected to exceed \$25,000. Depending on the procurement, TEA may also provide notification to each unsuccessful vendor in writing. CPD must maintain proof of the ESBD posting in the contract master file. Solicitations using certain procurement methods, such as major consulting services contracts, must be advertised in the Texas Register. If an agency does not comply with the Texas Register solicitation and/or award posting requirements for consulting services contracts, the consulting contract, including amendments, extensions, and renewals, is void.

Contracts that have a value that exceeds certain thresholds must be reported to the Legislative Budget Board (LBB). The submission must include any required documentation such as the solicitation documents, contract documents, and attestation letters. These reporting requirements are fulfilled through the [LBB Contracts Database](#).



### Compliance Check

A second review of the contract must be completed before it is sent to TEA Program staff, who must review and approve the contract in writing before it is sent to the vendor for signature. A pre-signature compliance review is completed before an agreement is routed for signature by authorized officials.

The CPD Contract Compliance Manager consults with the Contracts and Purchasing Division Director when instances and/or emerging patterns of noncompliance are identified to proactively implement system corrections.

## Third-Party Contracts

TEA staff are encouraged to seek partnerships and opportunities for TEA to collaborate with other entities sharing the mission and goals of the agency. Staff pursuing these opportunities are required to submit a copy of any third-party contract and a summary of its purpose to CPD by emailing [TEAContracts@tea.texas.gov](mailto:TEAContracts@tea.texas.gov). CPD will assign the appropriate internal stakeholders to review the document prior to routing for signature. CPD will track and route these agreements for signature.

# Phase 4: Monitoring

Monitoring vendor performance is a critical phase in the Contract Management Framework. The purpose is to ensure the vendor is providing the agreed goods and services consistent with the terms and conditions of the contract and prevent fraud, abuse, and waste.

All TEA contracts are monitored. Contract monitoring activities are shared by Accounting, CPD and TEA project managers and are conducted in a variety of ways, but must be objective and address contract complexity, value, and risk. TEA has general criteria for assigning contracts a low, medium, and high risk status. (See Table 1: TEA Contract Monitoring and Enhance Monitoring Criteria.) Low-risk contracts are subject to general monitoring and medium- or high-risk contracts are subject to enhanced monitoring. Enhanced monitoring is an increased level of monitoring, beyond what is normally used.

General monitoring activities for all TEA contracts include, but are not limited to:

- Reviewing invoices to ensure the receipt and acceptance of goods and services per contract requirements.
- Monitoring Agency contracts for certain administrative reporting activities stated in the contract’s terms and conditions or in any special provisions. These include contractor reporting of any litigation, lobbyist activities, changes in ownership or financial status, and key changes on personnel.
- Monitoring changes in a contractor’s HUB Subcontracting Plan (HSP) and requesting updated plans when contract amendments or renewals are processed.
- Communicating with TEA’s HUB Office to ensure the contractor submits HUB Performance Assessment Reports (PARs) according to schedule.
- Monitoring Agency compliance with statutes, rules, and regulations governing state Agency contract and procurement activities.

Enhanced monitoring (meaning greater frequency and/or use of more robust monitoring tools) is used to mitigate the greater risk posed to TEA by medium- or high-risk contracts (Tiers II and III as noted in Table 1 below). Enhanced monitoring activities include but are not limited to: scheduling formal monitoring meetings between TEA Project Managers and Contract Specialists to review monitoring requirements, providing training on best practices and agency standards for enhanced contract monitoring, and reviewing tools developed by program staff for contract monitoring.

**TABLE 1: TEA CONTRACT MONITORING AND ENHANCED MONITORING CRITERIA**

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**Tier I (low risk) contracts meet these criteria:**

- Under \$1,000,000;
- The contractor will not have access to confidential information or TEA data systems, and will not be in contact with students;
- The contract was awarded through a competitive procurement process, as described in the [State of Texas Procurement and Contract Management Guide](#), and the procurement was approved by the Texas Comptroller of Public Accounts, if over \$100,000; or the procurement was conducted through the Department of Information Resources (DIR) using a cooperative contract;
- The project is not a low-risk tolerance initiative;
- Vendor performance reported in the Vendor Performance Tracking System (VPTS) is an A; and
- A program or service similar to existing programs or services TEA provides.

**Tier II (medium risk) contracts meet one or more of these criteria:**

- Over \$1,000,000, but less than \$10,000,000;
- A proprietary or sole source contract under \$1,000,000;
- A consulting service reportable to the Office of the Governor's Department of Budget and Planning;
- The contractor will receive an advanced payment;
- The contractor will have access to confidential records or TEA data systems, or will be in contact with students;
- The project is a low-risk tolerance initiative;
- Vendor performance reported in VPTS is lower than A, but at least B;
- A new program or service, unlike a current TEA initiative; or
- The contractor has not had a major contract with a Texas state agency.

**Tier III (high risk) contracts meet one or more of these criteria:**

- Over \$10,000,000;
- A proprietary or sole source contract over \$1,000,000;
- Vendor performance reported in VPTS is lower than B; or
- TEA, in its sole discretion, has determined that a contract meeting one or more Tier II risk criteria should be subject to Tier III monitoring procedures.

## **Service Provider Criminal History Reviews and Non-Disclosure Agreements**

TEA OP 04-02 requires any contractor who has, or will potentially have, direct contact with public school students, to sensitive information, or to TEA data systems to submit to a national criminal history record information review (to include fingerprinting) before commencement of the contract. Contracts with this requirement are contingent upon meeting TEA's eligibility standards.

TEA program staff is responsible for ensuring the contractor has executed all necessary Access to Confidential Information forms prior to surrender of or access to TEA confidential information or access to public school students and TEA data systems.

## **Data Sharing Agreements**

Completion and submission of an Access to Confidential Information – Agent Agreement is required for TEA contractors to obtain access to confidential information. To ensure agency compliance with the Family Educational Rights and Privacy Act (FERPA), please consult OP 10-03 for agency policy governing the access, use, and dissemination of confidential enterprise information.

## **TEA Project Managers: Overseeing Deliverables**

TEA Project Managers are responsible for monitoring the contracts to which they are assigned. CPD provides TEA staff tools and training to support effective monitoring.

The responsibilities of the TEA Project Manager include:

- Serving as the primary point of contact for Agency communication with the contractor regarding all matters pertaining to the contract;
- Managing any state property used in contract performance, (e.g., computers, telephones, identification badges);
- Implementing a quality control and contract monitoring process using TEA monitoring resources;
- Monitoring the contractor's progress and performance to ensure goods and services procured conform to the contract requirements and keep timely records of findings;
- Promptly consulting with Agency legal counsel to address any legal concerns and/or issues;
- Managing, approving, and documenting any changes to the contract through the amendment process authorized by the terms of the contract;
- Inspecting and approving the products and/or services by submitting a written document accepting the deliverables or obtaining documentation from the end users responsible for receipt that inspection and approval have been completed;
- Verifying accuracy of invoices and authorizing payments consistent with the contract terms;
- Monitoring the contract budget to ensure sufficient funds are available throughout the term of the contract;
- Identifying and resolving disputes with the contractor promptly;
- Exercising state remedies, as appropriate, when a contractor's performance is deficient;
- Maintaining appropriate records in accordance with the records retention schedule;
- Confirming all products and/or services have been delivered and delivery is completed prior to the expiration date of the contract; and

- Performing contract closeout processes by ensuring the contract file contains all necessary contract documentation, reporting vendor performance to VPTS, and documenting lessons learned.

## **Dispute Resolution**

The objective of any dispute resolution process is to resolve problems before they escalate. To avoid escalation of problems to the next level and ensure the Agency has not exacerbated potential problems, it is imperative that TEA personnel respond promptly to all contractor inquiries.

TEA Project Managers should make every attempt to informally resolve all issues with a vendor. Informal resolution may include corrective action plans to identify improved services delivery or goods. Members of CPD are available to assist, if timely notice of the issue is provided. In the event the parties are unable to resolve the dispute, TEA is required by law to include as a term of the contract the dispute resolution process provided for in Chapter 2260 of the Texas Government Code.

## **Change Management/Amendments**

CPD's Monitoring team supports TEA Project Managers in effective planning for change management of contracts, i.e., amending the contract. Throughout the term of the contract, changes may become necessary. These changes may be minor, administrative changes such as a change of address, or they can be substantial changes that affect the price and delivery.

Failure to manage and control changes may result in an unintentional modification to the scope of work, extension of the schedule, increase in the contract cost, circumvention of management controls, or diminished contractor accountability, all of which may cause future compliance concerns. When modifying any part of the contract, the Project Manager must contact CPD before initiating the modification to determine if the change is within the scope, or parameters of the solicitation. Any changes to an original contract, whether it be competitive or IAC, ICC, etc., must remain within the scope of the original contract, funding authority, and statutory authority.

If a change is approved, the change and the impact to the scope of work must be documented in a contract amendment or purchase order change notice, as applicable. Under no circumstances may TEA staff direct a contractor to perform work that is not stated in the contract terms. If a contractor perceives that work beyond the scope of the contract was ordered by TEA, the contractor may claim that the contract was "constructively" changed and may be entitled to additional compensation for the changes. Changes determined to be substantial will require additional review as determine appropriate by the Senior Director of Contracts and Purchasing and approval by the appropriate signature authority.

## **Renewals**

If the contract has an option to extend or renew, the Project Manager must assess whether the option will be exercised by TEA prior to the expiration of the current contract term. The number, length, and process for exercising renewals and extensions should be specified in the contract.

Under no circumstances will a contract be renewed after the expiration date of the preceding contract term. CPD will provide vendors with notice of expiration and direct the vendor to cease

any work on the project. Project managers have a responsibility to ensure work ceases and are prohibited from approving an invoice for work performed after the contract term expires.

Work performed by a vendor without a valid contract or outside the terms of a valid contract constitutes an unauthorized purchase and is prohibited.

## **Phase 5: Close-out**

The purpose of the close-out phase is to verify that all parties to the contract have fulfilled their contractual obligations. Accordingly, contract close-out must be conducted promptly. The following activities are completed in the close-out phase:

- CPD and TEA Project Manager ensure all goods and services have been received and accepted.
- CPD and TEA Project Manager review list of required reports and ensure all reports have been received, reviewed, and accepted for accuracy and completeness.
- All Agency furnished equipment and materials are returned.
- All property inventory and ownership issues are resolved, including disposition of any equipment or licenses purchased under the contract.
- Final review and acceptance from the TEA Project Manager is completed.
- Final payment is made to the vendor.
- The Contractor performance is reported in the Vendor Performance Tracking System (VPTS) operated by the Comptroller's Office.

## **Vendor Performance Reporting**

The contractor's performance must be reported to VPTS by CPD staff once a contract with a value of over \$25,000 is completed or otherwise terminated. The TEA Project Manager completes the TEA Contractor Performance Evaluation Form to provide input for the VPTS report.

In assessing contractor performance, the TEA Project Manager should consider the following:

- Did the contractor meet the requirements in the contract?
- Were there any other criteria besides price and meeting specifications in the contract? If so, the Project Manager must consider those criteria in the vendor performance evaluation.

The Project Manager must maintain documentation and be able to justify the vendor performance rating. Vendor performance ratings are subject to public information request.

## **Record Retention**

Aside from the responsibility of maintaining the contract file, the Project Manager, or designated responsible TEA employee, is also responsible for ensuring that contract documents are retained

for the appropriate amount of time as determined by applicable law and TEA records retention schedule. TEA records retention schedule is active contract plus seven (7) years.

## Glossary of Terms

Amendment. An amendment to a contract is required when there is a change to the rights or duties of the parties. Formal and informal amendments are completed to address a variety of changes, as required by statute and the terms and conditions of contractual agreements.

Best and Final Offer (BAFO). Formal request for revisions to vendor proposals. A BAFO is a procurement strategy often used when the evaluation committee believes that the price could or should be better, or when some element of the proposal needs further definition. It is also used to obtain added information that will offer a larger point of difference between competitive proposals.

Best Value. Most advantageous to the State in light of all relevant circumstances. The purchase price and whether the goods or services meet specifications are the most important considerations. Other factors include: installation costs, life cycle costs, the reliability of the goods and services, delivery terms, indicators of probable vendor performance, cost of employee training, effect of purchase on agency productivity

Competitive Solicitations. Goods and/or services valued at \$5,000 or more must be competitively procured unless a competitive solicitation is not required by state or federal law or circumstances exist under which competition can be limited or waived.

Conflict of Interest. When an individual's official duties clash with the individual's personal interests, a "conflict of interest" may occur; this conflict may impair one's judgement when trying to determine the proper course of action in a procurement and contracting event.

Contract. A mutually binding legal relationship obligating the seller to furnish goods or services. This definition includes the Memorandum of Understanding (MOU), other non-competitive contracts between public entities, license agreements, or any other document that legally or financially binds the agency.

Contract Management Framework. The five components of contract administration that define the primary activities of the contracting process.

Contract Managers. Program staff involved in the development, evaluation, award, or management of a competitive or noncompetitive contract.

CPD. Contracts and Purchasing Division.

Electronic State Business Daily (ESBD). The online directory, administered by the State Procurement Division of the Comptroller's Office, that publishes solicitations for the purpose of informing vendors of procurement opportunities and provides public notice of contract awards.

Evaluation team: TEA staff whose job duties include assessing the quality, value and reasonableness of proposals, qualification statements, offers, or bid documents submitted to TEA in response to a competitive solicitation for goods and services. Evaluation staff complete the



TEA Contract Management Training and sign non-disclosure and conflict of interest disclosure forms before evaluating responses.

TEA Contract Administration Training. Training and education for program staff education to support effectively participating in the development of a solicitation, evaluation of responses, the award of a contract to a selected vendor, and contract monitoring activities.

TEA Contract Management Handbook. A compilation of relevant agency rules and guidelines for the administration and execution of agency contracts. The handbook is an adjunct to the [State of Texas Procurement and Contract Management Guide](#). The handbook is developed and maintained by CPD and may be viewed on iTEA.

Contract Term. Agency contracts must have a fixed term (beginning and ending dates) during which all related services are provided and all related costs incurred. Extensions and renewal terms must be identified in the original contract document. Contractors must not provide services before the contract is fully executed.

Limited Contact Policy. Once the fact gathering is complete and the actual solicitation development begins, any communication regarding the solicitation between a vendor and program staff must cease. All vendor communication must be directed to CPD.

Pre-signature Compliance Review. CPD review complete contract files for satisfaction of TEA policy requirements and state procurement law requirements before signature by the vendor and TEA signatories.

Program Staff. TEA staff outside of the Contracts and Purchasing Division. This term is used as a general statement to refer to agency staff responsible for implementing the education, research, and business initiatives (or programs) supporting TEA's strategic plan.

Project Manager. Program staff responsible for planning, procurement and execution of a project and serves as the point of contact for any issues or discrepancies arising during the term of the contract.

Proprietary Contract. An agreement to purchase a good or service 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. The term "proprietary" refers to a product or service to be supplied. The characteristic which is not shared or provided by competing or similar products or service. Proprietary purchases include products or services manufactured or offered under exclusive rights of ownership, including rights under patent, copyright, or trade secret law. A proprietary purchase can either be sole source (the specific product or service is only available for purchase through a single vendor), or competitive (the specified product or service is available for purchase through more than one vendor). Proprietary contracts must follow procedures for procurements in the Texas Procurement and Contract Management Guide.

Purchasing Professional. TEA Contracts and Purchasing Division staff whose primary job responsibilities include carrying-out and overseeing purchasing and contracts of goods and services for TEA.

Renewal. A renewal is processed when a contract ends, by its original terms, and both parties choose to re-enter the contract. Most terms remain the same as those stated in the original contract, but some elements may change, like price or delivery schedule.

Signatory Designee. Employees in positions that have been delegated signatory authority by the Commissioner, with the authority to legally or financially bind the agency. The Commissioner shall sign any contract with a value of \$1 million or more. The Commissioner confers authority to select designees for contracts under \$1 million and the letter authorizing the designees is on file with the Comptroller of Public Accounts (CPA).

Third Party Contract(s). A contract developed by another agency or entity using forms and terms and conditions other than those developed by TEA.